AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

By and Between

SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY

and

MP LIVE OAK ASSOCIATES, L.P.

Dated as of _____, 2020

AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

THIS AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2020 (the "**Effective Date**"), by and between the SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic (the "**Successor Agency**"), and MP LIVE OAK ASSOCIATES, L.P., a California limited partnership (the "**Developer**"). Successor Agency and Developer are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS

A. Successor Agency is a California entity, established pursuant to Assembly Bill 26 from the 2011-2012 First Extraordinary Session of the California Legislature, to wind up the affairs of, including the disposition of real property owned by, the former Redevelopment Agency of the County of Santa Cruz.

B. Developer is a California limited partnership. Developer was established to develop and operate safe, decent affordable housing in Northern California.

C. Successor Agency owns fee title to certain real property addressed as 1412, 1438, 1500, and 1514 Capitola Road, in the County of Santa Cruz, State of California, as legally described in Attachment No. 1, which is incorporated herein by this reference (the "**Capitola Property**").

D. Pursuant to the Long Range Property Management Plan prepared by the County of Santa Cruz (the "**County**"), which was approved by the California Department of Finance on August 20, 2014 (the "**LRPMP**"), the Capitola Property was to be retained for future development via a managed sale to maximize sale proceeds and long-term economic and community benefit.

E. In 2017, the County issued a Request for Qualifications (RFQ# 16Q1-007) for disposition of the Property. After review of all of the proposals submitted, County selected MidPen Housing Corporation, a California nonprofit 501(c)(3) corporation ("**MidPen**") that specializes in the development and operation of affordable housing projects in the State of California, for potential disposition of the Capitola Property for a mixed-use development containing a multifamily affordable housing component, a commercial component that includes a community health clinic and a dental clinic, and an open space component (the "**Capitola Project**"). The sole member/manager of Developer is Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation, which is a wholly controlled affiliate of MidPen.

F. On or about December 5, 2017, (i) Successor Agency and MidPen entered into that certain Exclusive Negotiation Agreement (the "**ENA**"), pursuant to which, among other things, Successor Agency and MidPen agreed to attempt to negotiate an agreement that would set forth the terms and conditions for Successor Agency's sale of a portion of the Capitola Property to MidPen, a portion of the Capitola Property to Dientes Community

Dental Care, a California nonprofit public benefit corporation and federally-qualified health center sub-recipient ("**Dientes**"), and a portion of the Capitola Property to Santa Cruz Community Health Centers, a California nonprofit public benefit corporation and federally-qualified health care center ("**SCCHC**"); and (ii) the County and MidPen entered into that certain Predevelopment Loan Agreement and Promissory Note, pursuant to which the County agreed to provide to MidPen a loan in an amount up to Three Hundred Fifteen Thousand Five Hundred Eighty-Five Dollars ($315,585) (the "**Predevelopment Agreement**" or "**Predevelopment Loan**," as applicable). Each of the ENA and Predevelopment Agreement is available for public inspection at the offices of Successor Agency and County, located at 701 Ocean Street, Santa Cruz, CA 95060.

G. The sale of portions of the Capitola Property to Developer, Dientes, and SCCHC, for such entities' development and subsequent operation of the respective portions of the Capitola Project on the Capitola Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are (i) in furtherance of Successor Agency's mandate pursuant to the LRPMP to dispose of the Capitola Property in a manner that maximizes revenue to the taxing entities, and County's goals to increase the supply of permanent affordable housing in the County of Santa Cruz, (ii) in the vital and best interests of the County and the welfare of its residents, and (iii) in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Capitola Project has been undertaken.

H. As further described herein, Successor Agency's purpose in entering into this Agreement is solely to dispose of the Capitola Property in furtherance of the LRPMP, and all other duties of Successor Agency hereunder are intended to be performed by the County, notwithstanding that the County is not a party to this Agreement and will not legally assume the rights and obligations of Successor Agency hereunder until such time as the Capitola Property has been disposed of pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the mutual promises, covenants, and conditions herein contained, Successor Agency and Developer hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, capitalized terms are defined where first used or as set forth in this Section 1. Capitalized terms used in an attachment attached hereto and not defined therein shall also have the meanings set forth in this Section 1.

"**Affiliate**" mean any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with the subject entity, whether by direct or indirect ownership of equity interests, by contract or otherwise, where "**Person**" means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, "**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership

of equity interests, by contract or otherwise, and "**Controlling**" and "**Controlled**" means exercising or having Control.

"**Air District**" means the Monterey Bay Air Resources District.

"**Annual Financial Statement**" means the financial statements prepared by Developer for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

"**Appraisal**" means that certain Appraisal Report dated December 3, 2018, prepared by Valbridge Property Advisors, an MAI appraiser.

"Building Permit" means all permits issued by the County and required for commencement of construction of the Project.

"Capitola Project" means (i) Developer's development of the Project on the Property; (ii) Dientes' development of the Dientes Component of Capitola Project on the Dientes Condominium; and (iii) SCCHC's development of the SCCHC Component of Capitola Project on the SCCHC Condominium.

"Capitola Property" means that certain real property referred to in Recital A and legally described and depicted in Attachment No. 1, which is attached hereto and incorporated herein by this reference. The Capitola Property comprises approximately three and six tenths (3.6) acres.

"**CDLAC**" means the California Debt Limit Allocation Committee.

"**CEQA**" means the California Environmental Quality Act, Public Resources Coe Section 21000, *et seq.*

"**CEQA Claims**" means any appeals or protests (including litigation) taken or filed with respect to Successor Agency or the County's findings, determinations, and/or certifications pursuant to CEQA in connection with Successor Agency's approval of this Agreement and in connection with the County's approval, conditional approval, or denial, of the Land Use Entitlements.

"Clinic Parcel" means the legal parcel to be established by the Parcel Map, which legal parcel shall (i) include all portions of the Capitola Property that are not a part of the Property, and (ii) be subdivided into a Condominium development.

"Clinic Parcel CC&Rs" means the declaration of covenants, conditions and restrictions for the commercial Condominium project to be located on the Clinic parcel and prepared by the Clinics in connection with the Condominium Plan. The Clinic Parcel CC&Rs will ensure, among other things, that an appropriate mechanism is in place to ensure maintenance of the Common Area.

"**Clinics**" means, collectively, SCCHC and Dientes.

"Close of Escrow" means recordation of the Grant Deed in the Official Records, conveying the Property to Developer and, except in the event of an early closing permitted pursuant to Section 2.2(a) below, the closing of the Project Financing.

"Common Area" means the entire common interest development located on the Clinic Parcel except the separate interests as shown on the Condominium Plan and described in the Clinic Parcel CC&Rs, which shall be owned by the unit owners as undivided interests-in-common in accordance with California Civil Code Section 6542.

"Condominium" means an estate in real property as defined in California Civil Code Sections 783 and 6542. A Condominium consists of an undivided equal ownership interest in a portion of the real property shown on the recorded Condominium Plan as "common area," together with a separate ownership interest in a "unit" as shown on the recorded Condominium Plan and as described in the recorded Clinic Parcel CC&Rs.

"Condominium Plan" means a condominium plan to be prepared by the Clinics and processed by Developer through the County to subdivide the Clinic Parcel into a Condominium project with two (2) Condominiums. Provided the Condominium Plan and the Clinic Parcel CC&Rs conform to the requirements of this Agreement, and provided the conveyance and development contemplated thereon are in accordance with this Agreement, Successor Agency agrees to (i) sign and record the Condominium Plan as the fee owner of the Clinic Parcel, (ii) consent to the Clinic Parcel CC&Rs as the owner of the Clinic Parcel, and (iii) execute and record grant deeds for each Condominium. Successor Agency and Developer contemplate that the Condominium Plan will subdivide the Clinic Parcel in the manner depicted in Attachment No. 2, which is attached hereto and incorporated herein by this reference.

"Construction Contract" has the meaning set forth in Section 7.2(f) of this Agreement.

"Construction Lender" means the lender that provides construction financing for the Project. If the Project is financed through issuance of the Tax-Exempt Bonds, then Construction Lender shall be understood to mean the institution or institutions that hold such Tax-Exempt Bonds through the construction period (e.g., until the Conversion Date). The Construction Lender may or may not also be the Take-Out Lender. The Construction Lender shall be an Institutional Lender.

"Construction Loan" means the construction loan for the Project secured by the Construction Loan Security Documents, in the approximate amount of Twenty-Seven Million Dollars ($27,000,000). If the Project is financed through issuance of the Tax-Exempt Bonds, then Construction Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds.

"Construction Loan Security Documents" means the documents and instruments required by the Construction Lender to secure the Construction Loan.

"**Conversion Date**" has the meaning set forth in the Construction Loan Security Documents, or, if such term is not defined therein, means the date the Construction Loan converts from a construction loan to a permanent loan.

"**Cost Sharing Agreement**" means an agreement to be entered into by and among Developer, Dientes, and SCCHC, which provides for the design, construction, and installation of, and the payment for, the infrastructure required to serve the Capitola Property and Capitola Project, including, without limitation, wet and dry utilities, public streets, drainage facilities, drive aisles, parking and walkway areas, street lighting, and common area landscape and irrigation.

"County" means the County of Santa Cruz, California.

"County Administrative Officer" means the person duly appointed to the position of County Administrative Officer of the County, or his or her designee. The County Administrative Officer shall represent Successor Agency in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by Successor Agency, the County Administrative Officer is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

"County Deed of Trust" means a form of deed of trust encumbering the Property, substantially in the form attached hereto and incorporated herein as Attachment No. 8, to secure repayment of the County Note.

"**County/Lender Subordination Agreement**" means, with respect to the Close of Escrow, (i) a subordination agreement between the County and the Construction Lender, pursuant to which the County agrees to subordinate the County Deed of Trust to the Construction Loan Security Documents, and the Construction Lender agrees to subordinate the Construction Loan Security Documents to the County Regulatory Agreement, and, with respect to the closing of the Take-Out Loan at conversion, (ii) a subordination agreement between the County and the Take-Out Lender, pursuant to which the County agrees to subordinate the County Deed of Trust to the documents securing the Take-Out Loan, and the Take-Out Lender agrees to subordinate the documents securing the Take-Out Loan to the County Regulatory Agreement.

"County Loan" has the meaning set forth in Section 6.2 of this Agreement.

"County Note" means a promissory note substantially in the form attached hereto and incorporated herein as Attachment No. 7, to be executed by Developer in favor of the County to evidence the obligation of Developer to repay the County Loan.

"County Regulatory Agreement" means a regulatory agreement substantially in the form attached hereto and incorporated herein as Attachment No. 10, which will establish certain restrictive covenants against the Property.

"County Title Policy" has the meaning set forth in Section 7.2(q) of this Agreement.

"Developer" has the meaning set forth in the opening paragraph of this Agreement.

"Developer Title Policy" has the meaning set forth in Section 7.3(f) of this Agreement.

"**Dientes**" means Dientes Community Dental Care, a California nonprofit public benefit corporation and federally-qualified health center subrecipient or an Affiliate of Dientes.

"**Dientes Component of Capitola Project**" means Dientes' development of a two-story dental clinic and administrative offices comprising not less than eleven thousand (11,000) square feet on the Dientes Condominium, and all required on-site improvements necessary to serve the development in accordance with this Agreement.

"**Dientes Condominium**" means the Condominium (i) to be established pursuant to, and shown on, the Condominium Plan, for development of the Dientes Component of Capitola Project, and (ii) to be described in the Clinic Parcel CC&Rs. Successor Agency and Developer contemplate that the Dientes Condominium shall be (a) established in the manner depicted in Attachment No. 2, and (b) deeded by Successor Agency to Dientes.

"Escrow" means the escrow through which the Close of Escrow is conducted.

"Escrow Holder" means Old Republic Title Insurance Company, with its offices located at 555 12th St., Oakland, CA 94607, or such other escrow company as may be agreed to by Developer and the County Administrative Officer.

"Event of Default" has the meaning set forth in Section 13.1 of this Agreement.

"Final Construction Documents" means the final plans, drawings and specifications upon which the Building Permit is issued.

"General Contractor" has the meaning set forth in Section 7.2(e) of this Agreement.

"**GeoKinetics Designs and Plans**" means those certain plans and specifications prepared by GeoKinetics with respect to the soil Vapor Intrusion Mitigation System (VIMS) for the Project, as approved by the Water Board, including, without limitation (i) those certain plans and specifications for the VIMS for the Project, (ii) that certain Operation, Maintenance, and Monitoring (OM&M) Plan for the VIMS and the venting of air emissions associated therewith, and (iii) that certain Financial Assurance Plan that will provide estimates of the OM&M costs.

"**Governmental Requirements"** means all laws, ordinances, statutes, codes, rules, regulations, requirements, orders and decrees, of the United States, the State of California, the County of Santa Cruz, the Water Board, the Air District, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Successor Agency, Developer, the Property, and/or the Project, including common law.

"Grant Deed" means a grant deed pursuant to which Successor Agency will convey the Property to Developer, substantially in the form attached hereto and incorporated herein as Attachment No. 5.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "acutely hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate or (xiv) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment. For purposes hereof, "Hazardous Materials" excludes materials and substances in quantities as are commonly used in the construction and operation of an apartment complex or medical clinic, provided that such materials and substances are used in accordance with all applicable laws.

"Hazardous Materials Contamination" means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

"HCD" means the State Department of Housing and Community Development.

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

"Indemnitees" means Successor Agency, the County, and their respective directors, officers, officials, members, employees, representatives, agents and volunteers.

"Institutional Lender" means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars ($100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an "incorporated admitted insurer" (as that term is used in Section 1100.1 of the California Insurance Code); a "foreign (other state) bank" (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a "foreign (other nation) bank" provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange. Each of Wells Fargo and Union Bank are hereby deemed to be an Institutional Lender.

"Investor" means the limited partner of the Partnership.

"**Joint Development, Easement, Joint Use, License and Maintenance Agreement**" means an agreement to be entered into by and among Developer, Dientes, and SCCHC, pursuant to which each of Developer, Dientes, and SCCHC shall grant to the other parties, amongst other things, pedestrian and vehicular easements over the common area portions of the Capitola Property owned by such party.

