



# City of Palo Alto

## City Council Staff Report

(ID # 5526)

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**Report Type: Consent Calendar**

**Meeting Date: 4/20/2015**

**Summary Title: Stevenson Loan Approval and related Budget Amendment Ordinance**

**Title: Approval of Loan Documents and Agreements Providing \$1,000,000 for the Rehabilitation of the Stevenson House and Adoption of a Budget Amendment Ordinance Appropriating Funds from the Residential Housing In-Lieu Fund for this Purpose**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that the City Council:

1. Authorize the City Manager or his designee to approve and execute the Loan Agreement in substantially the same form as Attachment A, the Regulatory Agreement restricting the project to affordable senior rental housing for a period of 55 years (“Joint Regulatory Agreement”) in substantially the same form as Attachment B and any other necessary and related documents to effectuate the \$1,000,000 City loan for the renovation of Stevenson House and the consolidation of outstanding Community Development Block Grant (CDBG) loans consistent with the funding commitment previously approved by the City Council on November 5, 2012; and
2. Approve a Budget Amendment Ordinance appropriating \$1,000,000 from the Residential Housing In-Lieu Fund for this purpose (Attachment C).

### **Executive Summary**

In November 2012, the City Council considered and approved a request by Palo Alto Senior Housing Project, Inc. (PASHPI) for \$1,000,000 of funds set aside by the Stanford University Medical Center (SUMC) Development Agreement (DA) for “Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing.”<sup>1</sup> At that time, the Council

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<sup>1</sup> Although the balance for Infrastructure, Sustainable Neighborhoods and Communities and Affordable Housing is

approved a budget amendment ordinance moving the funds from the SUMC DA Fund to the City’s Residential Housing In-Lieu Fund. The funds requested by PASHPI were to be used to help finance the complete rehabilitation of the Stevenson House facility, a 120-unit senior affordable development that has served the City’s extremely low, very low and low income senior population for 47 years.

Council approval of the recommended action will finalize the 2012 commitment to loan these funds to PASHPI. In addition, Council approval will consolidate existing Community Development Block Grant (CDBG) loans into an Amended and Restated Promissory Note and an Amended and Restated Deed of Trust, and result in a new Regulatory Agreement ensuring the long term use of the facility as affordable senior rental housing.

**Background**

Stevenson House, located at 435 E. Charleston Road, has been serving extremely low, very low and low income Palo Alto seniors for 47 years. Built in 1968, Stevenson House consists of 120 studio and one bedroom units. In addition to providing affordable housing, it offers services, meals and social programs for its residents.

Originally funded through HUD Section 202 funds, the facility has been well maintained over its lifespan. However, certain building system components have recently begun to near the end of their useful lives. Palo Alto Senior Housing Project, Inc. (PASHPI), the developer, owner and operator of Stevenson House, received Community Development Block Grant (CDBG) funding to repair some of those systems but a more comprehensive recapitalization is necessary to insure the long term viability of the facility. Over the past 20+ years, the City of Palo Alto has provided CDBG funds to assist in repairing some of the older systems. Approximately \$1.4 million has been allocated to the Stevenson House since 1991, of which \$1,021,247 is still outstanding. The breakdown of CDBG funding for Stevenson House is presented in Table 1, below.

**Table 1. Summary of CDBG Funds Provided to Stevenson House**

<b>Fiscal Year</b>	<b>Project Description</b>	<b>Allocation Amount</b>
<b>1994/1995</b>	Accessibility	\$ 21,000.00
<b>1991/1992 &amp; 1992/1993</b>	Deck/Fire Alarms	\$ 55,000.00
<b>1997/1998</b>	Building A Reroof	\$ 48,000.00
<b>2002/2003</b>	Emergency Call System	\$ 50,000.00

\$7.5 million, the DA stipulated that a minimum of \$1.7 million must be allocated for affordable housing.

<b>2004/2005</b>	Hot Water Piping & Freezer Project	\$ 83,260.00
<b>2006/2007</b>	Windows & Doors	\$ 370,000.00
<b>2006/2007</b>	Fire Alarm Project	\$ 47,646.00
<b>2007/2008</b>	Radiant Heating Project	\$ 144,259.00
<b>2008/2009 (CDBG-R)</b>	Sewer Pipe System Repair & Renovation	\$ 34,100.00
<b>2009/2010</b>	Radiant Heating Repairs – Building A	\$ 83,200.00
<b>2010/2011</b>	Sewer Repair Project	\$ 478,808.00
<b>TOTAL</b>		<b>\$1,415,273.00</b>

Source: Palo Alto Department of Planning & Community Environment, December 2014

On November 5, 2012, the City Council committed an additional \$1 million in affordable housing funds to help PASHPI finance a comprehensive rehabilitation of the facility (CMR #3176). PASHPI is also receiving County funds and utilizing tax credit financing, which necessitated a partnership with a for profit entity, as discussed in detail at the March 9, 2015 City Council meeting (CMR #5576).

## Discussion

Stevenson House is comprised of three buildings which house 120 units, a commercial kitchen and other support space, on a 2.32 acre site. Two buildings are three story structures and the third building is two stories. Some of the amenities that are provided for the residents include health, social, recreational and art programs. In addition, a nurse visits on a weekly basis to provide simple tests, advice and referrals. Because of its location, the residents are within close proximity to services offered in Mitchell Park and Cubberley Community Center.

### Scope of Rehabilitation Project

The existing structures will be completely rehabilitated to insure their long term functionality. The proposed rehabilitation work for Stevenson House includes:

- Seismic Upgrades to the buildings
- New Roof
- Re-pipe Building Water Distribution Systems
- Finalize Sewer Line Replacement

- Improve Accessibility to Apartments and Common Areas
- Reconfigure Common Area Spaces
- New Finishes and Appliances to Apartment Units

#### Project Financing and Budget

PASHPI proposes to retain a fee interest in the land and enter into a ground lease with the new Tax Credit Limited Partnership of which an affiliate of PASHPI will be the managing general partner. The Limited Partnership will own the buildings for the term of the ground lease, subject to the option PASHPI or an affiliate will have to reacquire the buildings at the end of the 15-year tax credit compliance period. Proceeds from the lease to the Limited Partnership to PASHPI will be used to help finance the rehabilitation of the buildings in the form of a seller carryback loan.

The Project budget for the proposed rehabilitation is \$45,538,425<sup>2</sup>. The proposed Sources and Uses are shown in Table 2 below.

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<sup>2</sup> Note the Project budget is still preliminary and subject to change.

**Table 2. Summary of Sources and Uses of Funds**

***Constructions Sources***

Tax Credit Equity*	\$2,284,948
Tax Exempt Bonds, Construction Tranche A	\$20,250,000
Carryback – Residual Receipts Loan	\$12,060,991
Stanford GUP Loan	\$4,000,000
City Housing Loan	\$1,000,000
Income During Construction	\$1,375,300
Capitalized Soft Loan Interest	\$237,500

***Deferred Costs***

Deferred Developer Fee	\$1,250,000
Tax Credit Allocation Committee Fees	\$49,000
Reserves and Other Costs	\$3,030,686
<b>TOTAL CONSTRUCTION SOURCES</b>	<b>\$45,538,425</b>

***Constructions Uses***

Total Development Cost	\$45,538,425
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\*20% of tax credit equity

***Permanent Sources***

Tax Credit Equity	\$11,424,742
FHA Permanent Mortgage	\$20,250,000
Carryback – Residual Receipts Loan	\$7,250,883
Stanford GUP Loan	\$4,000,000

City Housing Loan	\$1,000,000
Income During Construction	\$1,375,300
Capitalized Soft Loan Interest	\$237,500

***Deferred Costs***

Deferred Developer Fee	
Tax Credit Allocation Committee Fees	\$0
Reserves and Other Costs	\$0
<b>TOTAL CONSTRUCTION SOURCES</b>	<b>\$0</b>

***Permanent Uses***

Total Development Cost	\$45,538,425
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Source: Related, March 2015

Project Timeline

The rehabilitation work is projected to start in May 2015. PASHPI is currently working to complete the financing process and has provided the following project timeline (which is subject to obtaining all necessary HUD approvals):

June 2012	County approved funding application
July 2012	Submitted HUD prepayment
November 2012	City approved funding commitment
March 2013	Submitted TCAC/CDLAC applications
April/May 2015	Close on City Loan
April/May 2015	Close on Construction Loan
May 2015	Begin Construction

Affordable Housing Loan Agreement

The City's \$1,000,000 Loan Agreement (Attachment A) is similar to other approved loans. The loan to the Limited Partnership will be evidenced by a Note and Deed of Trust secured the Limited Partnership's leasehold interest in the buildings for the term of the lease and by its leasehold interest in the land. The Note will bear simple interest at 3% per annum, and payments will be made from residual receipts over and above the project's net operating income expenses and will be divided among other funding agencies based on the City's

proportionate share of its funding to total development costs. Interest will begin to accrue at the closing of the loan. Due to the deep affordability of the rents, it is not expected that cash flow will be sufficient to pay the annual interest in full. The Joint Regulatory Agreement (Attachment B) will provide that the proposed project will be affordable to extremely low, very low, and low income households, and the affordability restrictions will be in place for a minimum of 55 years after the issuance of a certificate of occupancy.

#### Amended and Restated Community Development Block Grant loan documents

Concurrent with approving the City's \$1,000,000 loan to the project, staff is also recommending the approval of Amended and Restated CDBG loan Documents. The purpose of this is to consolidate the outstanding CDBG loans to the property into one CDBG loan evidenced by an Amended and Restated Promissory Note, Amended and Restated Deed of Trust and the Joint Regulatory Agreement. The existing CDBG loan documents would be simultaneously terminated and replaced with these. Unlike the Affordable Housing Loan to the Partnership, this loan will remain the obligation of PASHPI and will be secured by PASHPI's fee interest in the land. The Joint Regulatory Agreement will clarify the project's required income restrictions of 50 units at 30% of Area Median Income (Extremely Low Income), 50 units at 50% of AMI (Very Low Income), and 20 units at 80% AMI (Low Income), and will provide that the project will be supported by the HUD SPRAC and Section 8 vouchers.

There may be technical changes to the agreements attached to this staff report as well as supplemental documents required to effectuate the loan and agreement. In accepting the staff's recommendation, the City Council would give the City Manager or his designee the authority to execute final documents that are substantially similar to those included and described here.

### **Resource Impacts**

In November 2012, the City Council approved a budget amendment ordinance moving \$1 million in funding from the Stanford University Medical Center (SUMC) Development Agreement Fund to the City's Residential Housing In-Lieu Fund for the purpose of the Stevenson House rehabilitation. With the requested action, the City Council would authorize execution of the final loan documents and agreements and approve a Budget Amendment Ordinance (Attachment C) to appropriate \$1 million in the Residential Housing Fund offset with a reduction in the fund's ending fund balance.

### **Policy Implications**

The actions recommended in this report implement the City's adopted Housing Element policies and programs supporting the development of extremely low, very low, and low income housing. Policy H-12 calls for encouraging, foster and preserve diverse housing opportunities for very low-, low- and moderate-income households. In addition, Policy H-18 supports housing that incorporates facilities and services to meet the health care, transit, or social service needs of households with special needs, including seniors and persons with disabilities. The project is a 100% affordable housing project and serves seniors who are earning well below the area wide

median income. A large percentage of Palo Alto's seniors are in the targeted income range. This population is underserved in the City and cannot afford to pay market rate rents.

### **Environmental Review**

The work proposed is all in the nature of maintenance and rehabilitation of the existing facility, which is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301.