"Land Use Entitlements" has the meaning set forth in Section 4 of this Agreement.

"**Land Use Entitlements Approval Date**" means the date that all of the Land Use Entitlements have been approved by each required governmental agency with jurisdiction over the Property and/or the construction of the Project, and all appeal and protest periods have expired with no appeals or protests (including litigation) taken or filed ("**Land Use Entitlement Claims**"), or, if any are so taken or filed, then upon the resolution of the Land Use Entitlement Claims upon terms acceptable to each of the County and Developer, each in their respective sole and absolute discretion.

"MidPen" means MidPen Housing Corporation, a California nonprofit public benefit corporation.

"Notice of Affordability" means a Notice of Affordability Restrictions on Transfer of Property substantially in the form attached hereto and incorporated herein as Attachment No. 11, to be executed by County and Developer and recorded in the Official Records to notify members of the public regarding the affordability restrictions for the Project.

"Notices" has the meaning set forth in Section 14 of this Agreement.

"NPDES" means the National Pollutant Discharge Elimination System.

"Official Records" means the Official Records of the County.

"Outside Closing Date" means the earlier of (i) the TCAC deadline to meet the readiness to proceed requirements, as provided to Developer by TCAC upon Developer's receipt of an allocation of Tax Credits from TCAC, and (ii) December 31, 2022.

"Parcel Map" means a parcel map to be prepared by Developer and processed by Developer through the County to establish the Capitola Property as two legal parcels, with one of such legal parcels to comprise the Property, and the other of such legal parcels to comprise the Clinic Parcel. The Parcel Map will provide that the Clinic Parcel is for condominium purposes. Provided the Parcel Map conforms to the requirements of this Agreement, and the conveyances and development contemplated pursuant to this Agreement, Successor Agency agrees to sign the Parcel Map as the fee owner of the Capitola Property. Successor Agency and Developer contemplate that the Parcel Map will subdivide the Capitola Property in the manner depicted in Attachment No. 2.

"Partnership Agreement" means Developer's partnership agreement.

"Permitted Encumbrances" means the Construction Loan Security Documents and such other exceptions to title approved by the Planning Director.

Planning Director" means the person duly appointed to the position of Planning Director of the County, or his or her designee. At such time as Successor Agency assigns all of its rights and obligations under this Agreement to the County, pursuant to the Successor Agency/County Assignment, (i) all references in this Agreement to the County Administrative Officer shall be deemed to refer instead to the Planning Director, (ii) the Planning Director shall represent the County in all matters pertaining to this Agreement, and (iii) whenever a reference is made herein to an action or approval to be undertaken by the County (as the successor-in-interest to Successor Agency), the Planning Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

"Project" means Developer's development of an affordable rental housing development consisting of fifty-seven (57) residential rental dwelling units (with one of such units an unrestricted manager's unit), a community center, open space, and all required on-site improvements necessary to serve the development in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development, the Land Use Entitlements, and the Final Construction Documents.

"Project Architect" means Wald, Ruhnke & Dost, or such other architect or architectural firm as may be approved by the County Administrative Officer.

"**Project Budget**" shall mean that certain budget attached hereto and incorporated herein as Attachment No. 9.

"Project Costs" means all costs of any nature incurred in connection with the planning, design, and development of the Project.

"Project Documents" means, collectively, this Agreement, the County Note, the County Deed of Trust, the County Regulatory Agreement, the Notice of Affordability, and any other agreement, document or instrument that Developer and Successor Agency or Developer and County (as applicable) enter into pursuant to this Agreement or in order to effectuate the purposes of this Agreement.

"Project Financing" has the meaning set forth in Section 6.1 of this Agreement.

"Property" means the legal parcel to be established for development of the Project pursuant to the Parcel Map. The Parties contemplate the Property will be established in the manner depicted in Attachment No. 2.

"Purchase Price" means the purchase price to be paid by Developer to Successor Agency for the purchase of the Property, which is One Million Four Hundred Seven Thousand Six Hundred One Dollars ($1,407,601). The Purchase Price and the purchase price for each of the SCCHC Condominium and Dientes Condominium have been determined based upon the Appraisal, with the appraised values determined thereunder reduced by the costs of environmental mitigation that is required in connection with development of the Capitola Property, as further described in that certain report titled Chronology of Environmental Conditions Resulting in Required Environmental Mitigation that Decreases Property Value prepared by Weber, Hayes & Associates Hydrogeology and Environmental Engineering, dated September 30, 2020, which is attached hereto as Attachment No. 13, the specific costs of which environmental mitigation are set forth in Attachment No. 14, both of which attachments are incorporated herein by reference.

"Release of Construction Covenants" means a release document substantially in the form attached hereto and incorporated herein as Attachment No. 12, to be executed by the County and recorded in the Official Records against the Property upon Developer's completion of the Project, as described in Section 10.16.

"Request for Notice" has the meaning set forth in Section 7.2(o) of this Agreement.

"**SCCHC**" means Santa Cruz Community Health Center, a California nonprofit public benefit corporation and federally-qualified health center, or an Affiliate of SCCHC.

"**SCCHC Component of Capitola Project**" means SCCHC's development of a two-story health care clinic comprising not less than nineteen thousand (19,000) square

feet on the SCCHC Condominium, and all required on-site improvements necessary to serve the development in accordance with this Agreement.

"**SCCHC Condominium**" means the Condominium (i) to be established pursuant to, and shown on, the Condominium Plan, for development of the SCCHC Component of Capitola Project, and (ii) to be described in the Clinic Parcel CC&Rs. Successor Agency and Developer contemplate that the SCCHC Condominium shall be (a) established in the manner depicted in Attachment No. 2, and (b) deeded by Successor Agency to SCCHC.

"Schedule of Performance" means the Schedule of Performance attached hereto and incorporated herein as Attachment No. 3.

"Scope of Development" means the Scope of Development attached hereto and incorporated herein as Attachment No. 4.

"**Sources and Uses of Funds Statement"** means the Sources and Uses of Funds statement attached to the Project Budget.

"**Successor Agency"** means the Santa Cruz County Redevelopment Successor Agency, a public body, corporate and politic.

"**Successor Agency/County Assignment**" has the meaning set forth in Section 15.3 of this Agreement.

"Take-Out Lender" means the lending institution that makes the Take-Out Loan. If the Project is financed through issuance of Tax-Exempt Bonds, then Take-Out Lender shall be understood to mean the institution that holds or institutions that hold such Tax-Exempt Bonds from and after the construction period (e.g., from and after the Conversion Date). The Take-Out Lender may or may not also be the Construction Lender. The Take-Out Lender shall be an Institutional Lender.

"Take-Out Loan" means the long-term loan made by the Take-Out Lender to Developer in order to take out the Construction Loan. If the Project is financed through issuance of Tax-Exempt Bonds, then Take-Out Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds.

"Tax Credits" has the meaning set forth in Section 6.1(b) of this Agreement.

"Tax Credit Program" means the low-income housing tax credit program authorized pursuant to Internal Revenue Code Section 42, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations such as 4 California Code of Regulations Sections 10300-10340.

"**Tax-Exempt Bonds**" means tax-exempt multifamily housing revenue bonds.

"TCAC" means the California Tax Credit Allocation Committee.

"Title Company" means Old Republic Title Insurance Company, with its offices located at 555 12th Street, Oakland, CA 94607, or such other title insurance company as may be agreed to by Developer and the County Administrative Officer.

"**Water Board**" means the Central Coast Regional Water Quality Control Board.

"**Weber Hayes Reports**" means that certain Data Submittal Package: Soil Vapor, Groundwater and Soil Sample Results – Expedited Site Characterization for an Imminent Multi-Use Development prepared by Weber, Hayes & Associates, dated April 16, 2020.

2. STRUCTURE OF TRANSACTION AND RELATIONSHIP OF PARTIES

2.1 Limited Third Party Rights. The Parties acknowledge and agree that although the Capitola Project contemplates development of the Dientes Component of Capitola Project and the SCCHC Component of Capitola Project, Developer is the only named developer party to this Agreement, and with the exception of the terms and conditions set forth in this Section 2, neither Dientes nor SCCHC shall have any third party rights under this Agreement. Each of Dientes and SCCHC shall be deemed a third party beneficiary of the terms and conditions set forth in this Section with the right, but not the obligation, to enforce said terms and conditions. Notwithstanding the foregoing third party beneficiary rights of the Clinics, however, (i) prior to the Close of Escrow, Successor Agency retains all rights pursuant to this Agreement to terminate this Agreement, and neither of the Clinics shall have any right, in law or in equity, to challenge any such termination, (ii) if this Agreement is terminated prior to the Close of Escrow, then neither Dientes nor SCCHC shall have any right, at law or in equity, to require Successor Agency to transfer any portion of the Capitola to the respective entity, and (iii) unless and until the Close of Escrow occurs pursuant to the terms of this Agreement, neither Dientes nor SCCHC shall have any right, in law or in equity, to require Successor Agency to transfer any portion of the Capitola Property to the respective entity.

2.2 Early Closing; Partial Termination of Agreement.

(a) This Agreement primarily addresses the transfer and sale of the Property to Developer, and Developer's development and operation of the Project on the Property. In the event, however, that the conditions set forth below in this Section 2.2(a) have been satisfied, or waived by Successor Agency, then Successor Agency shall permit the Close of Escrow to occur, notwithstanding that Developer has not satisfied all of Successor Agency's conditions to closing set forth in Section 7.2. In such event, concurrently with the Close of Escrow and subject to the terms of Section 2.3 below, Successor Agency shall convey to Dientes the Dientes Condominium for a purchase price of Zero Dollars ($0), and to SCCHC the SCCHC Condominium for a purchase price of Zero Dollars ($0), each of which purchase price reflects that the required mitigation costs exceed the earlier appraised value of such Condominium, as determined pursuant to the Appraisal.

(i) Organizational Documents. The Planning Director shall have received and approved a copy of such portions of the organizational

documents of the Clinics as the Planning Director deems reasonably necessary to document the power and authority of the Clinics to perform their obligations as set forth in their respective "Subsequent Agreement" (as that term is defined in Section 2.3 below), including, without limitation, (I) a certificate of good standing (or equivalent document) issued by the State of California, for each entity that comprises the respective Clinic (or the Affiliate entity of such Clinic that will enter into a Subsequent Agreement with Successor Agency), and (II) one (1) or more corporate resolution(s) of each Clinic authorizing the appropriate Clinic officer(s) to execute, in his or her capacity, the Subsequent Agreement. Each of the Clinics shall have made full disclosure to the Planning Director of the names and addresses of all persons and entities that have a beneficial interest in each respective Clinic.

(ii) Insurance. Each of the Clinics shall have submitted to the Planning Director and the Planning Director shall have approved the Clinics' evidence of the liability insurance required pursuant to Section 10.6 hereof.

(iii) Land Use Entitlements. The County shall have approved all land use entitlements for each of the Dientes Component of Capitola Project and SCCHC Component of Capitola Project, each of the Clinics shall have approved or be deemed to have approved the same, including without limitation all terms and conditions applicable thereto, and the time period for challenges thereto shall have lapsed without any challenges having occurred.

(iv) Evidence of Financing. The Planning Director shall have received and reasonably approved (1) a final pro forma for each of the Dientes Component of Capitola Project and SCCHC Component of Capitola Project, and (2) commitments consistent with the final, approved pro formas from all financing sources for the Dientes Component of Capitola Project and SCCHC Component of Capitola Project, as evidenced by letters of commitment and/or true and complete copies of loan documents.

(v) General Contractor. The general contractor for the Dientes Component of Capitola Project and SCCHC Component of Capitola Project (the "**Clinics' General Contractor**") shall have been approved by the Planning Director.

(vi) Construction Contract. The Planning Director shall have received a true and complete copy of a contract(s) by and between the Clinics and the Clinics' General Contractor pursuant to which the Clinics' General Contractor has agreed to construct the Dientes Component of Capitola Project and SCCHC Component of Capitola Project at a cost consistent with the costs set forth therefor in a budget provided to and approved by the Planning Director (the "**Clinics' Construction Contract**")

and the Planning Director shall have approved said Clinics' Construction Contract.

(vii) Final Construction Documents. The Planning Director shall have approved the final construction documents for the Dientes Component of Capitola Project and SCCHC Component of Capitola Project, and the Planning Director shall have received a full set thereof.

(viii) Completion Bond. If the Clinics' Construction Lender (if any) requires that a completion bond be posted by the Clinics' General Contractor, then such completion bond shall name the County as a co-obligee.

(ix) Completion Guaranty. If the Clinics' Construction Lender (if any) requires a completion guaranty from the Clinics, then the County shall have also received a completion guaranty from the Clinics in similar form and content.

(x) Building Permit. The building permit for the each of the Dientes Component of Capitola Project and SCCHC Component of Capitola Project shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

(xi) Construction to Commence. The Planning Director shall be reasonably satisfied that construction of the Dientes Component of Capitola Project and SCCHC Component of Capitola Project will commence not later than thirty (30) days after the Close of Escrow, and thereafter will be pursued to completion in a diligent and continuous manner.

(xii) Assignment of Final Construction Documents. The Clinics shall have conditionally assigned to the County their respective final construction documents for the Dientes Component of Capitola Project and SCCHC Component of Capitola Project by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 6, which assignment shall be subordinated to any pledge or assignment to the Clinics' Construction Lender (if any). Each of the Clinics shall have also delivered to the Planning Director the written consent of the other party to each such final construction document to said assignment in the form included as part of said Attachment No. 6, including, without limitation, to the use by the County of said final construction documents, as well as the ideas, designs, and concepts contained within them.

(xiii) Assignment of Construction Contract. The Clinics shall have conditionally assigned to the County their respective Clinics' Construction Contract by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 6, including obtaining the consent thereto of the Clinics' General Contractor, which assignment shall be

subordinated to any pledge or assignment to the Clinics' Construction Lender.

(xiv) Request for Notice of Default. Escrow Holder shall be ready to record a request for notice of default pursuant to Civil Code Section 2924(b), requesting that any beneficiaries of liens securing the Clinics' project financing notify the County of any default under the instrument creating the lien (if any) (the "**Request for Notice**").

(xv) Documents Executed. Each of the Clinics shall have duly executed their respective Subsequent Agreement and all documents required pursuant thereto to be executed, with signatures acknowledged (as applicable) and deposited them into Escrow.

(xvi) Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement. Each of the Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement shall have been fully executed in forms approved by the Planning Director, for recordation at the Close of Escrow.

(xvii) Licensing. Each of the Clinics shall have provided to Successor Agency a copy of its current license authorizing it to operate and provide the dental and/or medical (as applicable) services currently provided at its existing facility location.

(b) The conditions set forth in paragraph (a) above are for Successor Agency's benefit only and the County Administrative Officer may waive all or any part of such rights by written notice to Developer, which Developer shall promptly provide to the Clinics.

(c) Notwithstanding anything to the contrary in this Agreement, if the conditions set forth in paragraph (a) above have not been satisfied, or waived by Successor Agency, by the Close of Escrow, then all provisions in this Agreement related to the Dientes Component of Capitola Project and the SCCHC Component of Capitola Project shall automatically terminate and be of no further force or effect, and Successor Agency and Developer shall meet and confer, and consult with the County, to discuss potential options for the disposition and development of the Clinic Parcel. If within six (6) months after the automatic termination described in the foregoing sentence Developer and Successor Agency, after consultation with the County, have not reached agreement on any potential option for the disposition and development of the Clinic Parcel, then (i) the Clinic Parcel shall be released from this Agreement, and (ii) at such time as Successor Agency conveys the Property to Developer, Successor Agency shall reasonably cooperate with Developer with respect to any easements reasonably necessary to enable Developer to construct and operate the Project..

2.3 Execution of Agreements with Clinics at Close of Escrow. Except with respect to the occurrence of the Close of Escrow pursuant to paragraph (c) of Section 2.2

above, at the Close of Escrow, each of Dientes and SCCHC shall be required to execute a separate agreement that includes requirements pertaining to their respective developments that are substantially similar to the requirements herein (each, a "**Subsequent Agreement**"). Any such Subsequent Agreement shall (a) include a schedule, a scope of development, and a recordable regulatory agreement, (b) require development in accordance with all applicable plans, permits, and land use entitlements issued and/or approved in connection with the Dientes Component of Capitola Project or SCCHC Component of Capitola Project (as applicable), and (c) require as a condition to opening, and by a specified date, that each of the Clinics shall have obtained all licenses, approvals and permits required to operate and provide the dental and/or medical (as applicable) services contemplated by this Agreement Notwithstanding anything to the contrary contained in this Agreement, upon the Close of Escrow: (i) all provisions under this Agreement related to Dientes, SCCHC and/or the Clinic Parcel shall terminate and be of no further force or effect; (ii) any default under any Subsequent Agreement and/or the Clinic CC&Rs shall not be a default under this Agreement or under any agreement between the County and Developer related to the Property or the Project; (iii) Developer shall be released from any and all liability and claims related to the Clinic Parcel; and (iv) any indemnifications provided by Developer under this Agreement or any related agreements shall only apply to the Project and Property and not to the Clinic Parcel.

3. SCHEDULE OF PERFORMANCE

The Schedule of Performance sets forth the times by which the parties are required to perform certain obligations set forth in this Agreement.

4. LAND USE ENTITLEMENTS

Within the time set forth in the Schedule of Performance, Developer shall submit to the County and thereafter diligently process an application or applications for all discretionary governmental permits as may be necessary to allow Developer to develop the Project in the manner required by this Agreement including, without limitation, a Planned Unit Development and a Design Permit (collectively, the "**Land Use Entitlements**"). Successor Agency, without any cost or expense to Successor Agency other than as may be expressly provided in the Project Budget, agrees to reasonably assist Developer to secure said Land Use Entitlements. Notwithstanding the foregoing, Successor Agency shall sign, as the "Owner," all such applications to be submitted by Developer pursuant to this paragraph.

The approval of this Agreement by Successor Agency shall not constitute a pre-commitment by Successor Agency or the County or the County Board of Supervisors regarding any approvals required for development of the Project, including, without limitation, all required analysis under CEQA. Developer obtains no right or entitlement to construct the Project by virtue of this Agreement. The County retains unfettered discretion to approve, conditionally approve, or deny any entitlements and/or other approvals required for the Project and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the Project on the Property. All design, architectural, and

building plans for the Project shall be subject to the review and approval of the County and any other governmental agency with jurisdiction over the Property and/or Project. By its execution of this Agreement, Successor Agency is not committing itself or the County to or agreeing to undertake any acts or activities requiring the subsequent independent exercise of discretion by the County or any agency or department thereof.

Within ten (10) days after the County takes final action with respect to all of the Land Use Entitlements, Developer shall notify the County in writing whether Developer approves or disapproves the Land Use Entitlements, including all of the terms and conditions pertaining thereto. Any disapproval shall be in writing and shall state the reasons therefor. If Developer fails to timely notify the County in writing of Developer's approval or disapproval of the Land Use Entitlements, Developer shall be conclusively deemed to have approved the same. If Developer timely disapproves the Land Use Entitlements, this Agreement shall be terminated unless the parties mutually agree to approve an extension of time for reconsideration of the County's actions with respect to the Land Use Entitlements, with each party reserving the right to approve or disapprove the same in its sole and absolute discretion.

If any Land Use Entitlement Claims and/or CEQA Claims are taken or filed, then Developer shall have the right to elect to either defend the same or not defend the same, at Developer's cost, including, without limitation, all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. If Developer elects to so defend the same, then Developer shall appoint counsel and direct strategy; provided, however, that such counsel shall be acceptable to Successor Agency and County in each of their reasonable discretion. If Developer elects not to so defend, then either Successor Agency or Developer shall have the right to terminate this Agreement.

5. DUE DILIGENCE PERIOD; PERMISSION TO ENTER PROPERTY; AS-IS; PHYSICAL AND ENVIRONMENTAL CONDITION

5.1 Due Diligence Period. Successor Agency shall permit Developer and Developer's representatives and agents to enter onto the Property commencing on the Effective Date and continuing for a period of sixty (60) days thereafter ("**Due Diligence Period**"), for purposes of enabling Developer to examine, inspect, and investigate the physical and environmental condition of the Property, including any foundations, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, Hazardous Materials, if any, and, at Developer's sole and absolute discretion, to enable Developer to determine whether the Property is acceptable to Developer and suitable for Developer's intended use; provided, however, in no event shall Developer conduct any intrusive testing procedures on the Property without the prior written consent of Successor Agency, which consent may not be unreasonably delayed or withheld. Developer and Developer's representatives and agents shall also be entitled to enter onto the Property to conduct additional examinations and investigations at any time after expiration of the Due Diligence Period and through the Close of Escrow.

As a condition to Developer's entry onto the Property prior to the Close of Escrow, whether before or after the expiration of the Due Diligence Period, Developer shall provide to Successor Agency a copy of all reports, studies and test results prepared by Developer's consultants, without representation or warranty. Developer shall notify Successor Agency, in writing, at least twenty-four (24) hours prior to any entry by Developer or Developer's representatives on the Property. Successor Agency shall have the right, but not the obligation, to accompany Developer during such investigations. As an additional condition of such entry, Developer shall (i) conduct all work or studies in a diligent, expeditious, and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after the investigation; (ii) obtain any required governmental permits and comply with all applicable laws and governmental regulations; (iii) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; (iv) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) for all persons entering the Property in the amounts required by the State of California; and (v) provide to Successor Agency prior to initial entry a certificate of insurance evidencing that Developer and/or the persons entering the Property have procured and have in effect commercial general liability insurance that satisfies the requirements set forth in Section 10.6 hereof. Developer shall, in a timely manner, repair any and all damage to the Property caused by such inspections or investigations and shall indemnify, defend, and hold harmless the Indemnitees from and against any claims, liabilities, and losses arising from the entries of Developer and its representatives and agents on the Property pursuant to this Section 5.1, except to the extent that such claims, liabilities, and losses arise out of the intentional misconduct, active negligence, or illegal actions of any of the Indemnitees.

Notwithstanding Developer's right to enter the Property after expiration of the Due Diligence Period pursuant to the second sentence in the first paragraph of this Section 5.1, Developer shall notify Successor Agency in writing on or before the expiration of the Due Diligence Period of Developer's approval or disapproval of the physical and environmental condition of the Property and Developer's investigations with respect thereto. If Developer notifies Successor Agency of disapproval, such notification shall be accompanied by a statement of reasons. Developer's notification of disapproval shall stay the Due Diligence Period for a period of ten (10) days to allow for the Parties to meet and confer. During such meet and confer period, the Parties shall attempt in good faith to address the issues raised in the statement of reasons. Unless the Parties agree on a resolution of the issues raised in the statement of reasons or to extend in writing the Due Diligence Period, Developer's delivery of the notice of disapproval shall constitute Developer's election to terminate this Agreement and cancel the Escrow. Developer's failure to deliver notice of disapproval, accompanied by a statement of reasons, to Successor Agency on or before the expiration of the Due Diligence Period shall be conclusively deemed Developer's approval thereof.

Developer acknowledges that Developer is aware that the real property located at 1600 Capitola Road was operated as a dry cleaner and laundry business during some or all of the 1960s and 1970s, and that volatile solvents have been detected on the Property. Prior to the Effective Date, Successor Agency has provided to Developer a copy of the

Weber Hayes Reports, which include results of various soil, soil gas, and groundwater samples obtained from the Property and submitted to the Water Board, and a copy of the Geokinetics Designs and Plans, which include engineering plans and specifications for a VIMS for future structures. Other documents pertaining to the environmental condition of the Property can be accessed from the Water Board's electronic case file, at: https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000014098.

Should Dientes and/or SCCHC desire to enter and inspect the Clinic Parcel, Developer shall direct the respective entity to contact the County Administrative Officer and request such access, whereupon Successor Agency agrees to permit such access pursuant to a written agreement to be entered into by and between Successor Agency and the respective entity, in a form provided by Successor Agency legal counsel.

5.2 "AS-IS"; Release. Developer acknowledges and agrees that Developer is acquiring the Property from Successor Agency solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by any of the Indemnitees.

AS A MATERIAL PART OF THE CONSIDERATION FOR SUCCESSOR AGENCY'S AGREEMENT TO SELL THE PROPERTY TO DEVELOPER, DEVELOPER AGREES THAT AS OF CLOSE OF ESCROW DEVELOPER WILL ACCEPT THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS. EXCEPT AS OTHERWISE SET FORTH HEREIN AND SUBJECT TO APPLICABLE CALIFORNIA LAW, NO WARRANTY OR REPRESENTATION IS MADE BY SUCCESSOR AGENCY OR THE COUNTY WITH RESPECT TO THE PROPERTY AS TO (I) FITNESS FOR ANY PARTICULAR PURPOSE, (II) MERCHANTABILITY, (III) CONDITION, (IV) ABSENCE OF DEFECTS OR FAULTS, (V) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (VI) FLOODING, OR (VII) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT, AS THEY MAY APPLY TO THE CURRENT CONDITION OF THE PROPERTY OR DEVELOPER'S INTENDED DEVELOPMENT, CONSTRUCTION OR USE, OR FOR ANY OTHER PURPOSE. DEVELOPER ACKNOWLEDGES THAT DEVELOPER WILL BE RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE AND LEGAL CONDITION OF THE PROPERTY.

As of the Close of Escrow, Developer will be deemed to have waived and released each of Successor Agency and the County of and from any and all claims, causes of action, damages or losses that may be incurred by Developer concerning the condition of the Property, whether known or unknown as of the Close of Escrow, except for a breach or default by Successor Agency of its obligations under this Agreement or any fraud or intentional misrepresentation by Successor Agency. Such waiver will be deemed to be a release of all rights held by Developer under California Civil Code §1542, which states:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the

release, which if known by him or her must have materially affected his or her settlement with the debtor.

Developer Initials _____

5.3 Developer Indemnity. Following the Close of Escrow, Developer shall save, protect, defend, indemnify, and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by any of the Indemnitees by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result and to the extent of (i) Developer's failure to comply with all applicable Governmental Requirements, including, without limitation, all applicable terms, conditions, and requirements of the Water Board and Air District; (ii) Developer's failure to comply with any permit applicable to the Project and/or Property; (iii) Developer's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination; (iv) Developer's breach of its obligations under Section 5.4 or Section 5.5 hereinafter; or (iv) any Liabilities incurred after the Close of Escrow under any Governmental Requirements relating to the acts described in the foregoing clauses (i), (ii), (iii) and (iv). Except for obligations assumed by Developer in Section 5.4 and Section 5.5 hereinafter, Developer shall have no indemnity obligation to any of the Indemnitees for any Liabilities arising from or related to Successor Agency's or the County's failure to comply with any Governmental Requirements, whether known or unknown, that existed or arose prior to the Close of Escrow regardless of when such Liabilities may accrue.

5.4 Duty to Prevent Hazardous Material Contamination. Developer shall take commercially reasonable actions to prevent the exacerbation of an existing release of any Hazardous Materials located on the Property and the release of new Hazardous Materials to the Property after the Close of Escrow. For the avoidance of ambiguity only, nothing in the previous sentence shall limit Developer from maintaining Hazardous Materials existing on the Property prior to the Close of Escrow or consolidating such Hazardous Materials on the Property, all to the extent permitted by law. Developer's duty to prevent Hazardous Materials Contamination shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall comply with any state or local Government Requirements pertaining to apartment complexes in Santa Cruz County, California, as respects the disclosure, permitting, notification, storage, use, removal, and disposal of Hazardous Materials.