#### **Attachments:**

- Attachment A: Affordable Housing Fund Loan Agreement (PDF)
- Attachment B: Regulatory Agreement Restrictive Covenant (PDF)
- Attachment C: Budget Amendment Ordinance (PDF)

**AFFORDABLE HOUSING FUND LOAN AGREEMENT**

**between the**

**CITY OF PALO ALTO, a chartered city and municipal corporation**

**and**

**PASHPI STEVENSON HOUSE LP, a California limited partnership**

**Stevenson House**  
**455 East Charleston Road, Palo Alto, California**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS AND EXHIBITS .....	2
Section 1.1 Definitions.....	2
Section 1.2 Exhibits.....	4
ARTICLE 2. LOAN PROVISIONS.....	5
Section 2.1 Loan.....	5
Section 2.2 Interest.....	5
Section 2.3 Use of Loan Funds.....	5
Section 2.4 Security.....	5
Section 2.5 Conditions Precedent to Closing.....	5
Section 2.6 Conditions Precedent to Disbursement.....	6
Section 2.7 Repayment Schedule.....	6
Section 2.8 Reports and Accounting of Residual Receipts.....	8
Section 2.9 Non-Recourse.....	9
ARTICLE 3. CONSTRUCTION OF THE DEVELOPMENT .....	9
Section 3.1 Permits and Approvals.....	9
Section 3.2 Intentionally Omitted.....	9
Section 3.3 Construction Contract.....	9
Section 3.4 Construction Bonds.....	9
Section 3.5 Commencement of Construction.....	9
Section 3.6 Completion of Construction.....	10
Section 3.7 Construction Pursuant to Plans and Laws.....	10
Section 3.8 Relocation.....	11
Section 3.9 Equal Opportunity.....	12
Section 3.10 Progress Reports.....	12
Section 3.11 Construction Responsibilities.....	12
Section 3.12 Mechanics Liens, Stop Notices, and Notices of Completion.....	13
Section 3.13 Inspections.....	13
Section 3.14 Approved Development Budget; Revisions to Budget.....	13
Section 3.15 Developer Fee; Additional Fees.....	14
Section 3.16 Capital Contributions.....	14
ARTICLE 4. LOAN REQUIREMENTS .....	14
Section 4.1 Compliance with Regulatory Agreements.....	14
Section 4.2 Financial Accountings and Post-Completion Audits.....	14
Section 4.3 Information.....	14
Section 4.4 Records.....	14
Section 4.5 Audits.....	15
Section 4.6 Hazardous Materials.....	15
Section 4.7 Maintenance and Damage.....	17
Section 4.8 Fees and Taxes.....	17
Section 4.9 Notice of Litigation.....	18
Section 4.10 Nondiscrimination.....	18
Section 4.11 Transfer.....	18

## TABLE OF CONTENTS

	<u>Page</u>
Section 4.12 Insurance Requirements.....	19
<b>ARTICLE 5. DEFAULT AND REMEDIES .....</b>	<b>20</b>
Section 5.1 Events of Default.....	20
Section 5.2 Notice to Investor.....	22
Section 5.3 Right of Investor to Cure.....	22
Section 5.4 Remedies.....	23
Section 5.5 Right of Contest.....	24
Section 5.6 Remedies Cumulative.....	24
Section 5.7 Notice to Guarantor.....	24
Section 5.8 Right of Guarantor to Cure.....	24
<b>ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF BORROWER.....</b>	<b>25</b>
Section 6.1 Borrower's Warranty of Good Standing and Authority.....	25
<b>ARTICLE 7. GENERAL PROVISIONS .....</b>	<b>26</b>
Section 7.1 Relationship of Parties.....	26
Section 7.2 No Claims.....	26
Section 7.3 Amendments.....	27
Section 7.4 Indemnification.....	27
Section 7.5 Non-Liability of City Officials, Employees and Agents.....	27
Section 7.6 No Third Party Beneficiaries.....	27
Section 7.7 Discretion Retained By City.....	27
Section 7.8 Conflict of Interest.....	27
Section 7.9 Notices, Demands and Communications.....	27
Section 7.10 Applicable Law.....	28
Section 7.11 Parties Bound.....	28
Section 7.12 Attorneys' Fees.....	29
Section 7.13 Severability.....	29
Section 7.14 Force Majeure.....	29
Section 7.15 City Approval.....	29
Section 7.16 Waivers.....	29
Section 7.17 Title of Parts and Sections.....	30
Section 7.18 Entire Understanding of the Parties.....	30
Section 7.19 Multiple Originals; Counterpart.....	30
Section 7.20 Funding Recognition.....	30
Section 7.21 Exhibits.....	30

**AFFORDABLE HOUSING FUND LOAN AGREEMENT**

**Stevenson House – Affordable Housing Fund Loan  
(455 East Charleston Road, Palo Alto, California)**

This Affordable Housing Fund Loan Agreement (the "Agreement") is entered into as of [REDACTED], 2015, by and between the CITY OF PALO ALTO, a chartered city and municipal corporation ("City"), and PASHPI STEVENSON HOUSE LP, a California limited partnership ("Borrower"), with reference to the following facts:

- A. The City has established an Affordable Housing Fund for the purpose of increasing and preserving the supply of affordable rental housing in the City.
- B. Palo Alto Senior Housing Project, Inc., a California nonprofit public benefit corporation ("PASHPI"), the managing member of PASHPI Stevenson House LLC, a California limited liability company, the general partner of the Borrower (the "General Partner"), owns fee title to that certain real property located at 455 East Charleston Road, Palo Alto, California, and further described in Exhibit A attached to this Agreement (the "Property"). The Property contains a one-hundred twenty (120) unit senior housing development known as Stevenson House.
- C. Borrower has requested a loan from the Affordable Housing Fund in the amount of One Million Dollars (\$1,000,000) (the "Loan") to assist in the rehabilitation of the Development. As part of the refinancing, PASHPI will (i) sell the improvements on the Property to the Borrower and (ii) ground lease the Property to the Borrower. The Loan will be evidenced by a promissory note executed by Borrower in favor of City, which will be secured by a deed of trust to be recorded against the Borrower's leasehold estate in the Property. (References to "construction" in this Agreement shall also refer to "rehabilitation").
- D. As a material consideration for the Loan, this Agreement requires the Borrower to enter into a regulatory agreement with the City to ensure that one hundred twenty (120) rental units in the Development (the "Affordable Units"), are maintained for occupancy by low-income households at affordable rents for a fifty-five (55) year period.
- E. There is a severe shortage of rental housing affordable to households with very low incomes in the City and nearby areas. The Loan is being made to the Borrower at an interest rate below the market rate in order to increase the supply of affordable rental housing in the City. The requirements of this Agreement will result in the rehabilitation of the Development and in its continued long-term affordability.
- F. The City has determined the Development to be exempt under Section 15301 of the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) because the Project consists of the rehabilitation of existing structures.

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

**ARTICLE 1. DEFINITIONS AND EXHIBITS**

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agreement" shall mean this Loan Agreement.
- (b) "Approved Development Budget" shall mean the pro forma development budget, including sources and uses of funds, as approved by the City, and attached hereto and incorporated herein as Exhibit B.
- (c) "Approved Financing" shall mean all of the following loans acquired by the Borrower and approved by the City for the purpose of permanent financing for the Development, in addition to the Loan:
  - (i) Housing Revenue Bonds (Stevenson House), Series 2015, issued by the California Municipal Finance Authority ("CMFA") in the approximate amount of Twenty Million Two Hundred Fifty Thousand Dollars (\$20,250,000) (the "Bonds") which Bonds will be underwritten by Citigroup Global Markets Inc., to be cash-collateralized by an FHA permanent loan from Red Mortgage Capital, LLC of the same amount (the "FHA Loan");
  - (ii) A loan from the County of Santa Clara in the amount of Four Million Dollars (\$4,000,000) (the "County Loan");
  - (iii) A seller carry-back loan from PASHPI in the approximate amount of Seven Million Ninety Two Hundred Fifty Thousand Eight Hundred Eighty Three Dollars (\$7,250,883); and
  - (iv) Low Income Housing Tax Credit/Investor equity funds in the approximate amount of \$11,424,742 (the "Tax Credit Equity").
- (d) "Bond Regulatory Agreement" means the regulatory agreement executed by CMFA and Borrower as required in connection with the issuance of the Bonds.
- (e) "Borrower" shall mean PASHPI Stevenson House LP, a California limited partnership.
- (f) "Borrower's Leasehold Estate" shall mean Borrower's leasehold interest in the Property acquired pursuant to the Ground Lease and any fee or other interest in the Property acquired by Borrower hereafter.
- (g) "CEQA" shall mean the California Environmental Quality Act (Public Resources Code Section 21000 et seq.).
- (h) "City" shall mean the City of Palo Alto, California, a chartered city and municipal corporation.

(i) "City Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Borrower to be recorded against Borrower's Leasehold Estate at the Closing.

(j) "Closing" shall mean the date on which the Deed of Trust is recorded against the Borrower's Leasehold Estate.

(k) "Completion Date" has the meaning set forth in Section 3.6 below.

(l) "County Regulatory Agreement" shall mean [REDACTED].

(m) "Deed of Trust" shall mean the deed of trust that will encumber the Development to secure repayment of the Loan in the form provided by the City.

(n) "Default" shall have the meaning set forth in Section 5.1 below.

(o) "Development" shall mean the Borrower's Leasehold Estate and the Improvements.

(p) "General Partner" shall have the meaning set forth in Paragraph B of the Recitals.

(q) "Ground Lease" shall mean the lease entered into between PASHPI as lessor and the Borrower as lessee as of the Closing, creating Borrower's Leasehold Estate.

(r) "Guarantor" shall mean [to be defined as an affiliate of Related].

(s) "Hazardous Materials" or "Hazardous Substance" shall mean any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property, but excluding any substances or materials used in the construction, development, maintenance or operation of the Development, so long as the same are used in accordance with all applicable laws.

(t) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.7 below.

(u) "Hazardous Materials Law" shall have the meaning set forth in Section 4.7 below.

(v) "HUD" shall mean the U. S. Department of Housing and Urban Development.

(w) "Improvements" shall mean the one hundred twenty (120) units of affordable senior housing (including one manager's unit) and all buildings and infrastructure on the Property, including, without limitation, the following: parking, tenant related space and related ancillary facilities, together with any and all replacements or substitutions therefor or modifications thereto.

(x) "Investor" shall mean Wincopin Circle LLLP, a Maryland limited liability limited partnership and its successors and assigns, the tax credit investor limited partner of Borrower.

(y) "LIHTC" means Low Income Housing Tax Credits.

(z) "Loan" shall mean the City loan to Borrower of Affordable Housing Funds pursuant to this Agreement in the total principal amount of One Million Dollars (\$1,000,000).

(aa) "Loan Documents" shall mean this Agreement, the Note, the City Regulatory Agreement, and the Deed of Trust.

(bb) "Note" shall mean the promissory note that will evidence Borrower's obligation to repay the Loan in the form provided by the City.

(cc) "Parties" shall mean the City and Borrower.

(dd) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership dated on or about \_\_\_\_\_.

(ee) "Property" shall mean the real property located in the City of Palo Alto, County of Santa Clara, California, more particularly described in the attached Exhibit A.

(ff) "Regulatory Agreements" shall mean, collectively, the City Regulatory Agreement, the Bond Regulatory Agreement, the County Regulatory Agreement, and the regulatory agreement required to be recorded against the project by TCAC.

(gg) "Residual Receipts" shall have the meaning set forth in Section 2.7.

(hh) "TCAC" shall mean the California Tax Credit Allocation Committee.

(ii) "Term" shall have the meaning set forth in Section 2.7(a) below.

(jj) "Transfer" shall have the meaning set forth in Section 4.11 below.

(kk) "Unit" means one of the approximately one hundred twenty (120) apartment units to be constructed on the Property.

#### Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property  
EXHIBIT B: Approved Development Budget

## ARTICLE 2. LOAN PROVISIONS

### Section 2.1 Loan.

The City shall loan to the Borrower the Loan in the principal amount of One Million Dollars (\$1,000,000) for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Loan shall be evidenced by the Note in the form provided by the City and payable pursuant to Section 2.7 below.

### Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the Loan shall bear simple interest at a rate of three percent (3%) per annum.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until the earlier of such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

### Section 2.3 Use of Loan Funds.

(a) The Borrower shall use the Loan funds to pay development costs of the Development consistent with the Approved Development Budget.

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

### Section 2.4 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust in the form provided by the City, and recording it as a lien against the Borrower's Leasehold Estate.

(b) The City agrees to subordinate the Deed of Trust to the liens of the deeds of trust securing the County Loan, provided the City receives adequate notice and cure rights pursuant to subordination agreements executed or agreed upon before Closing in a form approved by the City. City agrees to subordinate the Deed of Trust to the deed of trust securing the FHA Loan pursuant to a subordination agreement provided by HUD.