5.5 Obligation to Remediate Premises. All final reports prepared by environmental consultants documenting the results of environmental assessments of the Property performed by Developer shall be submitted to the Water Board (and if applicable the Air District) for review promptly upon completion. Developer acknowledges that, prior to the Close of Escrow, Developer shall have no obligation to undertake any action to address or respond to Hazardous Materials present on, under, or about the Property

regardless of when the Hazardous Materials first occurred or when they were first discovered. After the Close of Escrow, any required remediation, investigation, mitigation, monitoring or other response action (collectively "**Response Action**") shall be performed by Developer at Developer's sole cost and expense without any reimbursement from Successor Agency or the County, including (i) all Response Actions required by any federal, state, regional, or local governmental agency or political subdivision or to fulfill any Governmental Requirements and (ii) all actions necessary to use the Property for the purposes contemplated by the Regulatory Agreement and this Agreement; and in either case (i) or (ii), regardless of whether the Hazardous Materials or Hazardous Materials Contamination that is the subject of such Response Action arose before or after the Close of Escrow and regardless of when it was first discovered. Such Response Actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, risk assessments or other reports, and the performance of any cleanup, remedial, removal, mitigation, monitoring, or restoration work.

5.6 Environmental Inquiries. Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination from any governmental agency, or when Developer is required to report to any governmental agency any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination (collectively, "**Environmental Inquiries**"), shall concurrently notify the Planning Director, and provide to him/her a copy or copies of the Environmental Inquiries.

In the event of a release of any Hazardous Materials at the Property by Developer into the environment in violation of law, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Planning Director a notification that the release occurred and a copy of any and all test results and final reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Planning Director, Developer shall furnish to the Planning Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits, test results and final reports, including, without limitation, those reports and other matters which may be characterized as confidential. For the avoidance of ambiguity only, Developer shall be under no obligation to furnish any attorney-client privileged documents; provided, however, that Developer may not withhold from Planning Director facts regarding a violation of law that affects the Property.

5.7 Materiality. Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of Successor Agency set forth in this Agreement and the post-closing obligations of Developer described herein are a material element of the consideration to Successor Agency under this Agreement, and that Successor Agency would not have entered into this Agreement unless Developer's obligations were as provided for herein. Such obligations survive the Close of Escrow and recordation of the Grant Deed.

5.8 Review of Title of Site. Within thirty (30) days after the Effective Date, Successor Agency shall cause the Title Company to deliver to Developer a standard preliminary title report dated no earlier than the Effective Date (the "**Preliminary Title Report**") with respect to the title to the Property, together with legible copies of the documents underlying the exceptions ("**Title Exceptions**") set forth in the Preliminary Title Report. Developer shall have the right to approve or disapprove the Title Exceptions and any proposed encumbrances to the Property in the exercise of its sole discretion; provided, however, that Developer hereby approves the following Title Exceptions:

(a) The standard printed exceptions and exclusions contained in the Preliminary Title Report.

(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

(d) All documents to be recorded at the Close of Escrow pursuant to this Agreement.

Developer shall have fifteen (15) days after the later of (i) the date of its receipt of the Preliminary Title Report, or (ii) the date Developer receives the documents underlying the Title Exceptions, to give written notice to Successor Agency and Escrow Holder of Developer's approval or disapproval of any of such Title Exceptions. Developer's failure to give written disapproval of any of the Title Exceptions in the Preliminary Title Report within such time limit shall be deemed Developer's approval of the Preliminary Title Report. If Developer notifies Successor Agency of its disapproval of any Title Exceptions in the Preliminary Title Report, Successor Agency shall have the right, but not the obligation, to remove any such disapproved Title Exceptions within thirty (30) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such disapproved Title Exception(s) will be removed on or before the Close of Escrow. If Successor Agency cannot or does not agree to remove any of the disapproved Title Exceptions before the Close of Escrow, Developer shall have fifteen (15) days after the expiration of such thirty (30) day period to either give Successor Agency written notice that Developer elects to proceed with the acquisition of the Property subject to the disapproved Title Exceptions or to give Successor Agency written notice that Developer elects to terminate this Agreement. Developer's failure to give written notice of its election within such fifteen (15) day period shall be deemed to be an election to proceed with the purchase of the Property subject to the disapproved Title Exceptions. The condition of title, including all of the Title Exceptions approved (or deemed approved) by Developer as provided herein shall hereinafter be referred to as the "**Condition of Property Title.**" From and after the Effective Date hereof, and continuing until the earlier of (i) the Close of Escrow, or (ii) termination of this Agreement, Successor Agency shall not further encumber the Property with additional Title Exceptions without Developer's prior written consent. Developer shall have the right to approve or disapprove, in its sole discretion, any further Title Exceptions reported by the Title Company after Developer has approved the Condition of Property Title (which are not created by Developer). Developer and the County Administrative Officer, on behalf of Successor Agency, shall have the authority to extend the foregoing fifteen (15) day period by written agreement.

Within thirty (30) days after the Effective Date, Successor Agency shall cause the Title Company to deliver to Developer (i) a standard preliminary title report dated no earlier than the Effective Date (the "**Dientes Preliminary Title Report**") with respect to the title to the Dientes Condominium, or if the Title Company is unable to prepare a title report that is limited to the Dientes Condominium, then for the Clinic Parcel or Capitola Property, together with legible copies of the documents underlying the exceptions ("**Dientes Title Exceptions**") set forth in the Dientes Preliminary Title Report, and (ii) a standard preliminary title report dated no earlier than the Effective Date (the "**SCCHC Preliminary Title Report**") with respect to the title to the SCCHC Condominium, or if the Title Company is unable to prepare a title report that is limited to the SCCHC Condominium, then for the Clinic Parcel or Capitola Property, together with legible copies of the documents underlying the exceptions ("**SCCHC Title Exceptions**") set forth in the SCCHC Preliminary Title Report. Upon Developer's receipt of the Dientes Preliminary Title Report or SCCHC Preliminary Title Report, the provisions in this Section 5.8 shall be applicable to said report.

6. FINANCING PLAN FOR THE PROJECT

6.1 Financing Plan. It is contemplated that Developer will finance the Project (the "**Project Financing**") through a combination of funds from the proceeds of the following:

(a) Construction Loan. The Construction Loan;

(b) Tax Credits. Developer equity, consisting of equity raised by the syndication to reputable investors of state and/or federal low-income housing credit and obtained pursuant to 26 U.S.C. §42 (the "**Tax Credits**");

(c) Take-Out Loan. The Take-Out Loan; and

(d) County Loan. The County Loan, as more particularly provided in Section 6.2 below.

Notwithstanding the foregoing, Developer shall continue to use commercially reasonable efforts to pursue additional sources of funds that may be available to assist with the costs of developing the Project, including, without limitation, funds from multiple programs administered by HCD.

6.2 County Loan. Subject to the terms and conditions of this Agreement, Successor Agency agrees to use commercially reasonable efforts to cause the County to make a loan to Developer, utilizing County housing funds, in the collective amount of (i) the Purchase Price (which amount Developer acknowledges shall be deemed to have been funded by the County upon Successor Agency's conveyance of the Property to Developer) (the "**Purchase Price Loan**"), and (ii) Three Million Five Hundred Ninety-Two Thousand Three Hundred Ninety-Nine Dollars ($3,592,399), for disbursement to Developer for costs Developer incurs to develop the Project, pursuant to the disbursement process set forth below (the "**Development Loan**"). Developer acknowledges that the County provided the Predevelopment Loan to MidPen pursuant to

the Predevelopment Agreement, and as set forth in the Predevelopment Agreement, the principal amount of the Predevelopment Loan is to be added to, and repaid pursuant to the repayment terms of, the Purchase Price Loan and Development Loan. The Purchase Price Loan, Development Loan, and Predevelopment Loan shall be collectively referred to hereinafter as the "**County Loan**". The County Loan shall be evidenced by the County Note, and shall be secured by the County Deed of Trust.

Developer represents, acknowledges and agrees that the cost of producing and maintaining affordable units is proportionately related to the level of affordability of the units, and that units restricted at deeper level of affordability will cost Developer more to produce. As a result, the County Loan shall be allocated to the Project in the following manner:

Thirty percent (30%) of the County Loan, in the amount of One Million Five Hundred Thousand Dollars ($1,500,000), shall be allocated to the cost of developing the maintaining the "30% AMI Units" (as that term is defined in the County Regulatory Agreement);

Fifty percent (50%) of the County Loan, in the amount of Two Million Five Hundred Thousand Dollars ($2,500,000), shall be allocated to the cost of developing and maintaining the "40% AMI Units," "50% AMI Units," and "60% AMI Units" (as those terms are defined in the County Regulatory Agreement); and

Twenty percent (20%) of the County Loan, in the amount of One Million Dollars ($1,000,000), shall be allocated to the cost of developing and maintaining the "80% AMI Units" (as that term is defined in the County Regulatory Agreement).

As a condition to Developer's obligation to close the Project Financing, the County shall have delivered the Development Loan (or undisbursed portion thereof, if portions are disbursed early pursuant to the following paragraph) to Escrow Holder for disbursement to Developer at or following the closing of the Project Financing. The Development Loan shall be disbursed to Developer to reimburse Developer for Project development costs incurred by Developer, pursuant to the process set forth in this paragraph. All disbursement requests must be approved by the Planning Director, and shall include written evidence of previously paid or pending invoices for development costs listed in the Project Budget, such as receipts or invoices from the vendor, and shall also include written evidence that the invoices are for actual Project development costs that have been or will be incurred as a result of development of the Project. All requests for payment shall include conditional lien releases covering the work to be reimbursed.

Notwithstanding anything herein to the contrary, following the Close of Escrow (if the Close of Escrow occurs early, pursuant to Section 2.2(a) above), the Planning Director shall have authority, in his or her sole and absolute discretion, to disburse portions of the Development Loan to Developer, upon a written request by Developer setting forth the necessity for such early disbursement, along with back-up documentation supporting the request.

6.3 Applications to CDLAC and TCAC . Within the time set forth in the Schedule of Performance, Developer shall (i)(a) if the Project will be financed through issuance of the Tax-Exempt Bonds, prepare for filing in the name of the California Municipal Finance Authority or other reputable issuer acceptable to the Planning Director a complete application to CDLAC for an allocation for the Tax-Exempt Bonds; and (b) apply to reputable institutional lenders for the third party credit enhancement or private placement of the Tax-Exempt Bonds in order to provide the Construction Loan and Take-Out Loan for the Project; and (ii)(a) prepare and submit a complete application to TCAC for an allocation of Tax Credits as soon as reasonably practicable following the Effective Date; and (b) apply to reputable institutional investors and syndicators qualified to act as the Investor.

Developer agrees to promptly submit to the Planning Director all of the following documents at such time as the same are submitted by Developer to TCAC or other applicable body or when such documents are received by Developer, as applicable (any documents submitted prior to the Effective Date of this Agreement shall also have been submitted by Developer to the Planning Director and reviewed by the Planning Director prior to the Effective Date of this Agreement):

(1) A true and correct copy of the preliminary reservation letter from TCAC, a copy of the letter of intent from the Investor reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds.

(2) A complete copy of the Tax Credit Regulatory Agreement (4 California Code of Regulations § 10340(c)). (As more fully discussed in Section 4.14 of County Regulatory Agreement, should the County be prevented by a final order of a court of competent jurisdiction, applicable and binding appellate opinion, or regulatory body with jurisdiction from enforcing, for any reason, the affordability restrictions set forth in this Agreement, the County shall, subject to TCAC's consent to the extent such consent is required, be a third-party beneficiary under said agreement and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default under this Agreement.)

(3) Complete copies of all correspondence or transmittals from TCAC or other jurisdiction (such as the Internal Revenue Service) containing any notification regarding the Project's noncompliance with applicable provisions of the Tax Credit Program.

6.4 Project Budget. The Project Budget includes all of the following: (i) a detailed budget; (ii) a Sources and Uses of Funds Statement; (iii) a Cash Flow Projection; and (iv) a First Year Operating Budget.

6.5 Developer Submittals.

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Project Budget, Developer shall submit to the Planning Director

copies of all of the correspondence and other documentation received in connection with the same.

Within five (5) days after the Effective Date, Developer shall provide to the Planning Director a copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

6.6 Financing Commitments. Not later than the time provided in the Schedule of Performance, Developer shall submit to the Planning Director for review and approval, which approval shall not be unreasonably denied or delayed, preliminary commitments for the Project Financing, including, without limitation, any investor or lender offers received from qualified parties for the Tax Credits.

6.7 Developer Fee. The parties acknowledge and agree that Developer shall not be entitled to any fee for developing the Project except as expressly set forth in the Project Budget.

6.8 Cost Savings Obligation. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by the Planning Director, Developer hereby agrees to provide and pay to the County towards repayment of the County Loan a "Cost Savings" payment for the Project in an amount to be determined based on the "Audit" (as those terms are described in subparagraph (a) below) to be conducted upon completion of construction of the Project.

(a) Audit to Determine Cost Savings Amount. The actual amount of Cost Savings to be paid to the County shall be determined after the Audit, as hereafter described, and the amount of such Cost Savings shall be equal to the amount by which the total sources of permanent financing for the Project (which financing includes, but is not limited to, the County Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits) exceed the costs of development incurred for the Project (which costs include, but are not limited to, the hard and soft costs incurred by Developer to perform predevelopment activities and construct the Project (including all permitted deferred developer fee), and the amount spent to reduce the principal balance of the Construction Loan to the principal balance of the Take-Out Loan). Prior to the Conversion Date, Developer shall cause its certified public accountant(s) to perform a final audit of the costs of development of the Project in accordance with the requirements of the Tax Credits and generally accepted accounting principles ("GAAP") and generally accepted auditing standards (herein referred to as "Audit"). If the Audit determines that the total sources of permanent financing for the Project (which financing includes, but is not limited to, the County Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits) exceed Developer's total costs to develop the Project (which costs include, but are not limited to, the hard and soft costs incurred by Developer to perform predevelopment activities and construct the Project, and the amount spent to reduce the principal balance of the

Construction Loan to the principal balance of the Take-Out Loan), such excess shall be considered the "**Cost Savings**" for the Project.

(b) Cost Savings Payment as Payment of Principal on County Loan. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by the Planning Director, the Cost Savings for the Project, once determined by the Audit pursuant to Section 6.8(a) above and subject to Section 6.8(c) below, shall be due and paid by Developer to the County and allocated and credited as a principal payment on the County Loan, as and when paid. Any Cost Savings above and beyond the amount needed to fully repay the County Loan may be used by Developer in its discretion.

(c) Timing of Payment of Cost Savings. The Cost Savings for the Project shall become due and payable by Developer to the County upon the later of (i) sixty (60) days after receipt by Developer of the final investor capital contribution, and (ii) completion of construction of the Project, as evidenced by the County's issuance of a Release of Construction Covenants.