### Section 2.5 Conditions Precedent to Closing.

The City shall not be obligated to proceed with the Closing under the Loan Documents unless the following conditions precedent are satisfied:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(b) Borrower has executed and delivered to City the Loan Documents and all documents, instruments, and policies required under the Loan Documents.

(c) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require.

(d) Borrower has furnished the City with evidence of the insurance coverage meeting the requirements of Section 4.13 below.

(e) The City has received copies of labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below.

(f) Borrower has closed, or simultaneously with this Loan, will close all Approved Financing described in Section 1.1(c).

**Section 2.6 Conditions Precedent to Disbursement.**

(a) Conditions Precedent to Disbursement of the Loan. The City shall not be obligated to make any disbursements of the Loan or take any other action under the Loan Documents unless the following conditions are satisfied prior to each such disbursement of the Loan:

(i) All requirements set forth in Section 2.5 have been and continue to be satisfied and there is no uncured Default by the Borrower;

(ii) The undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Development, are not less than the amount that the City reasonably determines is necessary to pay for development of the Development in accordance with the Approved Development Budget and to satisfy all of the covenants contained in this Agreement; and

(iii) The City has received a written draw request from the Borrower setting forth the proposed use of funds consistent with the Approved Development Budget, and in a form containing sufficient detail and with sufficient supporting documentation to permit the City to confirm that the work to be funded by the draw request has been performed. The draw requests shall also contain a statement of the total costs incurred by the Borrower since the date of the Borrower's last draw request, and the amount of those costs paid by the Borrower.

**Section 2.7 Repayment Schedule.**

The Loan shall be repaid as follows:

(a) Term. The Loan and this Agreement shall have a term that expires on the earlier of (i) the date that is fifty-five (55) years from the date of completion, which shall be determined by the date of issuance of a certificate of occupancy or functional equivalent for all Units in the Development (the "Completion Date"), and (ii) the repayment of all principal and interest outstanding under the Loan (collectively, the "Term"). Upon the expiration of the Term this Agreement shall terminate; provided, however, that upon any early termination of this

Agreement under the preceding clause (ii) of this Section 2.7(a), the City Regulatory Agreement shall remain in full force and effect in accordance with its terms.

(b) HUD Limitations. So long as the Secretary of Housing and Urban Development ("HUD") or his/her successor or assigns, are the insurers or holders of the first mortgage on FHA Project No. [REDACTED], payments on the Loan shall be payable only from 75% of available "surplus cash" as the term "surplus cash" is defined in the Regulatory Agreement dated [REDACTED], 2015 between HUD and Borrower (the "HUD Regulatory Agreement"). Surplus Cash shall be distributed as follows: the City shall receive fifteen percent (15%); the County shall receive thirty-five percent (35%); and PASHPI shall receive (50%) (collectively, the "Distribution Percentages"). The restrictions on payment imposed by the previous sentence shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note.

(c) Annual Payments. Commencing on May 15 of the year following the expiration of the HUD Regulatory Agreement, and on May 15 of each year thereafter for the Term of the Loan, Borrower shall make repayments of the Loan from Residual Receipts according to the Distribution Percentages, provided as follows:

(i) "Residual Receipts" shall mean, with respect to a particular calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(ii) "Annual Operating Expenses" means the following costs incurred for operations and maintenance of the Development: property and other taxes and assessments imposed on the Development; premiums for property damage, liability and all other insurance coverages; utility services not paid for directly by tenants including but not limited to water, sewer, trash collection, telephone, cable, internet, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies and others; any annual license or certificates of occupancy fees required for operation of the Development; general administrative expenses including but not limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and others; property management fees and reimbursements including on-site manager expenses (if applicable); cash deposited into reserve funds; approved partnership fees; tenant services fees; payment of a deferred developer fee; other payments required by any other lender, grantor or investor; and debt service payments (or administrative fees) on approved financing other than the Loan. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.

(iii) "Gross Revenue" is defined as all rental and incidental income from the Development, but excluding tenant security deposits, and any interest earned on said deposits and any interest earned on any reserve funds, proceeds from insurance (other than business or rental interruption insurance), loans, or proceeds of capital contributions.

(d) Payment in Full. Loan repayments made shall be credited first against accrued interest, if any, and then against outstanding principal. All unpaid principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City or otherwise permitted in accordance with this Agreement, (ii) the date of any Default, and (iii) the expiration of the Term...

(e) Prepayment. The Borrower shall have the right to prepay the Loan at any time without premium or penalty.

(f) Residual Receipts. In the event of any conflict between the provisions of the Partnership Agreement and this Agreement with respect to the calculation of Residual Receipts, this Agreement shall control.

Section 2.8 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statements; Annual Meeting. In connection with the annual repayment of the Loan, the Borrower shall furnish to the City, on or before 120 days after the end of Borrower's fiscal year audited financial statements duly certified by an independent firm of certified public accountants approved by the City or such statements as are provided to and accepted by HUD, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

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

(c) City Audits. The receipt by the City of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the City of any Loan repayment for any period shall not bind the City as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the City, then such deficiency shall become immediately due and payable with interest at the default rate set forth in section 2.2(b) above, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the City is entitled to any additional Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

Section 2.9 Non-Recourse.

Except as provided below, neither the Borrower nor any partner of the Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust or Regulatory Agreement. The sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust and Regulatory Agreement shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust and Regulatory Agreement, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections 3.7, 3.8, 4.6 and 7.4 of this Agreement, for liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

**ARTICLE 3. CONSTRUCTION OF THE DEVELOPMENT**

Section 3.1 Permits and Approvals.

All permits and approvals, except the building permit, necessary for the commencement of the rehabilitation of the Units on the Property must be received by the Closing.

Section 3.2 Intentionally Omitted.

Section 3.3 Construction Contract.

Borrower shall use the form of construction contract prescribed by HUD and HUD approval of such contract shall constitute City approval.

Section 3.4 Construction Bonds.

Prior to commencement of rehabilitation of the Development, the Borrower shall deliver to the City copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled costs of the Development. Such bonds shall name the City as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of rehabilitation of the Development within thirty (30) days following the recordation of the memorandum of the Ground Lease against the Property.

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute rehabilitation of the Development to completion, and shall cause the completion of the rehabilitation no later than May 30, 2017, subject to Section 7.15.

Section 3.7 Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall rehabilitate the Development in substantial conformance with the plans and specifications approved by the City Building Department. Borrower shall notify the City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City. Any written change order submitted to the City for its approval shall be deemed approved if not reasonably disapproved within seven (7) days following receipt by the City; provided that approval of such change orders by the City shall not increase the City's liability or obligations under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter, including (without limitation and where applicable) State prevailing wage requirements and the respective implementing rules and regulations and all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the City for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) Prevailing Wages. To the extent required by applicable law, the Borrower shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") if required by applicable law. The Borrower shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. Borrower shall also comply with requirements under the federal Davis-Bacon Act as required by HUD or any other funding source.

If payment of prevailing wages as set forth in the first sentence of this Section is applicable:

- (i) The Borrower shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and apprentices have been employed are required by Labor Code Sections 1777.5 et seq.;
- (ii) Copies of the currently applicable current per diem prevailing wages are available from DIR; and
- (iii) During the rehabilitation of the Improvements, the Borrower shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages.

Borrower intends that the Loan meets the exception set forth in California Labor Code Section 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this subsection shall survive the repayment of the Loan and the reconveyance of the Deed of Trust.

(d) Accessibility and Senior Housing Requirements. The Borrower shall construct the Improvements to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Title II and/or Title III of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973 (29 USC 794 et seq.), and Title 24 of the California Code of Regulations. Pursuant to the Regulatory Agreement, Borrower shall comply with all state and federal laws, rules and regulations, including those of HUD, regarding housing for seniors.

Section 3.8 Relocation.

Borrower has represented to the City that the repairs to be financed with the Loan will not result in any permanent displacement or relocation of the tenants residing in the Development, but may result in temporary relocation. To the extent that the repairs result in any temporary or permanent displacement or relocation of the tenants residing in the Development, Borrower agrees to comply with all applicable local, state, and federal statutes and regulations, (including without limitation (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) California Government Code Section 7260 et seq., and accompanying regulations; (c) the requirements of 24 CFR 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act, as applicable; and (e) the requirements in CFR 570.606(d) governing optional relocation policies; and (f) applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences) with respect to preparation of a relocation plan, relocation

planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Borrower shall indemnify, defend and hold harmless (with counsel reasonably acceptable to the City) the City and its councilmembers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower or the City) to satisfy relocation obligations related to the repairs to the Property. This obligation to indemnify shall survive the termination of this Agreement and the reconveyance of the Deed of Trust.

**Section 3.9 Equal Opportunity.**

The Borrower, for itself and its successors and assigns, and transferees agrees that in the construction of the Development:

(a) It will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, medical condition, age, marital status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) acquired or perceived, or retaliation for having filed a discrimination complaint (nondiscrimination factors). The Borrower will take affirmative action to ensure that applicants are considered for employment by the Borrower without regard to the nondiscrimination factors, and that Borrower's employees are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Borrower agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(b) It will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(c) It will cause the foregoing provisions to be inserted in all contracts for the construction of the Development entered into after the effective date of this Agreement; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**Section 3.10 Progress Reports.**

Until such time as Borrower has completed the Improvements, Borrower shall provide the City with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.14 below. This provision shall be satisfied by submission of the monthly draw request, or a copy thereof, to the City.

**Section 3.11 Construction Responsibilities.**

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the City, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

**Section 3.12 Mechanics Liens, Stop Notices, and Notices of Completion.**

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

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

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions or other event of force majeure, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

**Section 3.13 Inspections.**

Borrower shall, upon written request, permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

**Section 3.14 Approved Development Budget; Revisions to Budget.**

As of the date of this Agreement, the City has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any requested amendments to the Approved Development Budget to the City for approval monthly if actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget, taking into account

change orders permitted pursuant to Section 3.7. Written consent of the City shall be required to amend the Approved Development Budget.

Section 3.15 Developer Fee; Additional Fees.

The total amount of the anticipated non-deferred developer fee shall be up to, but not exceed, Two Million Five Hundred Thousand Dollars (\$2,500,000), or such lesser amount approved by TCAC, subject to any restrictions imposed by any other public agency; provided that the gross Developer Fee shall also not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000). The parties recognize that the amount and timing of fees will require the agreement of other financing sources and investors.

Section 3.16 Capital Contributions.

The Borrower shall cause the Investor to make the capital contribution described in section 1.1(c) above consistent with the terms and conditions of the Partnership Agreement and shall utilize such funds to pay costs of the Development, consistent with the Approved Development Budget.

**ARTICLE 4. LOAN REQUIREMENTS**

Section 4.1 Compliance with Regulatory Agreements.

Borrower shall comply with the terms of the Regulatory Agreements. Any breach under the Regulatory Agreements, subject to the notice and cure periods set forth in Section 5.1(c) and (d) below or such longer cure period as may be set forth in the Regulatory Agreements, as applicable, shall be considered a Default under this Agreement.

Section 4.2 Financial Accountings and Post-Completion Audits.

No later than one hundred twenty (120) days following full occupancy of the Development, Borrower shall provide to the City a financial accounting of all sources and uses of funds for the Development.

Section 4.3 Information.

Borrower shall provide any information reasonably requested by the City in connection with the Development, including (but not limited to) any information required in connection with Borrower's use of the Loan funds.

Section 4.4 Records.

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

(b) The City shall notify Borrower of any records it deems insufficient. Borrower shall have thirty (30) calendar days after the receipt of such a notice to correct any

deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

Section 4.5 Audits.

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

Section 4.6 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any Hazardous Materials except such of the foregoing as may be customarily used in construction or maintenance of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall promptly advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the City and its council members, officers, employees, agents, successors and assigns (each an "Indemnitee") from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to: (1) the failure of the Borrower from the date of acquisition of the Property by Borrower to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development; (2) the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development, except for any Hazardous Materials that existed in, on, or under those portions of the Property prior to Borrower's ownership; or (3) any

activity carried on or undertaken on or off those portions of the Property subsequent to acquisition by Borrower, and whether by the Borrower or any successor in title or any employees, agents, contractors or subcontractors of the Borrower or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development, each of the foregoing is a "Prohibited Condition." This obligation to indemnify shall survive termination of this Agreement. Notwithstanding anything herein to the contrary, Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under Section 4.7 to the extent that the Prohibited Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) 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 Borrower 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 Borrower 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 after the date of acquisition of the Property by Borrower and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the 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 lesser of ten percent (10%) or the maximum rate permitted by law, 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.

Section 4.7 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, and Borrower has not initiated diligent efforts to cure such condition within such period, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Development.

Subject to the requirements of senior lenders, and if economically feasible in the City's and Borrower's reasonable judgment, if any improvement now or in the future in the Development is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and Borrower shall diligently pursue the completion of such work or repair, which shall be complete within eighteen (18) months thereafter.

(b) Notwithstanding anything to the contrary contained herein or in any of the documents evidencing or securing the Loan, in the event of a casualty to the Property (or any portion thereof) or a condemnation affecting the Property or any portion thereof:

(i) If, as reasonably determined by City and Borrower, it is economically feasible to restore the Property to a physical condition substantially the same or functionally equivalent to that which existed prior to such casualty or condemnation, then (unless City and Borrower agree otherwise), Borrower shall deposit the insurance or condemnation proceeds (the "Proceeds"), as applicable, into an account created by Borrower to be disbursed for reconstruction of the Property in accordance with such commercially reasonable construction disbursement requirements and procedures as the City shall require. Notwithstanding the foregoing, to the extent that the holder of a senior lien, mortgage or deed of trust on the Property directs or consents to the rebuilding or restoration of the Property following a casualty or condemnation, the City shall not declare a default hereunder and shall consent to such rebuilding or restoration and shall consent to the construction disbursement requirements and procedures required by such senior lien holder.

Section 4.8 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Borrower deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 4.9 Notice of Litigation.

Borrower shall promptly notify the City in writing of any litigation materially affecting Borrower or the Development and of any claims or disputes that involve a material risk of such litigation.

Section 4.10 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, familial status, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development. The foregoing covenant shall run with the land.

Section 4.11 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, transfer, refinancing, or further encumbering, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, (ii) any interest in Borrower, and/or (iii) any interest of Borrower in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" shall exclude the leasing of any single Unit in the Development to an occupant in compliance with applicable regulatory agreements, including the Regulatory Agreements.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its discretion. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

(c) The City approves the grant of the security interests in the Property described in Section 1.1(c) above as well as the realization upon any security interest referenced therein.

(d) The City hereby approves a Transfer of the Development from Borrower to PASHPI or controlled affiliate of PASHPI and an assumption of the Loan by such transferee, or the purchase of the investor limited partner interest by PASHPI or such affiliate of PASHPI at

the end of the fifteen-year LIHTC compliance period, provided that such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement.

(e) The City hereby approves the Transfer of limited partner interests to the Investor or its affiliates and the removal of the general partner of the Partnership in accordance with the terms of the Partnership Agreement and subject to Section 5.3 of this Agreement.

**Section 4.12 Insurance Requirements.**

The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

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

(b) Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit and Two Million Dollars (\$2,000,000) in the aggregate, for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broad form Property Damage, Products and Completed Operations and Pollution Legal Liability. Such insurance coverage shall:

(i) Include the City, its officials, council members, agents and employees as additional insured. The coverage shall contain no special limitations on the scope of protection afforded to the above-listed insured.

(ii) Be primary and non-contributing with respect to any insurance or self-insurance programs covering the City, its council members, officers, agents and employees.

(iii) Provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, council members, agents or employees.

(iv) Include all of Borrower's subcontractors as insured under its policies or furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(c) Comprehensive Automobile Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit and Five Million Dollars (\$5,000,000) in the aggregate, annually, for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss including fire, business interruption, rental loss, public liability and boiler damage and liability, and excluding earthquake, for one hundred percent (100%) of the replacement value including the cost of debris removal, without deduction for depreciation, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than One Million Dollars (\$1,000,000) naming the City a Loss Payee, as its interests may appear.

(f) In addition to the above insurance requirements, the Borrower shall:

(i) Prior to commencement to work on the Development, furnish the City with properly executed certificates of insurance which shall clearly evidence all insurance required in sections (a) through (e), and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to the City.

(ii) Provide certified copies of endorsements and policies to the City in addition to certificates of insurance.

(iii) Replace certificates, policies and endorsements for any such insurance expiring prior to completion of work on the Development.

(iv) Place such insurance with insurers approved to do business in California and having A.M. Best Company ratings of no less than A:VII.

(g) The required insurance shall be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) through (d) continuously so long as the Note is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

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

(i) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City.

## **ARTICLE 5. DEFAULT AND REMEDIES**

### **Section 5.1 Events of Default.**

Each of the following shall constitute a "Default" by Borrower under this Agreement if not cured by Borrower or Investor within the cure periods set forth in Sections 5.1 or 5.3 below:

(a) **Failure to Construct.** Subject to Section 7.14, failure of Borrower to commence and complete construction of the Development within ninety (90) days of the times set forth in Section 3.6 above, unless extended by the City.

(b) **Failure to Make Payment.** Failure to repay the principal and any interest on the Loan within thirty (30) days of receipt of written notice from the City that such payment is due pursuant to the Loan Documents.

(i) Condemnation. The condemnation, seizure, or appropriation of all or a substantial part of the Property and the Development except by the City.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.11.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with any of the Loan Documents, proving to have been knowingly incorrect in any material respect when made. After completion of the Improvements, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Development.

Section 5.2 Notice to Investor.

City shall give to Investor at the address set forth in Section 7.9 hereof a duplicate copy of all notices of default or other notices that City may give to or serve in writing upon Borrower pursuant to the terms of this Agreement. The address of Investor set forth in Section 7.9 may be changed upon written notice delivered to City in the manner specified in Section 7.9 herein below. No notice of default given to Borrower shall be effective until the City has provided such notice.

Section 5.3 Right of Investor to Cure.

Notwithstanding any default by Borrower under this Agreement, City shall have no right to terminate this Agreement or exercise any remedies hereunder or under applicable law or take any other enforcement action hereunder unless City shall have first given Investor written notice of such default and Investor shall have failed to remedy such default or remove the general partner within the time periods specified by this Section.

Investor shall have the right, but not the obligation, at any time to pay any amounts due under this Agreement or do any act or thing required by Borrower by the terms of this Agreement, to prevent a default of this Agreement. Investor shall have ninety (90) days after receipt of notice from City describing such default and stating that Borrower has failed to cure such default within the time required by this Agreement to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Agreement as the same would have been if made and performed by Borrower instead of by Investor.

(a) In addition to the cure period provided in this Section 5.3, if Investor determines that in order to cure such default Investor must remove one or more general partners of Borrower pursuant to the Limited Partnership Agreement, Investor shall have a reasonable time after the expiration of such ninety (90) day period within which to remove such general partners(s) and to remedy such default, provided that:

(i) Investor shall have fully cured any default in the payment of any monetary obligations of Borrower under this Agreement within such ninety (90) day period and shall continue to pay currently such monetary obligations when the same are due; and

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions shall control.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the loan documents evidencing and securing the Approved Financing following expiration of all applicable notice and cure periods and the acceleration by such lender of all amounts due.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower or Borrower's general partner to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or Borrower's general partner or seeking any arrangement for Borrower or Borrower's general partner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower or Borrower's general partner in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower or Borrower's general partner, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower or Borrower's general partner shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower or Borrower's general partner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower or Borrower's general partner shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) Liens on Development. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(ii) Investor shall have removed such general partner(s) or commenced to remove the general partner(s) prior to or within such period, and shall be diligently prosecuting the same.

(b) Any default under this Agreement which by its nature cannot be remedied by Investor shall be deemed to be remedied if:

(i) within one hundred (100) days after receiving written notice from City describing the default and Borrower's failure to cure such default, or prior thereto, Investor shall have removed the general partner(s) or commenced appropriate proceedings to remove the general partner(s),

(ii) Investor shall begin and diligently continue to prosecute any such proceedings to completion,

(iii) Investor shall have fully cured any default in the payment of any monetary obligations of Borrower hereunder which does not require removal of the general partner(s), and

(iv) after removing the general partner(s), the Investor shall within a reasonable time cure all non-monetary defaults of Borrower hereunder capable of cure by Investor.

If Investor is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Borrower from removing the general partner(s), the times specified for such removal shall be extended for the period of such prohibition; provided that any Investor shall have fully cured any default in the payment of any monetary obligations of Borrower under this Agreement and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Investor shall not interfere with City's efforts to seek compliance by the Borrower with any non-monetary obligations under this Agreement.

#### Section 5.4 Remedies.

The occurrence of any Default hereunder, following the expiration of all applicable notice and cure periods set forth in Sections 5.1 and 5.3 above, will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

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

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

Section 5.5 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 5.6 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 5.7 Notice to Guarantor.

City shall give to Guarantor at the address set forth in Section 7.9 hereof a duplicate copy of all notices of default or other notices that City may give to or serve in writing upon Borrower pursuant to the terms of this Agreement. The address of Guarantor set forth in Section 7.9 may be changed upon written notice delivered to City in the manner specified in Section 7.9 herein below. No notice of default given to Borrower shall be effective until the City has provided such notice.

Section 5.8 Right of Guarantor to Cure.

Notwithstanding any default by Borrower under this Agreement, at any time prior to the Completion Date, City shall have no right to terminate this Agreement or exercise any remedies hereunder or under applicable law or take any other enforcement action hereunder unless City shall have first given written notice of such default to the Guarantor, and Guarantor shall have failed to remedy such default within the time periods specified by this Section.

At any time prior to the Completion Date, Guarantor shall have the right, but not the obligation, to pay any amounts due under this Agreement or do any act or thing required by Borrower by the terms of this Agreement, to prevent a default of this Agreement. Guarantor shall have ninety (90) days after receipt of notice from City describing such default and stating

that Borrower has failed to cure such default within the time required by this Agreement to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Agreement as the same would have been if made and performed by Borrower instead of by Guarantor.

**ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF BORROWER**

Section 6.1 Borrower's Warranty of Good Standing and Authority.

Borrower hereby represents and warrants to the City as follows:

(a) Organization. Borrower is duly organized and validly existing and is (or shall be prior to the commencement of activities under this Agreement) in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents 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 the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, 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 the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject to the laws affecting creditors' rights and principles of equity.

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

(f) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, to the best knowledge of Borrower, after due inquiry, Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever.

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

## ARTICLE 7. GENERAL PROVISIONS

### Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the acquisition of the Property, construction of the Improvements, and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with Social Security, income tax withholding, unemployment or workers' compensation, FICA, retirement, life and/or medical insurance and any and all laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

### Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the acquisition of the Property, the construction of the Improvements, or the operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the acquisition of the Property, the construction of the Improvements, or the operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the City, its officers, council members, agents and employees harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, or its officers, council members, agents or employees. The provisions of this Section 7.4 shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of City Officials, Employees and Agents.

No council member, official, employee or agent of the City shall be personally liable to Borrower in the event of any default or breach by the City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Discretion Retained By City.

The City's execution of this Agreement in no way limits the discretion of the City in the review and approval process in connection with development of the Development.

Section 7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(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. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the City or the Borrower, or any person related within the third (3rd) degree of such person.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail,

postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Owner: PASHPI Stevenson House LP  
c/o PASHPI Stevenson House LLC  
455 E. Charleston Road  
Palo Alto, CA 94306  
Attn: President

With a copy to: Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attn: General Counsel

Prior to the Completion Date, with a copy to Developer:

Related/Stevenson Development Co., LLC  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Attention: Frank Cardone

City: City of Palo Alto  
Office of the City Clerk  
PO Box 10250  
Palo Alto, CA 94303

With a copy to:

City of Palo Alto  
Director, Department of Planning & Community Environment  
PO Box 10250  
Palo Alto, CA 94303

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides its address.

Section 7.10 Applicable Law.

This Agreement shall be governed by California law.

Section 7.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and

shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the City and its successors and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within fifteen (15) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within fifteen (15) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one (1) year.

Section 7.15 City Approval.

Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager is also hereby authorized to approve, on behalf of the City, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 7.16 Waivers.