7. DISPOSITION OF PROPERTY

7.1 Agreement. Successor Agency, subject to the conditions set forth in Section 7.2 below (except as otherwise permitted under Section 2.2), agrees to sell the Property to Developer, and Developer, subject to the conditions set forth in Section 7.3 below, agrees to purchase the Property from Successor Agency. Subject to each party's reserved rights hereunder, the parties shall cooperate with one another and shall exercise commercially reasonable diligence in an effort to ensure that the conditions precedent set forth in Sections 7.2 and 7.3 are timely satisfied.

7.2 Conditions for Successor Agency's Benefit. Except as otherwise permitted under Section 2.2(a) in connection with an early closing, Successor Agency's obligation to sell the Property to Developer shall be subject to satisfaction of all of the following conditions precedent or Successor Agency's written waiver of such conditions precedent in its sole and absolute discretion:

(a) Organizational Documents. The Planning Director shall have received and approved a copy of such portions of the organizational documents of Developer or Developer's successor-in-interest as the Planning Director deems reasonably necessary to document the power and authority of Developer to perform its obligations set forth in this Agreement. Developer shall have made full disclosure to the Planning Director of the names and addresses of all persons and entities that have a beneficial interest in Developer.

(b) Insurance. Developer shall have submitted to the Planning Director and the Planning Director shall have approved Developer's evidence of the liability insurance required pursuant to Section 10.6 hereof.

(c) Land Use Entitlements. The County shall have approved the Land Use Entitlements for the Project, in accordance with Section 4, Developer shall have

approved or be deemed to have approved the same, including without limitation all terms and conditions applicable thereto, and the Land Use Entitlements Approval Date shall have occurred.

(d) Evidence of Project Financing. The Planning Director shall have received and reasonably approved commitments from all Project Financing sources, as evidenced by letters of commitment and/or true and complete copies of loan documents.

(e) General Contractor. The general contractor for the Project (the "**General Contractor**") shall have been approved by the Planning Director.

(f) Construction Contract. The Planning Director shall have received a true and complete copy of a contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Project at a cost consistent with the costs set forth therefor in the Project Budget (the "**Construction Contract**") and the Planning Director shall have approved said Construction Contract.

(g) Final Construction Documents. The Planning Director shall have approved the Final Construction Documents for the Project and the Planning Director shall have received a full set thereof.

(h) Completion Bond. If the Construction Lender or the Investor require that a completion bond be posted by the General Contractor, then such completion bond shall name the County as a co-obligee.

(i) Completion Guaranty. If the Construction Lender or the purchaser of the Tax Credits require a completion guaranty from Developer, or any Affiliate thereof, then the County shall have also received a completion guaranty from Developer in similar form and content.

(j) Building Permit. The Building Permit for the Project shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

(k) Construction to Commence. The Planning Director shall be reasonably satisfied that construction of the Project will commence not later than thirty (30) days after the Close of Escrow and thereafter will be pursued to completion in a diligent and continuous manner; provided, however, that if early closing occurs pursuant to Section 2.2(a), then the Planning Director shall be reasonably satisfied that construction of the Project will commence not later than thirty (30) days after the close of Developer's Project Financing.

(l) Assignment of Final Construction Documents. Developer shall have conditionally assigned to the County the Final Construction Documents for the Project by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 6, which assignment shall be subordinated to any pledge or assignment to the Construction Lender. Developer shall have also delivered to the Planning Director

the written consent of the other party to each such Final Construction Document to said assignment in the form included as part of said Attachment No. 6, including, without limitation, to the use by the County of the Final Construction Documents, as well as the ideas, designs, and concepts contained within them.

(m) Assignment of Construction Contract. Developer shall have conditionally assigned to the County the Construction Contract by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 6, including obtaining the consent thereto of the General Contractor, which assignment shall be subordinated to any pledge or assignment to the Construction Lender.

(n) Resident Services Plan. Developer shall have submitted a detailed resident services plan for the Project to the Planning Director, including any specialized supportive services to be provided to targeted populations, and the Planning Director shall have reasonably approved the same.

(o) Request for Notice of Default. Escrow Holder shall be ready to record a request for notice of default pursuant to Civil Code Section 2924(b), requesting that any beneficiaries of liens securing the Construction Loan notify the County of any default under the instrument creating the lien (the "**Request for Notice**").

(p) Documents Executed. Developer shall have duly executed the Grant Deed, County Note, County Deed of Trust, County Regulatory Agreement, and Notice of Affordability, with signatures acknowledged (as applicable) and deposited them into Escrow.

(q) Title Policy. Title Company is prepared to issue its ALTA loan policy of title insurance naming the County as the insured, in a policy amount not less than the principal amount of the County Loan, showing Developer as holding fee title to the Property and insuring the County Deed of Trust to be a valid lien on the Property subject only to exceptions approved by the Planning Director (the "**County Title Policy**").

(r) Land Use Entitlements Approval Date. Occurrence of the Land Use Entitlements Approval Date.

(s) Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement. Each of the Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement shall have been fully executed in forms approved by the Planning Director, for recordation at the Close of Escrow (applicable only if at Close of Escrow Successor Agency will convey Dientes Condominium to Dientes and SCCHC Condominium to SCCHC pursuant to Section 2.2(a) above).

(t) Total Project Cost. Nothing shall have come to the attention of Developer and/or the County to indicate that the Project cannot be completed at a cost consistent with the Project Budget and, if there has been such an indication, Developer has provided evidence, reasonably satisfactory to the Planning Director, of the availability of funding sources other than the County to complete the Project. If Developer becomes

aware of any such information, Developer shall promptly give notice thereof to the County Administrative Officer and the Planning Director.

(u) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the Close of Escrow as though made on and as of that date and, if requested by the Planning Director, the County shall have received a certificate to that effect signed by Developer.

(v) Successor Agency/County Assignment. Each of Successor Agency and County shall have duly executed the Successor Agency/County Assignment.

(w) No Default. No Event of Default by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by the Planning Director, the County shall have received a certificate to that effect signed by Developer.

7.3 Conditions for Developer's Benefit. Developer's obligation to purchase the Property from Successor Agency shall be subject to satisfaction of all of the following conditions precedent or Developer's written waiver of such conditions precedent in its sole and absolute discretion:

(a) Land Use Entitlements. Developer shall have approved the Land Use Entitlements for the Project, in accordance with Section 4.

(b) Condition of Property. No material changes shall have occurred after the Effective Date with respect to the condition of the Property.

(c) Evidence of Project Financing. The Developer shall have received commitments for the Construction Loan, Tax Credit Financing, and Take-Out Loan in form and substance acceptable to the Developer, and the Construction Loan and Tax Credit financing shall close concurrently with the leasing of the Property.

(d) Total Project Cost. Nothing shall have come to the attention of Developer and/or the County to indicate that the Project cannot be completed at a cost consistent with the Project Budget and, if there has been such an indication, Developer has provided evidence, reasonably satisfactory to the Planning Director, of the availability of funding sources other than the County to complete the Project.

(e) Building Permit. The Building Permit for the Project shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

(f) Title Insurance. The Title Company shall be prepared to issue its ALTA owner's policy of title insurance, with liability in the amount not less than the total of the equity raised from the sale of the Tax Credits plus the principal amounts of the Take-Out Loan and County Loan, showing fee title to the Property vested in Developer, in the Condition of Property Title, with no other encumbrances or title exceptions, except (i) the Project Documents being recorded at the Close of Escrow pursuant to the terms of

this Agreement, (ii) the lien of the Construction Loan Security Documents, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "**Developer Title Policy**"). The Title Company shall provide the County with a copy of the Developer Title Policy.

(g) Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement. Each of the Joint Development, Easement, Joint Use, License and Maintenance Agreement and Cost Sharing Agreement shall have been fully executed.

(h) Reissuance of Predevelopment Loan. If reasonably required by the Investor, MidPen and the County shall have terminated the Predevelopment Agreement, and the County shall be deemed to have provided a new loan to Developer in the amount of the Predevelopment Loan.

(i) No Default. No Event of Default by Successor Agency shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by Successor Agency.

7.4 Developer Right to Terminate. If, by the time provided in the Schedule of Performance, any of the conditions set forth in Section 7.3 have not been satisfied, or waived by Developer, then Developer, provided that it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 13.1), may terminate this Agreement by giving thirty (30) days' written notice to Successor Agency.

7.5 Successor Agency Right to Terminate. If, by the time provided in the Schedule of Performance, any of the conditions set forth in Section 7.2 have not been satisfied, or waived by Successor Agency, then Successor Agency, provided that it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 13.1), may terminate this Agreement by giving thirty (30) days' written notice to Developer.

7.6 Waiver of Conditions. The conditions set forth in Section 7.2 are for Successor Agency's benefit only and the County Administrative Officer may waive all or any part of such rights by written notice to Developer. The conditions set forth in Section 7.3 are for Developer's benefit only and Developer may waive all or any part of such rights by written notice to Successor Agency.

8. PROPERTY CLOSING; ESCROW EXPENSES

8.1 Close of Escrow. Upon receipt by the Escrow Holder of (i) the Grant Deed, County Regulatory Agreement, County Deed of Trust, and Notice of Affordability, and (ii) all other funds and documents required to conduct the Close of Escrow in accordance with this Agreement, and when the conditions precedent described in Section 7.2 have been satisfied, or waived by the County Administrative Officer, and the conditions precedent described in Section 7.3 have been satisfied, or waived by Developer, the Escrow Holder shall take all of the following actions:

(a) Recordation. Escrow Holder shall record the following documents in the Official Records in the following order:

(i) the Grant Deed;

(ii) the County Regulatory Agreement;

(iii) the Construction Loan Security Documents;

(iv) the County Deed of Trust;

(v) the Request for Notice;

(vi) one or more (as applicable) County/Lender Subordination Agreements;

(vii) the Notice of Affordability; and

(viii) such other documents required to close the Escrow in accordance with this Agreement;

(b) Deliveries to Successor Agency. Escrow Holder shall deliver to Successor Agency:

(i) a conformed copy of each of the documents recorded pursuant to paragraph (a) above; and

(ii) the County Title Policy;

(c) Deliveries to Developer. Escrow Holder shall deliver to Developer:

(i) a conformed copy of each of the documents recorded pursuant to paragraph (a) above, and

(ii) the Developer Title Policy.

8.2 Expenses of Developer. Developer shall pay: (a) any and all documentary transfer taxes and recording fees arising from the conveyance of the Property from Successor Agency to Developer, (b) the Escrow fee, (c) the premium for the County Title Policy and Developer Title Policy, and (d) all such other costs and expenses related to the Escrow and not expressly provided for herein.

8.3 Instruction to Escrow Holder Regarding Waiver of Transfer Taxes and Recording Fees. The Escrow Holder is hereby instructed to seek such waivers and exemptions from transfer taxes and recording fees as are available pursuant to Revenue and Taxation Code Section 11922 and Government Code Sections 6103 and 27383, respectively.

8.4 Broker's Commissions. Developer represents and warrants to Successor Agency that Developer has not engaged any broker, agent or finder in connection with this Agreement, and Developer agrees to indemnify, protect, hold harmless, and defend the Indemnitees from any claim by any brokers, agents or finders retained by Developer. Successor Agency represents and warrants to Developer that Successor Agency has not engaged any broker, agent, or finder in connection with this Agreement, and Successor Agency agrees to indemnify, protect, hold harmless, and defend Developer and its officers, officials, members, employees, representatives, agents, and volunteers from any claim by any brokers, agents, or finders retained by Successor Agency.

9. OTHER ESCROW INSTRUCTIONS

9.1 Funds in Escrow. All funds received in the Escrow shall be deposited by the Escrow Holder in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the County Administrative Officer and Developer, and such funds may be combined with other escrow funds of the Escrow Holder. All disbursements shall be made on the basis of a thirty (30) day month.

9.2 Failure to Close. If the Close of Escrow does not occur on or before the Outside Closing Date, either Party not then in default may, in writing, demand the return of its money, papers, or documents from the Escrow Holder. No demand for return shall be recognized until fifteen (15) days after the Escrow Holder (or the Party making such demand) shall have mailed copies of such demand to the other Party. Objections, if any, shall be raised by written notice to the Escrow Holder and to the other Party within the fifteen (15) day period, in which event the Escrow Holder is authorized to hold all money, papers and documents until instructed by mutual agreement of the Parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow Holder shall conduct the Close of Escrow as soon as possible.

If objections are raised in the manner provided above, the Escrow Holder shall not be obligated to return any such money, papers or documents except upon the written instructions of both the County Administrative Officer and Developer, or until the Party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said fifteen (15) period, the Escrow Holder shall immediately return the demanded money, papers or documents.

9.3 Amendments. Any amendment to these Escrow instructions shall be in writing and signed by the County Administrative Officer or legal counsel to Successor Agency and Developer. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as the Escrow Holder under such amendment.

9.4 Notices. All Notices from the Escrow Holder to Successor Agency or Developer shall be given in the manner provided in Section 14.

9.5 Liability. The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under Sections 6, 8 and 9 and such

additional general or special instructions as may be prepared by the Escrow Holder and approved and executed by the parties.

10. DEVELOPMENT OF THE PROJECT

10.1 Scope of Development. Developer shall construct the Project on the Property in accordance with all applicable Governmental Requirements, the approved Land Use Entitlements, and the Scope of Development. In the event of any conflict between the approved Land Use Entitlements and the Scope of Development, the approved Land Use Entitlements shall govern and control. Subject to Section 17.12 below, Developer shall commence and complete construction of the Project on the Property by the respective times established therefor in the Schedule of Performance. The Scope of Development shall be deemed to include any plans and specifications submitted to the County for approval, and shall incorporate or show compliance with all mitigation measures.

10.2 Additional Governmental Permits and Approvals.

(a) Before commencement of construction or development of any buildings, structures or other works of improvement upon the Property by Developer, Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals not included in the Land Use Entitlements which may be required by the County or any other governmental agency affected by or with jurisdiction over such construction, development or work.