Any waiver by the City or Borrower of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City or Borrower to take action on any breach or default of the other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party by the other party to perform any obligation under this Agreement shall not operate as a waiver or release from any

of its obligations under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for written consent to future waivers.

**Section 7.17 Title of Parts and Sections.**

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

**Section 7.18 Entire Understanding of the Parties.**

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

**Section 7.19 Multiple Originals; Counterpart.**

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

**Section 7.20 Funding Recognition.**

The Borrower shall ensure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Borrower will include a reference to the support provided herein in all publications made possible with the Loan made available under this Agreement.

**Section 7.21 Exhibits.**

Exhibit A and Exhibit B are incorporated into and hereby made a part of this Agreement

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

**CITY:**

CITY OF PALO ALTO, a chartered city and a municipal corporation

By: \_\_\_\_\_  
James Keene, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Cara Silver, Senior Assistant City Attorney

**BORROWER:**

PASHPI STEVENSON HOUSE LP, a California limited partnership

By: PASHPI Stevenson House LLC, a California limited liability company, its general partner

By: Palo Alto Senior Housing Project, Inc., a California nonprofit public benefit corporation, its managing member

By: \_\_\_\_\_  
Patrick O'Regan  
President

**EXHIBIT A**

**Legal Description**

Leasehold Interest in that certain real property in the City of Palo Alto , County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF THAT CERTAIN 6.01 ACRE TRACT OF LAND AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO, PALO ALTO, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JUNE 30, 1952 IN BOOK 37 OF MAPS, PAGE 30, WITH THE NORTHWESTERLY LINE OF CHARLESTON ROAD, AS SAID LINE WAS ESTABLISHED BY PARCEL 142 IN THE FINAL ORDER OF CONDEMNATION TO CERTAIN DEFENDANTS, ENTERED ON JANUARY 25, 1957 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, IN THAT CERTAIN ACTION ENTITLED, "THE CITY OF PALO ALTO, A MUNICIPAL CORPORATION, PLAINTIFF VS. JAMES H. ALTEIRI, ET AL, DEFENDANTS", CASE NO. 100068, A CERTIFIED COPY OF WHICH ORDER WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 25, 1957 IN BOOK 3715 OFFICIAL RECORDS, PAGE 448; THENCE FROM SAID POINT OF BEGINNING NORTH 35° 34' 50" WEST, ALONG THE SOUTHWESTERLY LINE OF SAID 6.01 ACRE TRACT FOR A DISTANCE OF 195.50 FEET TO THE SOUTHERNMOST CORNER OF THAT CERTAIN 5.01 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS J. FREITAS, ET UX, TO THE PALO ALTO UNITARIAN CHURCH DATED AUGUST 30, 1954, RECORDED SEPTEMBER 10, 1954 IN BOOK 2957 OFFICIAL RECORDS, PAGE 100, SANTA CLARA COUNTY RECORDS; THENCE NORTH 54° 26' 10" EAST ALONG A SOUTHEASTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 200.00 FEET; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 139.55 FEET TO THE NORTHERNMOST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS J. FREITAS, ET UX, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED SEPTEMBER 16, 1955, RECORDED NOVEMBER 23, 1955, IN BOOK 3342 OFFICIAL RECORDS, PAGE 242, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 0° 13' 50" EAST ALONG THE WESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CITY OF PALO ALTO FOR A DISTANCE OF 68.16 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID NORTHWESTERLY LINE OF CHARLESTON ROAD; THENCE SOUTH 54° 26' 10" WEST ALONG SAID LAST MENTIONED LINE 160.31 FEET TO THE POINT OF BEGINNING, AS SURVEYED IN MARCH, 1965 BY RILEY & FLOYD, CIVIL ENGINEERS.

**PARCEL TWO:**

BEGINNING AT A POINT IN A SOUTHWESTERLY LINE OF THAT CERTAIN 5.01 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS F. FREITAS ET UX, TO THE PALO ALTO UNITARIAN CHURCH, INC., A CORPORATION, DATED AUGUST 27, 1954, RECORDED SEPTEMBER 10, 1954, IN BOOK 2957 OFFICIAL RECORDS, PAGE 100, SANTA CLARA COUNTY RECORDS, DISTANT THEREON NORTH 35° 34' 50" WEST 78.95 FEET FROM THE SOUTHERNMOST CORNER THEREOF IN THE NORTHWESTERLY LINE OF CHARLESTON ROAD, AS THE SAME ORIGINALLY EXISTED (40.00 FEET IN WIDTH), SAID POINT OF BEGINNING BEING IN THE WESTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM THE PALO ALTO UNITARIAN CHURCH, INC. A CORPORATION, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED FEBRUARY 9, 1956, RECORDED MARCH 2, 1956 IN BOOK 3428 OFFICIAL RECORDS, PAGE 465, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CITY OF PALO ALTO FOR THE FOLLOWING COURSES AND DISTANCES: NORTH 0° 13' 50" WEST 0.44 FEET; THENCE NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 80.00 FEET, THROUGH A CENTRAL ANGLE OF 35° 21', FOR AN ARC DISTANCE OF 49.36 FEET AND NORTH 35° 34' 50" WEST 361.00 FEET TO THE WESTERNMOST CORNER THEREOF IN THE

NORTHWESTERLY LINE OF SAID 5.01 ACRE TRACT ABOVE REFERRED TO; THENCE SOUTH 54° 30' 00" WEST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 215.00 FEET TO THE WESTERNMOST CORNER THEREOF; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 268.35 FEET TO A SOUTHERLY CORNER THEREOF; THENCE NORTH 54° 26' 10" EAST ALONG A SOUTHEASTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 200.00 FEET TO AN ANGLE CORNER THEREIN; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 139.55 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF RANCHO RINCON DE SAN FRANCISQUITO, AS SURVEYED IN MARCH 1965 BY RILEY & FLOYD, CIVIL ENGINEERS.

PARCEL THREE:

AN EASEMENT 30.00 FEET IN WIDTH ACROSS THAT CERTAIN PARCEL SITUATE IN THE CITY OF PALO ALTO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WHICH PARCEL WAS DESCRIBED IN THE DEED FROM THE PALO ALTO UNITARIAN CHURCH, INC., A CORPORATION, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED FEBRUARY 9, 1956, RECORDED MARCH 2, 1956 IN BOOK 3428 OFFICIAL RECORDS, PAGE 465, SANTA CLARA COUNTY RECORDS, AS RESERVED BY SAID PALO ALTO UNITARIAN CHURCH, INC., IN SAID DEED TO CITY OF PALO ALTO TO PERMIT INGRESS AND EGRESS TO CONTIGUOUS PROPERTIES, THE CENTER LINE OF WHICH EASEMENT IS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF THE PARCEL DESCRIBED IN SAID DEED TO CITY OF PALO ALTO, DISTANT THEREON SOUTH 35° 34' 50" EAST 230.00 FEET FROM THE WESTERNMOST CORNER THEREOF; THENCE RUNNING AT RIGHT ANGLES TO SAID LAST MENTIONED LINE NORTH 54° 25' 10" EAST 40.00 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL SO CONVEYED TO CITY OF PALO ALTO.

APN: 132-06-037

**EXHIBIT B**  
**Approved Development Budget**



RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Palo Alto  
Office of City Attorney  
250 Hamilton Avenue  
Palo Alto, CA 94301

RECORDED WITHOUT CHARGE  
GOVERNMENT CODE §§ 6103, 27383

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**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

**Stevenson House – Affordable Housing Fund Loan and CDBG Loan  
(455 East Charleston Road, Palo Alto, California)**

This REGULATORY AGREEMENT and DECLARATION OF RESTRICTIVE COVENANTS, (the "Agreement") is made and entered into as of \_\_\_\_\_, 2015 (the "Effective Date"), by and between the CITY OF PALO ALTO, a chartered city and a municipal corporation ("City"), and PASHPI STEVENSON HOUSE LP, a California limited partnership ("Owner") with reference to the following facts.

**RECITALS**

A. The City and Owner have entered into an Affordable Housing Fund Loan Agreement (the "Housing Fund Loan Agreement"), pursuant to which the City agreed to provide a loan in the principal amount of up to One Million Dollars (\$1,000,000) (the "Housing Fund Loan") to Owner for the rehabilitation of one hundred twenty (120) senior housing units (the "Project") located on that certain real property located at 455 East Charleston Road, Palo Alto, California, as further described in Exhibit A attached hereto (the "Property"). The fee interest in the Property is owned by Palo Alto Senior Housing Project, Inc. ("PASHPI"), the managing member of the general partner of Owner, and leased to the Owner by a long-term ground lease (the "Lease").

B. The City previously provided PASHPI a series of loans from Community Development Block Grant ("CDBG") funds for repairs and upgrades to the Property, as previously set forth in five (5) sets of CDBG loan documents, including five (5) loan agreements, promissory notes, deeds of trust and regulatory agreements (the "Previous CDBG Loan Documents"), as more particularly described in the New CDBG Note.

C. As of the date of this Agreement, the City has consolidated the outstanding CDBG loans into a single loan to PASHPI in the collective total amount of \$985,237.37 (the "CDBG Loan"), evidenced by an Amended and Restated CDBG Promissory Note executed by PASHPI (the "New CDBG Note") and Amended and Restated CDBG Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by PASHPI and recorded against the fee interest of PASHPI in the Property (the "New CDBG Deed of Trust") and this Agreement, which incorporates the remaining material requirements under the previous loan agreements and regulatory agreements (collectively, the "New CDBG Loan Documents"). The

Previous CDBG Loan Documents shall be terminated by the City upon the execution, and recordation as applicable, of the New CDBG Loan Documents.

D. The New CDBG Loan Documents require the Owner to comply with those CDBG requirements that relate to the ongoing operation of the Project, as further described in Exhibit C attached hereto (the "CDBG Related Covenants"). As a condition to the Housing Fund Loan and the Lease with PASHPI, the Owner has agreed to the CDBG Related Covenants.

E. In conjunction with this Agreement, the Owner has executed the Housing Fund Loan Agreement, along with a Housing Fund Loan promissory note (the "Note") and a Housing Fund Loan deed of trust (the "Deed of Trust") secured by Owner's leasehold interest in the Property and fee interest in the improvements on the Property.

F. The funds loaned to Owner pursuant to the Housing Fund Loan Agreement are from the City's Affordable Housing Fund, created by the City for the purpose of increasing and preserving the supply of affordable rental housing in the City. There is a severe shortage of rental housing affordable to senior households with extremely low, very low and low incomes in the City and nearby areas. The requirements of this Agreement will result in the long-term affordability of the entire Project and is consistent with the City's Affordable Housing Fund Guidelines and the City's affordable housing goals as outlined in the City's Housing Element of the Comprehensive Plan. The Housing Fund Loan is being made to the Owner at an interest rate below the market rate in order to increase the supply of affordable rental housing in the City.

G. As material consideration for both the Housing Fund Loan to Owner and the Lease, Owner has entered into this Agreement with the City to ensure that one hundred twenty (120) rental units, excluding one (1) manager's unit, as further described in this Agreement, including Exhibit B attached hereto (the "Affordable Units"), are maintained for occupancy by Extremely Low Income, Very Low Income and Low Income senior households at affordable rents for the Term of this Agreement. This Agreement, in conjunction with any other regulatory agreements recorded by other parties, will ensure the entire Project's continuing affordability. This Agreement serves as the regulatory agreement for both the CDBG Loan and the Housing Fund Loan. The New CDBG Loan Documents provide that an uncured default by Owner under this Agreement shall also constitute a default on the CDBG Loan to PASHPI.

H. In consideration for the Housing Fund Loan and the Lease to Owner, the Owner has agreed to observe all the terms and conditions set forth below.

I. This Agreement requires no allocation of Article 34 authority from the County of Santa Clara, under Measure A as approved by the voters in November 1998, in that this Agreement is not subject to Article 34 for the following reason: the development consists of the improvement of dwelling units of a previously existing low-rent housing project. (Health & Safety Code Section 37001(f).)

J. On April 20, 2015, the City Council authorized the Housing Fund Loan to the Owner and the New CDBG Loan Documents on certain terms and conditions and authorized the City Manager to execute all necessary documents required in connection with the Housing Fund Loan and the CDBG Loan.

## AGREEMENT

THEREFORE, the City and the Owner hereby agree as follows. The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

### ARTICLE 1 DEFINITIONS

#### 1.1 Definitions.

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Housing Fund Loan Agreement.

(a) "Actual Household Size" is the actual number of persons in the applicable household.

(b) "Additional Term" is defined in Section 6.1(a) below.

(c) "Affordable Unit" is defined in Recital G.

(d) "Agreement" is this Regulatory Agreement and Declaration of Restrictive Covenants.

(e) "Area Median Income" is the area median income for Santa Clara County as published and periodically updated by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision ("State HCD"), adjusted for Actual Household Size as specified in this Agreement. In the event that such income determinations are no longer determined and published by State HCD or HUD or are not updated for a period of at least 24 months from the date of the previous publication, the City shall provide Owner with other income determinations that are reasonably similar with respect to previous methods of calculation by State HCD or HUD.

(f) "CDBG" is the federal Community Development Block Grant program.

(g) "CDBG Loan" is defined in Recital C.

(h) "CDBG Related Covenants" is defined in Recital D.

(i) "City" is defined in the first paragraph of this Agreement.

(j) "Deed of Trust" is the deed of trust to the City on Owner's leasehold interest in the Property that secures repayment of the Housing Fund Loan and the performance of all covenants of the Housing Fund Loan Documents, as described in Recital E.

(k) "Default" is defined in Section 7.7(a).

(l) "Effective Date" is defined in the first paragraph of this Agreement.

(m) "Extremely Low Income Household" means a household with gross income that does not exceed 30% of Area Median Income and which is otherwise a qualified Tenant under the Section 8 or HUD Program regulations, as applicable.

(n) "Extremely Low-Income Units" means the Units that are required to be occupied by Extremely Low-Income Households.

(o) "HAP Contract" means a Housing Assistance Payment or SPRAC contract with HUD for project-based Section 8 or senior rental assistance, respectively.

(p) "HCD" is the California Department of Housing and Community Development.

(q) "Housing Fund Loan" is defined in Recital A.

(r) "Housing Fund Loan Agreement" is defined in Recital A.

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

(t) "HUD Program" means any program of rental assistance to the Project or the Tenants provided by HUD.

(u) "HUD Regulatory Agreement" means, collectively, the HUD 202 Program Prepayment Regulatory Agreement and, as applicable, the SPRAC Use Agreement or any other regulatory agreement approved by City and required by a HUD Program to be recorded against the Project.

(v) "Lease" is defined in Recital A.

(w) "Loan" is the Housing Fund Loan defined in Recital A.

(x) "Loan Agreement" is the Housing Fund Loan Agreement defined in Recital A.

(y) "Loan Documents" are, collectively, the Housing Fund Loan Agreement, the Note, the Deed of Trust, and this Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

(z) "Low Income Household" means a household with gross income that does not exceed 80% of Area Median Income and which is otherwise a qualified Tenant under the Section 8 or HUD Program regulations, as applicable.

(aa) "Low Income Units" means the Units that are required to be occupied by Low Income Households.

(bb) "Management Agent" is defined in Section 5.2 below.

(cc) "New CDBG Deed of Trust" is defined in Recital C.

(dd) "New CDBG Loan Documents" are defined in Recital C.

(ee) "New CDBG Note" is defined in Recital C.

(ff) "Note" is defined in Recital E.

(gg) "Official Records" are the Official Records of Santa Clara County.

(hh) "Owner" is defined in the first paragraph of this Agreement.

(ii) "PASHPI" is by Palo Alto Senior Housing Project, Inc.

(jj) "Previous CDBG Loan Documents" are defined in Recital B.

(kk) "Project" is the Property and the one hundred twenty (120) rental housing units located on the Property as described in Recital A, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(ll) "Property" is defined in Recital A.

(mm) "Rent" is the total of monthly payments by the Tenant of an Affordable Unit for all of the following: (1) use and occupancy of the Affordable Unit and land and all facilities associated with the Affordable Unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any separately charged fees or service charges assessed by the Owner which are required of all tenants of Units in the Project, except security deposits; (3) an allowance for utilities paid by the Tenant as established by the Santa Clara County Housing Authority, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities that are assessed by a public or private entity other than the Owner and paid by the Tenant.

(nn) "Section 8" means Section 8 of the United States Housing Act of 1937 ("Act"), as amended.

(oo) "Section 8 Assistance" means rental assistance on behalf of households living at the Property provided pursuant to Section 8, whether indirectly pursuant to a Section 8 Assistance Program contract, or directly pursuant to tenant-based Section 8 vouchers or certificates, or pursuant to a SPRAC.

(pp) "Section 8 Assistance Program" means a program funded by HUD that provides rental assistance on behalf of Extremely Low, Very Low and Low Income Households, including the SPRAC program, or a successor federal or State rental assistance program providing similar assistance.

(qq) "Section 8 Assisted Household" means a household that holds a valid voucher or certificate under a Section 8 Assistance Program.

(rr) "SPRAC" means a Senior Preservation Rental Assistance Contract between Owner and HUD pursuant to [insert citation].

(ss) "TCAC" is the California Tax Credit Allocation Committee.

(tt) "Tenant" is a household legally occupying an Affordable Unit pursuant to a valid lease or rental agreement with Owner.

(uu) "Term" is the term of this Agreement, which shall commence on the date that this Agreement is recorded in the Official Records and shall continue until the fifty-fifth (55th) anniversary of the date that this Agreement is recorded in the Official Records.

(vv) "Unit" is one of the one hundred twenty (120) rental housing units constructed on the Property.

(ww) "Very Low Income Household" means a household with gross income that does not exceed 50% of Area Median Income and which is otherwise a qualified Tenant under the Section 8 or HUD Program Regulations, as applicable.

(xx) "Very Low-Income Units" means the Units that are required to be occupied by Very Low-Income Households.

## 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Affordable Units

EXHIBIT C: CDBG Related Covenants

## **ARTICLE 2 USE, OCCUPANCY AND RENT RESTRICTIONS AND COVENANTS**

### 2.1 Occupancy Requirements.

The Property shall be used for the operation and maintenance of at 120 Units of affordable senior rental housing, excluding one (1) manager's unit as described below, subject to the affordability covenants contained herein, for an effective period of no less than 55 years. At all times during the term of this Agreement, unless subsequently revised in a written amendment approved by the City, at least FIFTY (50) of the Units shall be made available to Extremely Low Income seniors, at least FIFTY (50) of the Units shall be made available to Extremely Low Income or Very Low Income seniors and at least TWENTY (20) of the Units shall be made available to Extremely Low Income, Very Low Income or Low Income seniors, subject to Section 2.1(d). Without derogating the importance of compliance by Owner with the other provisions of this Agreement, compliance by Owner with this provision is of particular importance to City and is one of the principal reasons for which City was willing to provide the CDBG Loan to PASHPI and the Housing Fund Loan to the Owner.

(a) Extremely Low Income Units: At all times during the Term a minimum of FIFTY (50) Units shall be rented and occupied by, or if vacant, made available for rental and occupancy by, Extremely Low Income Households.

(b) Very Low Income Units: At all times during the Term a minimum of FIFTY (50) Units shall be rented and occupied by, or if vacant, made available for rental and occupancy by, Very Low Income Households.

(c) Low Income Units: At all times during the Term a minimum of TWENTY (20) Units shall be rented and occupied by, or if vacant, made available for rental and occupancy by, Low Income Households, subject to the following subsection (d).

(d) Manager's Unit: A unit made available for an on-site manager would not be required to comply with the rent and occupancy restrictions of this Section if it is occupied by a resident manager as a condition of employment.

## 2.2 Occupancy and Rent for Units Occupied by Section 8 Assisted Households.

Units occupied by Section 8 Assisted Households shall be considered to be qualified Extremely Low-Income, Very Low-Income, or Low-Income Units based on each household's annual income as certified pursuant to regulations and procedures of the applicable Section 8 Assistance Program. Notwithstanding anything to the contrary contained herein, the Rent for Units occupied by Section 8 Assisted Households shall be set pursuant to the applicable Section 8 Assistance Program regulations and procedures.

## 2.3 Rent for Units Occupied by Non-Section 8 Assisted Households.

At all times during the term of this Agreement, the maximum monthly Rent charged to each of the Tenants without a Section 8 rental subsidy shall not exceed the following:

(a) Extremely Low Income Units: The Rent charged to Tenants of the Extremely Low Income Units shall not exceed the Rent established by TCAC for Extremely Low Income Households at or below 30% of Area Median Income for the applicable bedroom size.

(b) Very Low Income Units: The Rent charged to Tenants of the Very Low Income Units shall not exceed the Rent established by TCAC for Very Low Income Households at or below 50% of Area Median Income for the applicable bedroom size.

(c) Low Income Units: The Rent charged to Tenants of the Low Income Units shall not exceed the Rent established by TCAC for Low Income Households at or below 80% of Area Median Income for the applicable bedroom size

## 2.4 Noncompliance.

Subject to the provisions of this Section 2.4, a failure by Owner to maintain the rent affordability and occupancy restrictions required by this Agreement shall constitute a default of this Agreement. The Project will be deemed to be in compliance with the affordability covenants, notwithstanding a temporary noncompliance with the provisions, if the noncompliance arises as a result of an increase in the income of any Tenant, and if the next vacancy is filled in accordance with this Agreement. Notwithstanding any other provision of this Agreement, this Agreement does not require existing Tenants of the Affordable Units that do not qualify as Extremely Low, Very Low or Low Income Households to vacate their Units.

## 2.5 City Approval of Rents.

Rents for all Affordable Units shall be subject to approval by the City. Owner shall certify to the City that Owner is not charging any fee other than Rent to Tenants of the Affordable Units for all of the components of Rent defined in Section 1.1(cc) above.

## 2.6 Increased Income of Tenants.

(a) Non-Qualifying Household. If, upon recertification of the income of an Extremely Low Income or Very Low Income Tenant, the Owner determines that a Tenant's household's income has increased and exceeds the applicable qualifying income for the Tenant's income category, then, [upon expiration of the Tenant's lease], such Tenant shall be counted in the next highest Project income level for which such Tenant qualifies. If upon recertification, the Owner determines that a Tenant's household income exceeds the qualifying income for a Low Income Household, then [upon expiration of the Tenant's lease], such Tenant's Rent may be increased to equal one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of Tenant's actual income, upon sixty (60) days written notice to the Tenant.

(b) Tax Credit or State Financing. Federal and State financing requirements regarding increased incomes of households at recertification shall apply in lieu of this Section 2.6 so long as a regulatory agreement with a Federal or State agency is in force.

(c) Agreement to Limitation on Rents. The Project has received direct financial assistance in the form of the Loan from the City. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. The Owner hereby agrees to limit Rents as provided in this Agreement in consideration of the Owner's receipt of the Loan and further agrees that any limitations on Rents imposed on the Affordable Units are in conformance with the Costa-Hawkins Act. The Owner further covenants that the terms of this Agreement are fully enforceable.

## 2.7 Lease Provisions.

Except as required by HUD, the Owner shall use a form of Tenant lease approved by the City for the Affordable Units. The form of Tenant lease shall also comply with all requirements of the Loan Documents, and shall, among other matters:

(a) provide that the Tenant is subject to the requirement for the execution of an annual income certification in accordance with Section 3.1 below, and that if the Tenant's income increases above the applicable income limits, such Tenant's Rent may be increased;

(b) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Affordable Units in accordance with the standards set forth in this Agreement, or (2) to qualify as an Extremely Low, Very Low or Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(c) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Owner and the Tenant,

however the Rent may not be raised more often than once every twelve (12) months after such initial year. The Owner will provide each Tenant with at least thirty (30) days' written notice of any increase in Rent applicable to such Tenant, or such notice as otherwise required by law, and with such further notice as may be required by Section 2.6 above;

(d) prohibit subleasing of the Affordable Unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Owner of any need for maintenance or repair;

(e) include reasonable rules of conduct consistent with California law; and

(f) allow termination of the tenancy only for good cause, including serious or repeated violation of the terms and conditions of the rental agreement, violations of applicable federal, state, or local law; or other good cause.

Notwithstanding the foregoing, HUD approval of the form of Tenant Lease shall constitute City approval.