(b) The landscaping and finish grading plans shall be prepared by a professional landscape architect or registered civil engineer who may be the same firm as Developer's architect or civil engineer. During the preparation of drawings and plans, staff of Developer shall hold regular progress meetings with the County to coordinate the preparation of, submission to, and review of drawings, plans and related documents by the County. The staff of Developer shall communicate and consult informally with the County as frequently as is necessary to insure that the formal submittal of any documents to the County can receive prompt and speedy consideration. Successor Agency shall use reasonable commercial efforts to cause the County to approve, conditionally approve, or deny, in writing, any formally submitted plans within thirty (30) days after submission to the County.

(c) Developer shall pay all necessary fees and timely submit to the County Final Construction Documents with final corrections required by the County to obtain a Building Permit.

10.3 Review and Approval of Plans, Drawings, and Related Documents.

(a) Successor Agency shall use reasonable commercial efforts to cause the County to approve, conditionally approve, or deny, in writing, any formally submitted plans within thirty (30) days after submission to the County.

(b) If the County determines that such a submittal is not substantially complete or not in accordance with procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance. If Developer desires to make any material changes in the construction plans after their approval by the County, Developer shall submit the proposed change to the County for approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Section 10.3 the Land Use Entitlements, the Scope of Development, and all Governmental Requirements, Successor Agency shall use reasonable efforts to cause the County to approve the proposed change, in writing, within thirty (30) days after submission to the County.

10.4 Cost of Development. Developer acknowledges and agrees that all Project Costs shall be borne exclusively by Developer. Developer shall also bear all costs related to discharging the duties of Developer set forth in this Agreement. Developer shall also be responsible for all fees associated with development of the Project, including, but not limited to, school facilities fees and development impact fees.

10.5 Indemnity. Developer shall defend (by counsel reasonably satisfactory to the County and Successor Agency), assume all responsibility for and hold the Indemnitees harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorney's fees and costs), to the extent arising out of the activities and/or performance of Developer or any of Developer's employees, agents, representatives, contractors, or subcontractors under or with respect to (i) this Agreement, (ii) the making of the County Loan; (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any of Developer's contractors, subcontractors or material suppliers, engineers, architects or other persons with respect to the Property; or (v) the ownership, occupancy or use of the Property by Developer, whether such damage shall accrue or be discovered before or after termination of this Agreement. Developer's indemnification obligations pursuant to this Section 10.5 shall not apply to the extent that such claims, suits, or damages arise out of the intentional misconduct, active negligence, or illegal actions of any of the Indemnitees. The obligations and indemnifications in this Section 10.5 shall constitute covenants running with the land.

10.6 Insurance Requirements.

(a) General. Commencing on the date of the Close of Escrow and continuing throughout the term of the County Regulatory Agreement, Developer shall procure and maintain, at its sole cost and expense, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects the County and Successor Agency and any insurance or self-insurance maintained by the County or Successor Agency shall be considered in excess of Developer's insurance coverage and shall not contribute to it. If Developer normally carries insurance in an amount greater than the minimum amount required by the County or Successor Agency for this Agreement, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. Therefore, Developer hereby acknowledges and agrees that any and all insurances carried by it shall

be deemed liability coverage for any and all actions it performs in connection with this Agreement. Insurance is to be obtained from insurers reasonably acceptable to the County and Successor Agency.

If Developer utilizes one or more subcontractors in the performance of this Agreement, Developer shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of Developer in this Agreement, unless Developer and the County both initial here _____ / _____.

(b) Types of Insurance and Minimum Limits

(1) Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the Developer has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of Developer's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by Developer's employees), leased or hired vehicles, in the minimum amount of $1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the Developer does not drive a vehicle in conjunction with any part of the performance of this Agreement and Developer and the County both certify to this fact by initialing here JMK / _____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of $5,000,000 per occurrence, and $5,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of $_____combined single limit, if, and only if, this subparagraph is initialed by Developer and the County _____ /_____.

(5) Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as (i) the County issues a final certificate of occupancy (or equivalent document, if the County does not issue certificates of occupancy), and (ii) the County issues a Release of Construction Covenants, for the Project, and storage and transportation risks. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. The County shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement. Notwithstanding anything to the contrary in this Section10.6, however, Developer's

requirement to maintain the insurance required by this paragraph shall terminate on the date the County issues a Release of Construction Covenants for the Project.

(6) Insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Santa Cruz County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent required by the Construction Lender or Investor. The County shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement. Notwithstanding anything to the contrary in this Section10.6, however, Developer's requirement to maintain the insurance required by this paragraph shall not commence until the date the County issues a Release of Construction Covenants for the Project.

(7) Business interruption and extra expense insurance to protect Developer and the County covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period. Notwithstanding anything to the contrary in this Section10.6, however, Developer's requirement to maintain the insurance required by this paragraph shall not commence until the date the County issues a Release of Construction Covenants for the Project.

(8) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. Notwithstanding anything to the contrary in this Section10.6, however, Developer's requirement to maintain the insurance required by this paragraph shall not commence until the date the County issues a Release of Construction Covenants for the Project.

(c) Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, Developer agrees that the retroactive date thereof shall be no later than the Effective Date, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post Agreement coverage") and any extensions thereof. Developer may maintain the required post Agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post Agreement coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover Successor Agency and the County of Santa Cruz, and their respective officials, officers, members, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of Developer, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(3) All required policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days' prior written notice (10 days for nonpayment of premium) has been given to:

Santa Cruz County
Planning Department
Attn: Housing Manager
701 Ocean Street, Room 418
Santa Cruz, CA 95060

Should Developer fail to obtain such an endorsement to any policy required hereunder, Developer shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the County as a material term of this Agreement.

(4) Developer agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide Successor Agency on or before the Effective Date of this Agreement with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

Santa Cruz County
Planning Department
Attn: Housing Manager
701 Ocean Street, Room 418
Santa Cruz, CA 95060

(5) Developer hereby grants to the County and Successor Agency a waiver of any right of subrogation which any insurer of said Developer may acquire against the County or Successor Agency by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County or Successor Agency has received a waiver of subrogation endorsement from the insurer.

10.7 Developer's Continuing Indemnification Obligations. Developer agrees that the provisions of this Section shall not be construed as limiting in any way the County's or Successor Agency's right to indemnification or the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

10.8 Remedies for Defaults Re: Insurance. In addition to any other remedies the County or Successor Agency may have, if Developer commits a default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Successor Agency or the County may at its sole option, obtain such insurance and invoice the Developer for the amount of said premium. Exercise of the remedy set forth herein, however, is an alternative to other remedies the County and Successor Agency may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

10.9 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall, subject to the rights of the Construction Lender, promptly proceed to obtain all available insurance proceeds and, to the extent proceeds are available, take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as it existed prior to the casualty, and Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Agreement. The County shall cooperate with Developer, at no expense to the County, in an effort to obtain any governmental permits required for such repair, replacement, or restoration.

10.10 Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the County shall have the right of access to the Property without charges or fees, at normal business hours during the construction of the Project (subject to reasonable job safety rules as may be imposed by Developer or the General Contractor), including, but not limited to, the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules. Such representatives of the County shall be those who are so identified in writing by the Planning Director.

10.11 Compliance with Laws; Compliance with Prevailing Wage Laws.

(a) Compliance with Laws. Developer shall carry out the construction, development and operation of the Project in conformity with all Governmental Requirements, including without limitation, all applicable local and state labor standards, County zoning and development standards, any permit applicable to the Project and/or Property, all requirements of the Water Board and Air District, including, without limitation, the GeoKinetics Designs and Plans, building, plumbing, mechanical and electrical codes, and all other provisions of the County Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

(b) Compliance with Prevailing Wage Laws.

(i) Developer shall carry out the construction through completion of the Project and the overall development of the Property in conformity with all applicable Governmental Requirements relating to the payment of prevailing wages and compliance with prevailing wage rules, including, without limitation, if applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, et seq., and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "**Davis-Bacon**")) and California law (Labor Code Section 1720, et seq.) ("**California Prevailing Wage Law**"). The parties acknowledge that a financing structure utilizing certain federal and/or state funding sources and financing scenarios may trigger compliance with applicable state and federal prevailing wage laws and regulations. Developer shall determine the applicability of federal, state, and local prevailing wage laws based upon the final financing structure and sources of funding of the Project, as approved by the Planning Director.

(ii) Developer shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal, state, and local public works requirements, prevailing wage laws, and labor laws and standards, and neither the County nor Successor Agency makes any representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state, and local laws to the construction of the Project. Developer expressly, knowingly, and voluntarily acknowledges and agrees that neither Successor Agency nor the County have previously represented to Developer or to any representative, agent, or Affiliate of Developer, or any contractor(s) or any subcontractor(s) for the demolition work, construction, or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction of the Project is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis-Bacon. Notwithstanding the foregoing, each of County and Successor Agency hereby advises

Developer that the Santa Cruz Code requires Developer to pay prevailing wages in connection with construction of the Project.

(iii) Developer knowingly and voluntarily agrees that Developer shall have the obligation to provide any and all disclosures or identifications as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. Developer shall indemnify, protect, pay for, defend, and hold harmless the Indemnitees, with legal counsel reasonably acceptable to Successor Agency and the County, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer or its contractor with any applicable local, state, and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the parties that, in connection with the demolition work, development, and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state, and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project by Developer.

(iv) "Increased costs," as used in this Section 10.11, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time.

10.12 Anti-Discrimination. Developer, for itself and its successors and assigns, agrees that in the construction of the Project on the Property or other performance under this Agreement, Developer shall not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1,

subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code.

10.13 Taxes and Assessments. After the Close of Escrow, Developer shall pay prior to delinquency all real estate taxes and assessments on the Property so long as Developer retains any interest therein. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to Developer in respect thereto, or obtain any available exemptions.

10.14 Right of County to Satisfy Other Liens on the Property(s). At any time prior to the completion of construction, and after Developer has had written notice and has failed after a reasonable time, but in any event not less than forty-five (45) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Property which are not otherwise permitted under this Agreement, the County shall have the right but no obligation to satisfy any such liens or encumbrances. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to Developer in respect thereto.

10.15 Non-liability of the County. Developer acknowledges and agrees that:

(a) The County neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the Project, including matters relating to: (i) the Final Construction Documents, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, and/or (iii) the progress of the Project and its conformity with the Final Construction Documents; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to Developer by the County in connection with such matters is solely for the protection of the County and that neither Developer nor any third party is entitled to rely on it;

(b) The County is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and the County does not intend to ever assume any such status; and the County shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

(c) The County shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Developer or any of Developer's agents, employees, contractors, licensees or invitees; or (iii) from and after the Close of Escrow any accident on the Property or any fire or other casualty or hazard thereon not caused by the Indemnitees; and

(d) By accepting or approving anything required to be performed or given to the County under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, the County shall not be deemed to have warranted

or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by the County to anyone.

10.16 Release of Construction Covenants. Promptly after completion of construction of the Project by Developer in conformity with this Agreement, the County shall furnish Developer with a Release of Construction Covenants upon written request therefor by Developer. The County shall not delay and/or unreasonably withhold such Release of Construction Covenants. Such Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction required by this Agreement and the Release of Construction Covenants shall so state. The Release of Construction Covenants shall be in the form attached hereto as Attachment No. 12 or such other similar form as to permit it to be recorded in the Official Records. If the County refuses or fails to furnish a Release of Construction Covenants for the Project after written request from Developer, the County shall, within fifteen (15) days of written request therefor, provide Developer with a written statement of the reasons the County refused or failed to furnish the requested Release of Construction Covenants. The statement shall also contain the County's opinion of the actions Developer must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate unavailability of specific items of materials for landscaping or other minor "punch list" items, the County shall issue its Release of Construction Covenants upon the posting of cash, a bond, or other security acceptable to the County in the County's sole discretion by Developer with the County in an amount representing the fair value of the work not yet completed, and Developer shall thereafter complete the "punch list" work with reasonable diligence and in no event later than sixty (60) days after the County's issuance of the Release of Construction Covenants. A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage or any insurer of a mortgage securing money loaned to finance the improvements, or any part of this Agreement, or a release of any obligations under this Agreement which survives issuance of the Release of Construction Covenants. A Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code Section 3093.

11. AFFORDABILITY COVENANTS

As more particularly provided in County Regulatory Agreement, (i) ten (10) of the dwelling units in the Project shall be rented, in perpetuity, to households whose incomes do not exceed thirty percent (30%) of the Santa Cruz County area median income, adjusted for household size; (ii) twelve (12) of the dwelling units in the Project shall be rented, in perpetuity, to households whose incomes do not exceed forty percent (40%) of the Santa Cruz County area median income, adjusted for household size; (iii) sixteen (16) of the dwelling units in the Project shall be rented, in perpetuity, to households whose incomes do not exceed fifty percent (50%) of the Santa Cruz County area median income, adjusted for household size; (iv) thirteen (13) of the dwelling units in the Project shall be rented, in perpetuity, to households whose incomes do not exceed sixty percent (60%) of the Santa Cruz County area median income, adjusted for household size; and (v) five (5) of the dwelling units in the Project shall be rented, in perpetuity, to households whose incomes do not exceed eighty percent (80%) of the Santa Cruz County area median

income, adjusted for household size, with all of such dwelling units rented at an affordable rent, pursuant to Health and Safety Code Section 50053(b). The Project shall also include one (1) unrestricted manager's unit. Notwithstanding the foregoing, however, if the Investor reasonably determines prior to the Close of Escrow that based on the Project's residual analysis test, maximum rent levels would need to be increased after the fifty-fifth (55^{th}) year of operation, then the Planning Director shall have the right, in his or her sole and absolute discretion, to revise the form of the County Regulatory Agreement to permit such increases after the fifty-fifth (55^{th}) year of operation, but only to the extent necessary to satisfy the Investor's residual analysis test.

12. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Developer's Formation, Qualification and Compliance. Developer represents and warrants that (a) it is validly existing and in good standing under the laws of the State of California, (b) it has all requisite authority to conduct its business and own and lease its properties, (c) it has all requisite authority to execute and perform its obligations under this Agreement, (d) this Agreement is binding upon Developer in accordance with its terms, and (e) the individuals executing this Agreement on behalf of Developer are duly authorized to execute and deliver this Agreement on behalf of Developer.