## 2.8 Security Deposits.

Any security deposits collected by Owner or Owner's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

## 2.9 Applicability of HUD Regulations and HUD Regulatory Agreement.

During the term that a HUD Regulatory Agreement is in effect for the Project, all definitions, procedures and calculations related to the use and occupancy of the Units and the qualification of Tenants including, without limitation, determination of Rent, Rent increases, household income limits, income certification procedures, tenant selection procedures and the designation of particular Units for each of the income categories as required by a HUD Regulatory Agreement shall be deemed to be in compliance with this Agreement. Compliance with the HUD Regulatory Agreement shall be deemed compliance with this Agreement to the extent the HUD Regulatory Agreement is more restrictive than this Agreement. In case of a direct conflict between this Agreement and the HUD Regulatory Agreement, the Owner shall comply with the HUD Regulatory Agreement; however, the Owner shall comply with all requirements of this Agreement that are in addition to (rather than inconsistent with) requirements of the HUD Regulatory Agreement.

## 2.10 Efforts to Seek Section 8 Assistance Payment Contracts for the Units.

As a continuing obligation during the term of this Regulatory Agreement, Owner shall, in good faith, undertake all actions as required and necessary to seek to obtain such renewals of the Section 8 Assistance contracts for the Project as may be made available from time to time. Owner shall seek the longest term available for such contracts and shall seek to renew such contract assistance for all of the Affordable Units. In the event that any such Section 8 Assistance contract is obtained and then later terminated by HUD for all, or a portion of, the Units, Owner shall continue to rent to all Tenants residing in the affected Units under the terms

of any replacement or successor rental assistance program provided by HUD or another governmental agency to the Tenants. If in the future operation of the Section 8 Assistance Contract is terminated through no fault of the Owner, the Owner shall notify the City of such occurrence, the impact of such termination on the financial feasibility of the Project (including Owner's obligation to comply with Section 2.1 of this Agreement, and Owner's efforts to find an alternative subsidy. Owner shall use good faith efforts to find a replacement subsidy upon any indication that the Section 8 Assistance contract may be terminated. If despite its good faith efforts, Owner is unable to find a replacement subsidy on substantially similar terms to such terminated Section 8 Assistance within sixty (60) days of the loss of such a contract, and the City reasonably determines that the City's requirement to rent fifty (50) Units to Extremely Low Income Households in accordance with Section 2.1(a) has a detrimental impact on the financial feasibility of the Project given the loss of the Section 8 Assistance contract, the Owner may implement the remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(2) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

#### 2.11 Selection Criteria for Applicants for Tenancy; Live-Work Preference.

Owner agrees to accept Section 8 Assisted Households as Tenants on the same basis as all other prospective tenants. Owner shall not apply selection criteria to Section 8 Assisted Households that are more burdensome than criteria applied to all other prospective tenants, nor shall Owner apply or permit the application of management policies or lease provisions that have the effect of precluding occupancy of Units by Section 8 Assisted Households. The Owner will use reasonable efforts to make the Units available to participants in the Section 8 tenant-based voucher program and other rent subsidy programs as may become available.

To the extent allowed by HUD, Owner will give a preference in the selection of Tenants, and in the maintenance of its waiting list for Units, to those eligible households who have been displaced, or are threatened to be displaced, from housing within the city limits of the City and to those otherwise eligible households that have one or more adult household members living, working (with or without monetary compensation), hired to work, or expected to live, as a result of planned employment, within the city limits of the City. Owner will use the definitions and procedures applicable to the City's Below Market Rate housing program to administer this preference.

### **ARTICLE 3 INCOME CERTIFICATION AND REPORTING**

#### 3.1 Income Certification.

The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications for each Tenant renting any of the Affordable Units. Owner shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives

assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Owner shall retain in the Tenant's file all verifications of Tenant's income (tax returns, W-2 forms, paycheck stubs, etc.). Copies of Tenant income certifications shall be made available to the City upon request.

### 3.2 Client Data.

The Owner shall maintain confidential records of client data demonstrating client eligibility for housing. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and ethnicity. Such information shall be made available to the City's monitors or their designees for review upon request in order to determine compliance with this Agreement.

### 3.3 Disclosure.

The Owner understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Owner's responsibilities under this Agreement, is prohibited by the laws of the State of California, unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent or guardian.

### 3.4 Annual Report to City.

(a) The Owner shall provide any information reasonably requested by the City in connection with the Project. In particular, the Owner shall provide the City with annual reports, including but not limited to reports regarding the Project's Rent and occupancy levels, as well as the annual operating budget. Without limitation, the Owner shall provide the City no later than the ninetieth (90<sup>th</sup>) day after the close of each fiscal year following the Effective Date, PDF copies of the following documents:

(1) audited financial statements for the Project; and

(2) an occupancy report including: (i) the verified income of each Tenant, (ii) the number of members of each Tenant household; (iii) the current Rents charged Tenant and whether these Rents include utilities, and (iv) the date tenancy commenced for each Affordable Unit.

(b) Within fifteen (15) days after receipt of a written request, Owner shall provide any other information or completed forms requested by the City to ensure compliance with the Loan Documents or this Agreement.

(c) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Affordable Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the City, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the City with an owner certification addressed to the City certifying that the Owner has complied with this Agreement.

### 3.5 Additional Information.

The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Owner which pertain to the Affordable Units.

### 3.6 Records.

(a) The Owner shall maintain complete, accurate and current records pertaining to the Affordable Units, and shall permit any duly authorized representative of the City to inspect records, including but not limited to records pertaining to income and household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Affordable Units shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Affordable Units for a period of at least five (5) years.

(b) The City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by City if a longer time period is reasonably required.

### 3.7 On-Site Inspection.

The City shall have the right to perform on-site inspections of the Project, including the Affordable Units, as is reasonably required to ensure compliance with the Loan Documents, but in any case at least once per year. The Owner agrees to cooperate in such inspection(s). If City desires to inspect the interior of the Affordable Units, City shall give Owner sufficient notice to allow Owner to give seventy-two (72) hours' notice to Tenants.

## **ARTICLE 4 OPERATION OF THE DEVELOPMENT**

### 4.1 Residential Use.

The Property and the Units shall be used only for rental residential purposes consistent with this Agreement and the other Loan Documents and the Units shall be operated and maintained as rental residences for the Term of this Agreement. No part of the Affordable Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days, nor shall the Owner convert or apply to convert the Project to condominium or cooperative ownership or to a community apartment project or sell condominium or cooperative conversion rights in the Project or the rights to convert the Property or the Project to condominium or cooperative ownership or as a community apartment project.

#### 4.2 Compliance with Loan Documents and CDBG Loan Requirements.

Owner shall comply with all the terms and provisions of the Loan Documents and with the CDBG Related Covenants.

#### 4.3 Taxes and Assessments

. Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, 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.

### **ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE**

#### 5.1 Management Responsibilities.

The Owner is responsible for all management functions with respect to the Units, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Units. The Owner shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder.

#### 5.2 Management.

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

#### 5.3 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project.

The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

#### 5.4 Replacement of Management Agent.

If, as a result of a periodic review, the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Project entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute Default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 7.7 below.

#### 5.5 Approval of Management Policies.

The Owner shall submit its written management policies with respect to the Affordable Units to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

#### 5.6 Property Maintenance.

(a) The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

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

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

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

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

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

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

(A) violations of state law, uniform codes, or City ordinances;

(B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

(C) broken windows;

(D) graffiti (must be removed within 72 hours); and

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

(b) The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to assure the Units are maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that the Owner breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by the Owner to the City upon demand.

## **ARTICLE 6 EXPIRATION OF TERM**

### **6.1 Notification to City and Tenants.**

(a) At least six (6) months but not more than one (1) year prior to the expiration of the Term, the Owner shall provide irrevocable written notice to the City regarding whether Owner elects to extend the Term of this Agreement for an additional period of forty-five (45) years or for the longest feasible period of time mutually acceptable to the City and the

Owner or that is consistent with the remaining terms of the other regulatory agreements in place on the Project (the "Additional Term"). If Owner fails to provide written notice to City of Owner's election, Owner shall be deemed to have provided notice of Owner's decision not to extend the Term on the date that is six (6) months prior to the expiration of the Term. If Owner elects to extend the Term of this Agreement for the Additional Term, this Agreement will remain binding upon Owner and Owner's successors until the expiration of the Additional Term.

(b) At least one (1) year prior to the expiration of the Term or any Additional Term, the Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants in Affordable Units containing (1) the anticipated date of the expiration of the Term, (2) any anticipated Rent increase upon the expiration of the Term or Additional Term, (3) a statement that a copy of such notice will be sent to the City, and (4) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Owner shall also file a copy of the above-described notice with the City Manager. In addition, Owner shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 Nondiscrimination; Senior Housing.**

(a) Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, including employees, applicants for employment, and contractors, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS), weight, height, housing status or political affiliation or belief. Owner will take affirmative action to ensure that all employment practices are free from such discrimination and in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment. Such employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provision of this nondiscrimination clause. In addition to the foregoing general obligations, Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Owner services or works required of City by the State of California pursuant to agreement between City and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Owner and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Project, and Owner and any person claiming under or through the Owner, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Project.

(c) Owner shall comply with all applicable state and federal laws, rules and regulations, including those of HUD, regarding multifamily rental housing for seniors. Notwithstanding paragraph (a), 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).

(d) City Nondiscrimination Provisions. As set forth in Palo Alto Municipal Code section 2.30.510, Owner certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Owner acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

(e) The Owner shall include the provisions contained in this Section in all contracts and subcontracts related to the Project.

(f) The requirements in this Section shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

## 7.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the Housing Fund Loan or the CDBG Loan and all accrued interest are paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City has made the Housing Fund Loan and the CDBG Loan on the condition, and in consideration of, this provision, and would not have done so otherwise.

## 7.3 Effect of Other Financing Programs.

The Project may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by the Owner pursuant to these subsidy programs independently regulate Units in the Project. If any provision of another regulatory agreement is found in conflict or in contradiction with the terms of this Agreement in relation to the Affordable Units, the most restrictive requirement, providing the greatest affordability to the most Tenants for the longest term, shall apply to those Affordable Units, except as otherwise specified.

#### 7.4 Loan Documents.

In the event of any conflict among the Loan Documents, the most restrictive requirements shall apply.

#### 7.5 Covenants to Run With the Land.

The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

#### 7.6 Indemnification

(a) To the full extent permitted by law, the Owner shall indemnify, defend at its own expense, and hold the City and its council members, elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, and the marketing, maintenance, and operation of the Project, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Property from the burdens of this Agreement.

#### 7.7 Default.

(a) The occurrence of any of the following is a "Default" and shall constitute a material breach of this Agreement if not corrected, cured or remedied in the time period set forth in subsection (b) of this Section:

(1) Failure of Owner or any person under its direction or control to comply with or perform when due any obligation under this Agreement;

(2) Any warranty, representation, or statement made to City by Owner under this Agreement that is false or misleading in any material respect either now or at the time made or furnished; or

(3) A Default pursuant to the Loan Agreement or any Loan Document, including, but not limited to, any Default under the provisions of the Loan Agreement restricting Transfers, as defined in the Loan Agreement.

(b) If the Owner fails to cure the Default within thirty (30) days after the City has notified the Owner in writing of the Default or, if the Default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the City, in writing, the City shall have the right to enforce this Agreement by any or all of the following actions, or by any other remedy provided by law.

(c) Calling the Loan. The City may declare a Default under the Note, accelerate the indebtedness evidenced by the Note, and with respect to the Loan, proceed with foreclosure under the Deed of Trust.

(d) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages.

(e) Remedies Provided Under Loan Agreement. The City may exercise any other remedy provided under the Loan Agreement.

#### 7.8 Recording and Filing.

The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records.

#### 7.9 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be Santa Clara County.

#### 7.10 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

#### 7.11 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the City in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or Default of Owner or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

7.12 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records.