12.2 Litigation. Developer represents and warrants that there are no actions, lawsuits or proceedings pending or, to the best of Developer's knowledge, threatened against or affecting Developer, the adverse outcome of which could have a material adverse effect on Developer's ability to perform its obligations under this Agreement.

12.3 Successor Agency. Successor Agency represents and warrants that (a) it is validly existing and in good standing under the laws of the State of California, (b) subject to the terms of Section 16 below, which provide that at the Close of Escrow Successor Agency will assign and transfer all of its obligations hereunder to the County, it has all requisite authority to execute and perform its obligations under this Agreement, including the disposition of the Capitola Property pursuant to the terms of this Agreement, (c) this Agreement is binding upon Successor Agency in accordance with its terms, and (d) the individuals executing this Agreement on behalf of Successor Agency are duly authorized to execute and deliver this Agreement on behalf of Successor Agency. Successor Agency further represents and warrants that there are no actions, lawsuits, or legal proceedings pending or, to the knowledge of Successor Agency, threatened, against or affecting Successor Agency, the adverse outcome of which could have a material adverse effect on Successor Agency's ability to perform its obligations under this Agreement. As used in this Section 12.3, the phrase "knowledge of Successor Agency" shall mean and refer to the actual knowledge of the County Administrative Officer, without duty of inquiry or investigation.

13. DEFAULTS AND REMEDIES

13.1 Event of Default. Any of the following events or occurrences with respect to either Party shall constitute a material breach of this Agreement and, after the

expiration of any applicable cure period, shall constitute an "**Event of Default**" by such party:

(a) The failure by either Party to pay any amount in full when it is due under this Agreement, if the failure has continued for a period of ten (10) days after the Party entitled to payment demands in writing that the other Party cure that failure.

(b) The failure by either Party to perform any other obligation under this Agreement, if the failure has continued for a period of thirty (30) days after demand in writing that such Party cure the failure, or such shorter time period as may be provided for in one of the other Project Documents. If, however, by its nature the failure cannot reasonably be cured within said time period, such Party may have such longer period of time as is reasonably necessary to cure the failure, provided that such Party commences said cure within said thirty (30)-day period, and thereafter diligently prosecutes said cure to completion.

13.2 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.3 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

13.4 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend litigation in any way connected with this Agreement, the prevailing Party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. If either Party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other Party, then the Party so litigating shall be entitled to reasonable attorneys' fees from the other Party to this Agreement. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

13.5 Reimbursement of Successor Agency. Within thirty (30) days after its receipt of written demand from Successor Agency, Developer shall reimburse Successor Agency for all costs reasonably incurred by Successor Agency (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants) in connection with Successor Agency enforcement of the Project Documents and all related

matters, including, without limitation, the following: (a) Successor Agency's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the Parties to any Project Document; and (b) all claims, demands, causes of action, liabilities, losses, and other costs against which any of the Indemnitees is indemnified under the Project Documents. Such reimbursement obligations shall bear interest from the date occurring fifteen (15) days after Successor Agency makes written demand to Developer at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less. Such reimbursement obligations shall survive termination of this Agreement.

14. NOTICES

Any notices, demands or other communications required or permitted to be given by any provision of this Agreement or which any party may desire to give the other shall be given in writing to the appropriate party, and shall be (a) delivered personally, (b) sent as a PDF or similar attachment to an e-mail, provided that such e-mail shall be followed with a hard copy sent by first-class mail, postage prepaid, within one (1) business day, (c) sent by certified mail, postage prepaid, or (d) sent by a reputable delivery service which provides a receipt with the time and date of delivery, addressed to a party, at the addresses set forth below, or to such other address as said party may hereafter or from time to time designate by written notice to the other party. All Notices shall be addressed as follows:

If to Developer:	MP Live Oak Associates, L.P. c/o MidPen Housing Corporation 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Attn: Jan Lindenthal Telephone No.: 650-356-2919 E-mail: jlindenthal@midpen-housing.org
If to Successor Agency:	Santa Cruz County Redevelopment Successor Agency 701 Ocean Street, Room 520 Santa Cruz, CA 95060 Attn: Assistant County Administrative Officer Telephone No.: 831-454-2100 E-mail: elissa.benson@santacruzcounty.us

with a copy to

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attn: Planning Director
Telephone No.: 831-454-2332
E-mail: HousingProgramsInfo@santacruzcounty.us

and to:

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: Allison LeMoine-Bui, Esq.
Telephone No.: 714-641-5100
E-Mail: alemoine-bui@rutan.com

Notice given by United States Postal Service or delivery service as provided herein shall be considered given on the earlier of the date on which said notice is actually received by the party to whom such notice is addressed, or as of the date of delivery, whether accepted or refused, established by the United States Postal Service return receipt or such overnight carrier's receipt of delivery, as the case may be. Notice given by e-mail attachment as provided above shall be deemed given on the date on which the e-mail was sent, provided the recipient has confirmed receipt as evidenced by sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement, provided that, if recipient has not confirmed receipt of any notice or other communication to be delivered by e-mail attachment as provided above, notice shall be deemed given on the next business day, provided the such e-mail was followed up with a hard copy as required above). Any such notice not so given shall be deemed given upon receipt of the same by the party to which it is addressed

Addresses for notice may be changed from time to time by notice to the other Party. Notwithstanding that Notices shall be deemed given when delivered, the non-receipt of any Notice as the result of a change of address of which the sending Party was not notified shall be deemed receipt of such Notice.

15. ASSIGNMENT

15.1 Generally Prohibited. Except as otherwise expressly provided to the contrary in this Agreement, Developer shall not assign any of its rights or delegate any of its duties under this Agreement, nor shall any changes occur with respect to the ownership and/or control of Developer, including, without limitation, stock transfers, or transfers, sales or issuances of membership or ownership interests, or statutory conversions, without the prior written consent of the County Administrative Officer, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at Successor Agency's option, be void. Notwithstanding the foregoing, however, (i) the Investor may be admitted to the Partnership as a 99.99% Tax Credit limited partner without obtaining any consent, and

such Investor may assign its interests as a 99.99% Tax Credit limited partner to a subsequent reputable institutional investor without any consent; (ii) the Investor may remove the general partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably acceptable to Successor Agency; and (iii) the Partnership may transfer and assign its rights and duties hereunder to MidPen or an Affiliate of MidPen pursuant to the purchase option and/or right of first refusal entered into between MidPen and the Partnership. For purposes of this Section 15.1, if the Investor transfers to an entity in which the Investor or an Affiliate of the Investor is the administrative general partner or managing member such transferee entity shall be deemed to be a "reputable institutional investor." This Section 15.1 shall not be applicable to the leasing of individual dwelling units to income eligible households in accordance with the County Regulatory Agreement.

15.2 Release of Developer. Upon any such assignment made in compliance with Section 15.1 above which is evidenced by a written assignment and assumption agreement in a form approved by Successor Agency's counsel, the transferor shall be released from any liability under this Agreement arising from and after the effective date of such assignment.

15.3 Assignment of Agreement by Successor Agency to County. The Parties acknowledge and agree that at the Close of Escrow Successor Agency will assign all of its rights and obligations under this Agreement to the County of Santa Cruz pursuant to an assignment and assumption agreement in a form approved by special legal counsel to the County (the "**Successor Agency/County Assignment**").

16. ADMINISTRATION

Following approval of this Agreement by Successor Agency, and prior to the Close of Escrow this Agreement shall be administered and executed on behalf of Successor Agency by the County Administrative Officer. The County Administrative Officer shall have the authority to issue interpretations, waive terms and conditions, and enter into implementing agreements and amendments of this Agreement (including, without limitation, to the Schedule of Performance) on behalf of Successor Agency provided that such actions do not substantially change the uses or development permitted on the Property, materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of Successor Agency provided herein, or materially decrease the revenues or other compensation to be received by Successor Agency hereby. All other waivers or amendments shall require the formal consent of the Board of Directors of Successor Agency and, if required by applicable law, of the Santa Cruz County Consolidated Redevelopment Successor Agency Oversight Board.

Following the Close of Escrow, and assignment of this Agreement to the County, this Agreement shall be administered and executed on behalf of the County by the Planning Director. The Planning Director shall have the authority to issue interpretations, waive terms and conditions, enter into subordination agreements with public funding sources where the public funding source's regulations require such subordination, and enter into implementing agreements and amendments of this Agreement (including,

without limitation, to the Schedule of Performance) on behalf of the County provided that such actions do not substantially change the uses or development permitted on the Property, materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of the County provided herein, or materially decrease the revenues or other compensation to be received by the County hereby. All other waivers or amendments shall require the formal consent of the Board of Supervisors of the County.

17. MISCELLANEOUS

17.1 Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

17.2 Prior Agreements; Amendments. This Agreement, along with the ENA, contains the entire agreement between Successor Agency and Developer with respect to the Property, and with the exception of the ENA, all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the Party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

This Agreement (at such time as this Agreement has been transferred and assigned to the County), along with the Predevelopment Agreement, contains the entire agreement between the County and Developer with respect to the Property and Project, and with the exception of the Predevelopment Agreement, all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the Party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. Following the Close of Escrow, the County agrees to consider in good faith making reasonable modifications to this Agreement that are necessary to finance the development of the Project.

17.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, without regard to conflict of law principles.

17.4 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Successor Agency, service of process on Successor Agency shall be made by personal service upon the County Administrative Officer or in such other manner as may be provided by law. In the event that any legal action is commenced by Successor Agency against Developer, service of process on Developer shall be made in such manner as may be provided by law.

17.5 Severability of Provisions. No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions if and to the extent that the primary purposes of this Agreement can still be accomplished without materially impairing the rights or increasing the obligations or risks of each Party, as reasonably determined

by that Party, and to that extent all provisions of this Agreement are hereby declared to be severable.

17.6 Interpretation. Both Parties have participated in the drafting of this Agreement and any ambiguities in this Agreement shall not be construed for or against either Party on account of the authorship or presumed authorship hereof. Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement. Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any of the members of the relevant class. References herein to Articles, Sections, and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The terms "including" and "include" mean "including (include) without limitation."

17.7 Accounting Principles. Any accounting term used and not specifically defined in this Agreement shall be construed, and all financial data required to be submitted under this Agreement shall be prepared, in conformity with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Successor Agency.

17.8 Attachments Incorporated. All attachments to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

17.9 Time of the Essence. Time is of the essence of this Agreement.

17.10 Warranty Against Payment of Consideration. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

17.11 Non-liability of Successor Agency or County Officials and Employees. No member, director, officer, employee, or volunteer of Successor Agency or the County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Successor Agency or for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement.

17.12 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; pandemics, quarantine restrictions; freight embargoes; litigation beyond the reasonable control of a Party; unusually severe weather; inability, despite commercially reasonable efforts, to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier beyond the reasonable control of a Party; acts of the other Party; acts or the failure to act of any public or governmental entity (except that acts or the failure to act of the County or Successor Agency shall not excuse performance by Successor Agency);

or any other acts or causes beyond the reasonable control of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Force Majeure shall serve also to extend the time by which any condition, for the benefit of either Party, shall be satisfied under this Agreement. Notwithstanding any provision of this Agreement to the contrary, in no event shall adverse market conditions, interest rates, the lack of funding or difficulty obtaining the financing necessary to complete the Project constitute grounds of enforced delay pursuant to this Section.

17.13 Developer Covenant to Defend this Agreement. Developer acknowledges that each of Successor Agency and the County is a "public entity" and/or a "public agency" as defined under applicable California law. Therefore, Successor Agency and the County must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a California public body, Successor Agency's action in approving this Agreement, and the County's action in approving an assumption of this Agreement, may be subject to proceedings to invalidate this Agreement or mandamus. Developer assumes the risk of delays and damages that may result to Developer from any third-party legal actions related to Successor Agency's and/or the County's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, including, without limitation, the County's approval of any Project approvals and issuance of any permits required for development of the Project, even in the event that an error, omission or abuse of discretion by Successor Agency and/or the County is determined to have occurred. If a third-party files a legal action regarding Successor Agency's and/or the County's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, including, without limitation, the County's approval of any Project approvals and issuance of any permits required for development of the Project, Successor Agency may terminate this Agreement on thirty (30) days written notice to Developer of Successor Agency's intent to terminate this Agreement, referencing this Section 17.13, without any further obligation to perform the terms of this Agreement and without any liability to Developer resulting from such termination, unless Developer unconditionally agrees to indemnify and defend the Indemnitees, with legal counsel reasonably acceptable to Successor Agency and the County, against such third-party legal action, as provided hereinafter in this Section 17.13; provided, however, that Successor Agency's right to terminate under this Section 17.13 shall terminate upon conveyance of the Property to Developer. Within thirty (30) days after receipt of Successor Agency's notice of intent to terminate this Agreement, as provided in the preceding sentence, Developer may in Developer's sole and absolute discretion offer to defend Successor Agency and the County, with legal counsel reasonably acceptable to Successor Agency, in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. At the request of Developer, Successor Agency shall cooperate with and assist Developer in its defense of any such third-party legal action, provided that Successor Agency shall not be obligated to incur any expense in connection with such cooperation or assistance.

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

Developer shall refrain from restricting the rental, sale or lease of the Property on any of the bases listed above in this Section 17.14. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or

occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Section 17.14 shall, without regard to technical classification and designation, be binding for the benefit and in favor of Successor Agency and its successors and assigns, and shall remain in effect in perpetuity.

17.15 Consents and Approvals. Unless otherwise expressly set forth in this Agreement, any consents or approvals to be given by a Party under this Agreement shall not be unreasonably withheld, conditioned or delayed.

17.16 Third Party Beneficiary. The County is an intended third party beneficiary of this Agreement and shall have the right, but not the obligation, to enforce its terms including the rights and benefits that Successor Agency has under this Agreement. Except as provided in this Section 17.16, no person or entity other than Successor Agency, Developer, and the County, and the permitted successors and assigns of each of them, shall be authorized to enforce the provisions of this Agreement.