7.13 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Owner: PASHPI Stevenson House LP  
c/o PASHPI Stevenson House LLC  
455 E. Charleston Road  
Palo Alto, CA 94306  
Attn: President

With a  
copy to: Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attn: General Counsel

City: City of Palo Alto  
Office of the City Clerk  
PO Box 10250  
Palo Alto, CA 94303

With a  
copy to: City of Palo Alto  
Director, Department of Planning & Community Environment  
PO Box 10250  
Palo Alto, CA 94303

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

7.14 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

7.15 Multiple Originals; Counterparts.

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

SIGNATURES TO FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

**CITY:**

CITY OF PALO ALTO, a chartered city and municipal corporation

By: \_\_\_\_\_  
James Keene, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Cara Silver, Senior Assistant City Attorney

**OWNER:**

PASHPI STEVENSON HOUSE LP, a California limited partnership

By: PASHPI Stevenson House LLC, a California limited liability company, its general partner

By: Palo Alto Senior Housing Project, Inc., a California nonprofit public benefit corporation, its managing member

By: \_\_\_\_\_  
Patrick O'Regan  
President

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Leasehold Interest in that certain real property in the City of Palo Alto, County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF THAT CERTAIN 6.01 ACRE TRACT OF LAND AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO, PALO ALTO, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JUNE 30, 1952 IN [BOOK 37 OF MAPS, PAGE 30](#), WITH THE NORTHWESTERLY LINE OF CHARLESTON ROAD, AS SAID LINE WAS ESTABLISHED BY PARCEL 142 IN THE FINAL ORDER OF CONDEMNATION TO CERTAIN DEFENDANTS, ENTERED ON JANUARY 25, 1957 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, IN THAT CERTAIN ACTION ENTITLED, "THE CITY OF PALO ALTO, A MUNICIPAL CORPORATION, PLAINTIFF VS. JAMES H. ALTEIRI, ET AL, DEFENDANTS", CASE NO. 100068, A CERTIFIED COPY OF WHICH ORDER WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 25, 1957 IN [BOOK 3715 OFFICIAL RECORDS, PAGE 448](#); THENCE FROM SAID POINT OF BEGINNING NORTH 35° 34' 50" WEST, ALONG THE SOUTHWESTERLY LINE OF SAID 6.01 ACRE TRACT FOR A DISTANCE OF 195.50 FEET TO THE SOUTHERNMOST CORNER OF THAT CERTAIN 5.01 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS J. FREITAS, ET UX, TO THE PALO ALTO UNITARIAN CHURCH DATED AUGUST 30, 1954, RECORDED SEPTEMBER 10, 1954 IN [BOOK 2957 OFFICIAL RECORDS, PAGE 100](#), SANTA CLARA COUNTY RECORDS; THENCE NORTH 54° 26' 10" EAST ALONG A SOUTHEASTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 200.00 FEET; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 139.55 FEET TO THE NORTHERNMOST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS J. FREITAS, ET UX, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED SEPTEMBER 16, 1955, RECORDED NOVEMBER 23, 1955, IN [BOOK 3342 OFFICIAL RECORDS, PAGE 242](#), SANTA CLARA COUNTY RECORDS; THENCE SOUTH 0° 13' 50" EAST ALONG THE WESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CITY OF PALO ALTO FOR A DISTANCE OF 68.16 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID NORTHWESTERLY LINE OF CHARLESTON ROAD; THENCE SOUTH 54° 26' 10" WEST ALONG SAID LAST MENTIONED LINE 160.31 FEET TO THE POINT OF BEGINNING, AS SURVEYED IN MARCH, 1965 BY RILEY & FLOYD, CIVIL ENGINEERS.

**PARCEL TWO:**

BEGINNING AT A POINT IN A SOUTHWESTERLY LINE OF THAT CERTAIN 5.01 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LOUIS F. FREITAS ET UX, TO THE PALO ALTO UNITARIAN CHURCH, INC., A CORPORATION, DATED AUGUST 27, 1954, RECORDED SEPTEMBER 10, 1954, IN [BOOK 2957 OFFICIAL RECORDS, PAGE 100](#), SANTA CLARA COUNTY RECORDS, DISTANT THEREON NORTH 35° 34' 50" WEST 78.95 FEET FROM THE SOUTHERNMOST CORNER THEREOF IN THE NORTHWESTERLY LINE OF CHARLESTON ROAD, AS THE SAME ORIGINALLY EXISTED (40.00 FEET IN WIDTH), SAID POINT OF BEGINNING BEING IN THE WESTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM THE PALO ALTO UNITARIAN CHURCH, INC. A CORPORATION, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED FEBRUARY 9, 1956, RECORDED MARCH 2, 1956 IN [BOOK 3428 OFFICIAL RECORDS, PAGE 465](#), SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CITY OF PALO ALTO FOR THE FOLLOWING COURSES AND DISTANCES: NORTH 0° 13' 50" WEST 0.44 FEET; THENCE NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 80.00 FEET, THROUGH A CENTRAL ANGLE OF 35° 21', FOR AN ARC DISTANCE OF 49.36 FEET AND NORTH 35° 34' 50" WEST 361.00 FEET TO THE WESTERNMOST CORNER THEREOF IN THE

NORTHWESTERLY LINE OF SAID 5.01 ACRE TRACT ABOVE REFERRED TO; THENCE SOUTH 54° 30' 00" WEST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 215.00 FEET TO THE WESTERNMOST CORNER THEREOF; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 268.35 FEET TO A SOUTHERLY CORNER THEREOF; THENCE NORTH 54° 26' 10" EAST ALONG A SOUTHEASTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 200.00 FEET TO AN ANGLE CORNER THEREIN; THENCE SOUTH 35° 34' 50" EAST ALONG A SOUTHWESTERLY LINE OF SAID 5.01 ACRE TRACT FOR A DISTANCE OF 139.55 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF RANCHO RINCON DE SAN FRANCISQUITO, AS SURVEYED IN MARCH 1965 BY RILEY & FLOYD, CIVIL ENGINEERS.

PARCEL THREE:

AN EASEMENT 30.00 FEET IN WIDTH ACROSS THAT CERTAIN PARCEL SITUATE IN THE CITY OF PALO ALTO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WHICH PARCEL WAS DESCRIBED IN THE DEED FROM THE PALO ALTO UNITARIAN CHURCH, INC., A CORPORATION, TO CITY OF PALO ALTO, A MUNICIPAL CORPORATION, DATED FEBRUARY 9, 1956, RECORDED MARCH 2, 1956 IN [BOOK 3428 OFFICIAL RECORDS, PAGE 465](#), SANTA CLARA COUNTY RECORDS, AS RESERVED BY SAID PALO ALTO UNITARIAN CHURCH, INC., IN SAID DEED TO CITY OF PALO ALTO TO PERMIT INGRESS AND EGRESS TO CONTIGUOUS PROPERTIES, THE CENTER LINE OF WHICH EASEMENT IS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF THE PARCEL DESCRIBED IN SAID DEED TO CITY OF PALO ALTO, DISTANT THEREON SOUTH 35° 34' 50" EAST 230.00 FEET FROM THE WESTERNMOST CORNER THEREOF; THENCE RUNNING AT RIGHT ANGLES TO SAID LAST MENTIONED LINE NORTH 54° 25' 10" EAST 40.00 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL SO CONVEYED TO CITY OF PALO ALTO.

APN: 132-06-037

**EXHIBIT B  
AFFORDABLE UNITS**

<b>Number of Bedrooms</b>	<b>Number of Units</b>
Studio	68
Jumbo Studio	23
One Bedroom	28
TOTAL	119
Manager (Studio)	1

**EXHIBIT C  
CDBG RELATED COVENANTS**

A. CDBG Requirements.

Owner shall comply with all CDBG Related Covenants and Regulations to the extent such pertain to the ongoing operation of the Project by the Owner during Owner's ownership of the Project.

B. The following CDBG and related City requirements shall apply to the Project:

1. Compliance with Federal Regulations; Laws.

The Owner agrees to comply with all applicable requirements of the Housing and Urban Development regulations concerning Community Development Block Grants (24 CFR Part 570) and all federal and policies issued pursuant to such regulations (the "Regulations") pertaining to the ongoing operation of the Project by the Owner. For convenience, this Exhibit C lists certain of these requirements pertaining to the ongoing operation of the Project. In the event any of the provisions of this Exhibit C conflict with the Regulations, the Regulations shall prevail.

2. Civil Rights.

a. Compliance. The Owner agrees to comply with all federal, state, and local laws, including, without limitation, 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, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246, as amended by Executive Orders 11375 and 12086.

b. Lease Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964, as amended, and 24 CFR Part 570.601 and 602. In regard to the lease or other transfer of land acquired, cleared or improved with assistance provided to PASHPI under the Previous CDBG Loan Agreement, the Owner shall cause or require a covenant running with the land to be inserted in the lease or other instrument of such transfer, prohibiting discrimination as herein defined, in the lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Owner agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

c. Section 504. The Owner agrees to comply with any federal regulations issued pursuant to and in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), as amended, which prohibits discrimination against the disabled in any federally assisted program.

3. Affirmative Action.

a. Compliance With California Constitution. Article I, Section 31 of the California Constitution, adopted by the People of the State of California as Proposition 209 in 1996, prohibits the City from discrimination or the grant of preferential treatment on the basis of race, sex, color, ethnicity or national origin in public employment, public education, and public

contracting. Article I, Section 31 (e) provides that nothing in Section 31 shall be interpreted as prohibiting actions which must be taken to establish or maintain eligibility for any federal program where ineligibility would result in a loss of federal funds to the City. The provisions of this subsection (a) are those necessary to establish and maintain eligibility for federal funds. At such time as any provision of this subsection (a) is not required to establish and maintain such eligibility, that provision shall be waived by City. If Owner believes any provision of this subsection (a) should be waived under this subsection (a), Owner shall provide notice to City in writing, identifying the provision for which a waiver is sought and the legal basis for the waiver. City shall respond to the request for waiver within thirty days after notice is received.

b. EEO/AA Statement. The Owner will, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that it is an Equal Opportunity or Affirmative Action Employer.

#### 4. Conduct.

a. Hatch Act. The Owner agrees that no personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title 5 of the United States Code.

b. Conflict of Interest. The Owner agrees to abide by the provisions of 24 CFR Section 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. The Owner further covenants that in the performance of this Agreement, no person having such a financial interest shall be employed or retained by the Owner hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies or Owners which are receiving funds under the CDBG Program.

c. Copyrights. If this Agreement results in any copyrightable material, the City or grantor agency, or both, reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

#### 5. ENVIRONMENTAL CONDITIONS

a. Air and Water. The Owner agrees to comply with the following regulations insofar as they apply to the performance of this Agreement: Clean Air Act, 42 U.S.C. 7401, et seq.; Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; U.S. Environmental Protection Agency regulations pursuant to 40 CFR Part 50, as amended.

b. Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Owner shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

c. Lead-Based Paint. The Owner agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR Section 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly noticed that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

d. Historic Preservation. The Owner agrees to comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

Ordinance No. \_\_\_\_\_  
Ordinance of the Council of the City of Palo Alto Amending the Fiscal Year  
2015 Budget to Provide An Additional Appropriation of \$1,000,000 in the  
Residential Housing In-Lieu Fund for the Stevenson House Rehabilitation  
Project

RECITALS

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. The Council of the City of Palo Alto finds and determines as follows:

A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 16, 2014 did adopt a budget for Fiscal Year 2015.

B. The 2011 Stanford University Medical Center (SUMC) Development Agreement provided funds for use in connection with infrastructure, sustainable neighborhoods and communities, and affordable housing.

C. In 2012, the City Council approved a Budget Amendment Ordinance transferring \$1,000,000 from the SUMC Fund to the Residential Housing In-Lieu Fund to finance a request by the Palo Alto Senior Housing Project, Inc. (PASHPI) for \$1,000,000 to rehabilitate Stevenson House.

D. The Stevenson House facility is a 120 unit senior affordable development that serves the City’s extremely very low and low income senior population and with City Council approval this action will finalize the 2012 commitment to loan these funds to PAHSPI for the Stevenson House Rehabilitation Project.

SECTION 2. Therefore, the sum of One Million Dollars (\$1,000,000) is hereby appropriated in the Residential Housing In-Lieu Fund for Stevenson House and the ending fund balance in the Residential Housing In-Lieu Fund is decreased by One Million Dollars (\$1,000,000).

SECTION 3. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

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Not Yet Approved

SECTION 4. The Council of the City of Palo Alto hereby finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning & Community  
Environment

\_\_\_\_\_  
Director of Administrative Services