17.17 Termination. This Agreement shall automatically terminate upon the County's issuance of a Release of Construction Covenants for the Project. Such termination shall not terminate any indemnification obligations set forth in this Agreement, or any other provisions in this Agreement which are expressly stated either in this Agreement or in the County Note, County Deed of Trust, or County Regulatory Agreement to survive termination of this Agreement.

[End of Agreement – Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed.

"Successor Agency"

SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic

Date:_____

By: _____
Carlos J. Palacios, County Administrative Officer

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Allison LeMoine-Bui
Special Counsel to Successor Agency

"Developer"

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

Date: 10/26/2020

By: _____
Jan Lindenthal
~~Assistant Secretary~~

ATTACHMENTS

1	-	Legal Description of Capitola Property
2	-	Proposed Subdivisions
3	-	Schedule of Performance
4	-	Scope of Development
5	-	Form of Grant Deed
6	-	Form of Assignment of Contract
7	-	Form of County Note
8	-	Form of County Deed of Trust
9	-	Project Budget
10	-	Form of County Regulatory Agreement
11	-	Form of Notice of Affordability
12	-	Form of Release of Construction Covenants
13	-	Chronology of Environmental Conditions Resulting in Required Environmental Mitigation that Decreases Property Value
14	-	Environmental Mitigation Costs

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF CAPITOLA PROPERTY

The land referred to herein is described as follows:

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEING A PART OF LOT 3, AS THE SAME IS SHOWN UPON THAT CERTAIN MAP ENTITLED "WILSON BROTHERS SUBDIVISION NO. 1", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY ON JUNE 6, 1916 IN MAP BOOK 18 AT PAGE 22, SANTA CRUZ COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY SIDE OF LOWER SOQUEL ROAD AS THE SAME IS SHOWN UPON THE ABOVE MENTIONED MAP, FROM WHICH THE NORTHWESTERLY CORNER OF LOT 1 AS SHOWN ON THE ABOVE MENTIONED MAP, BEARS SOUTH 69° 43' EAST 247.80 FEET DISTANT; THENCE LEAVING THE SOUTHERLY SIDE OF SAID COUNTY ROAD SOUTH 13° 50' WEST 406.79 FEET TO A STATION ON THE NORTHERLY BOUNDARY OF LOT 11 IN SAID TRACT; THENCE ALONG THE LAST MENTIONED BOUNDARY NORTH 75° 43' WEST 113.28 FEET TO A STATION; THENCE NORTH 13° 50' EAST 418.71 FEET TO THE SOUTHERLY SIDE OF SAID FIRST MENTIONED COUNTY ROAD; THENCE ALONG THE SOUTHERLY SIDE OF SAID ROAD SOUTH 69° 43' EAST 114.00 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF AS WAS CONVEYED IN THE DEED FROM FRANK DUARTE, ET UX., TO THE COUNTY OF SANTA CRUZ, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, RECORDED NOVEMBER 10, 1960 IN VOLUME 1354, PAGE 213, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 026-193-42

PARCEL TWO:

BEING A PART OF LOTS 2 AND 3 AS THE SAME ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "WILSON BROTHERS SUBDIVISION NO. 1" FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY ON JUNE 6, 1916 IN MAP BOOK 18 AT PAGE 22, SANTA CRUZ COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY SIDE OF THE LOWER SOQUEL ROAD, AS THE SAME IS SHOWN UPON THE ABOVE MENTIONED MAP, FROM WHICH THE NORTHWESTERLY CORNER OF LOT 1 AS SHOWN UPON THE ABOVE

MENTIONED MAP BEARS SOUTH 69° 43' EAST 172.80 FEET DISTANT; THENCE LEAVING THE SOUTHERLY SIDE OF SAID COUNTY ROAD SOUTH 13° 50' EAST 398.33 FEET TO A STATION ON THE NORTHERLY BOUNDARY OF LOT 12 IN SAID TRACT; THENCE ALONG SAID LAST MENTIONED BOUNDARY AND THE NORTHERLY BOUNDARY OF LOT 11 IN SAID TRACT NORTH 75° 43' WEST 74.255 FEET TO A STATION; THENCE NORTH 13° 50' EAST 406.79 FEET TO THE SOUTHERLY SIDE OF SAID FIRST MENTIONED COUNTY ROAD; THENCE SOUTH 69° 43' WEST 75 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO COUNTY OF SANTA CRUZ FOR THE WIDENING OF CAPITOLA ROAD BY DEED FROM CABRILLO DEVELOPMENT COMPANY, DATED AUGUST 30, 1960, RECORDED NOVEMBER 2, 1960 IN VOLUME 1352, PAGE 535, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 026-193-43

PARCEL THREE:

BEING a part of Lots 3 and 4, as the same are shown upon that certain map entitled "Wilson Brothers Subdivision No. 1", filed for record in the Office of the County Recorder of Santa Cruz County on June 6, 1916 in Map Book 18 at Page 22, Santa Cruz County Records and being more particularly bounded and described as follows:

BEGINNING at a station on the Southerly side of Lower Soquel or Capitola Road, from which the Southwest corner of said Lower Soquel or Capitola Road and Seventeenth Avenue, as the same are shown on the above mentioned Map bears South 69° 43' East 563.06 feet distant; said point of beginning being also the most Northerly corner of that certain parcel of land conveyed by J. S. Harwood, et al, to F. G. Wilson, et al, by Deed of Trust recorded in Volume 9 of Trust Deeds, Page 229, Santa Cruz County Recors; thence along the Westerly boundary of said last mentioned tract of land South 18° 50' West 418.87 feet to the Northerly boundary of Lot 11 as shown on said Map; thence along the Northerly boundary of said Lot 11 and Lot 10 North 75° 43' West 103.90 feet; thence in a straight line 429.49 feet to a point on the said Lower Soquel Road, distant 102.09 feet Westerly from the said point of beginning; South 69° 43' East and along said line of the said Lower Soquel Road 102.09 feet to the point of beginning.

EXCEPTING THEREFROM so much of the above described land as was conveyed by Walter Goulard, to County of Santa Cruz, a political subdivision of the State of California, recorded July 13, 1960 in Volume 1330, Page 162, Official Records of Santa Cruz County.

APN: 026-193-41

ATTACHMENT NO. 2

PROPOSED SUBDIVISIONS

[See following document]

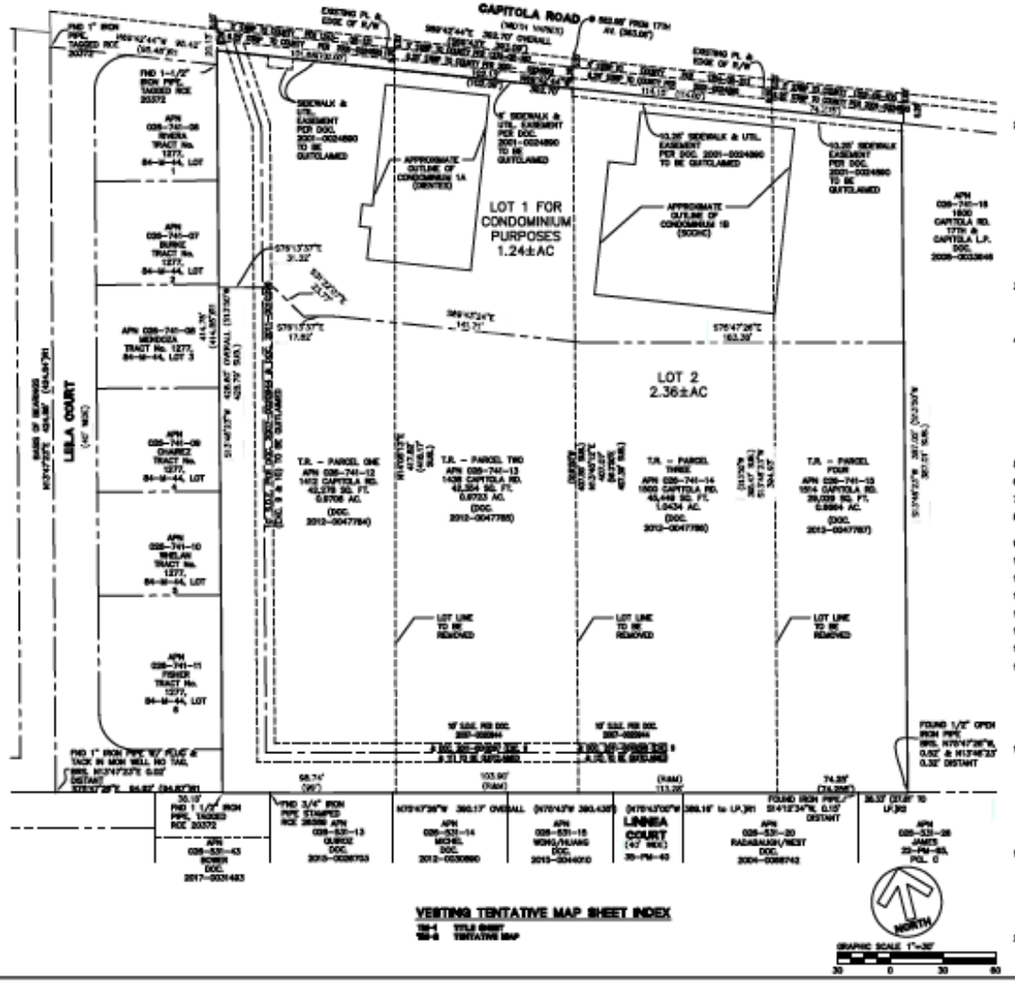
VESTING TENTATIVE MAP

2 LOT SUBDIVISION

LOT 1 IS FOR CONDOMINIUM PURPOSES

1500 CAPITOLA ROAD

SANTA CRUZ COUNTY, CALIFORNIA



LEGEND

- PROJECT BOUNDARY
- (N) PROPERTY LINE
- ADJACENT LOT LINE
- REMOVE LOT LINE
- EASEMENT LINE TO BE QUITCLAIMED
- CENTERLINE

GENERAL NOTES (CONTINUED)

21. VESTING TENTATIVE MAP: THIS VESTING TENTATIVE PARCEL MAP IS BEING FILED IN ACCORDANCE WITH ARTICLE 2, SECTION 66452 AND CHAPTER 4.5 OF THE SUBDIVISION ACT MAP.
22. AREA: THE BOUNDARIES OF THIS SUBDIVISION CONTAIN 3.66± ACRES CONSISTING OF TWO DEVELOPABLE PARCELS.
23. BUILDING TYPES: THE BUILDING FOOTPRINTS SHOWN ARE FOR CONCEPTUAL PURPOSES ONLY. THE BUILDING TYPE, LOCATION AND STYLES WILL BE PERMITTED AS CONSTRUCTED IN CONFORMANCE WITH PROJECT PD REQUIREMENTS PRIOR TO THE APPLICATION FOR BUILDING PERMITS.
24. UTILITIES: A PUBLIC STORM DRAIN EASEMENT IN FAVOR OF THE COUNTY OF SANTA CRUZ WILL BE CREATED TO FACILITATE THE MAINTENANCE OF THE STORM DRAIN LINE.
25. MULTIPLE FINAL MAPS: PURSUANT TO SECTION 66456.1 OF THE SUBDIVISION MAP ACT, THE DEVELOPER RESERVES THE RIGHT TO FILE MULTIPLE FINAL MAPS. ONLY THE IMPROVEMENTS REQUIRED TO SUPPORT THE LEVEL OF DEVELOPMENT, AS DETERMINED BY THE COUNTY, OF EACH PARTICULAR FINAL MAP NEED TO BE COMPLETED OR BONDED.
26. CONDOMINIUM UNITS 1A AND 1B SHOWN CONCEPTUALLY ONLY. CONDOMINIUM MAPPING WILL BE BASED ON FINAL DESIGN PLANS, BUILDING PERMIT 191579.

ENGINEER'S STATEMENT

THIS VESTING TENTATIVE PARCEL MAP HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH STANDARD ENGINEERING PRACTICE.

07/09/2019
FRITZ COLE GAUMNITZ, P.E. DATE
BKF ENGINEERS
R.C.E. NO. 75787

GENERAL NOTES

1. DUAL OWNERSHIP OF LOT 1:
   DENTEX COMMUNITY DENTAL CARE
   1830 COMMERCIAL WAY
   SANTA CRUZ, CA 95065
   CONTACT: LAURA MARCUS
   (831) 464-9408

   SANTA CRUZ COMMUNITY HEALTH CENTERS (SCCHC)
   220 LOCUST STREET
   SANTA CRUZ, CA 95060
   CONTACT: LESLIE CONNER
   (831) 427-3500

   OWNER OF LOT 2:
   MIDPEN HOUSING CORPORATION
   275 MAIN STREET, SUITE 304
   WATSONVILLE, CA 95076
   CONTACT: ASHLEY SCHMIDEKART
   (831) 707-2133
2. DEVELOPER OF LOT 1:
   DENTEX COMMUNITY DENTAL CARE
   1830 COMMERCIAL WAY
   SANTA CRUZ, CA 95065
   CONTACT: LAURA MARCUS
   (831) 464-9408

   SANTA CRUZ COMMUNITY HEALTH CENTERS (SCCHC)
   220 LOCUST STREET
   SANTA CRUZ, CA 95060
   CONTACT: LESLIE CONNER
   (831) 427-3500

   DEVELOPER OF LOT 2:
   MIDPEN HOUSING CORPORATION
   275 MAIN STREET, SUITE 304
   WATSONVILLE, CA 95076
   CONTACT: ASHLEY SCHMIDEKART
   (831) 707-2133
3. CIVIL ENGINEER: BKF ENGINEERS, 307 MAIN STREET, SUITE 120, SALINAS, CA 93912, CONTACT: COLE GAUMNITZ, (408) 467-9100
4. PROPERTY: BEING A PART OF THAT CERTAIN LAND CONVEYED TO HENRY H. MERRIMAN AND FAYE R. MERRIMAN, HIS WIFE, BY DEED RECORDED IN VOLUME 7 OF OFFICIAL RECORDS, PAGE 142, SANTA CRUZ COUNTY RECORDS.

   BEING A PART OF LOTS 2, 3 AND 4 AS THE SAME ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "MICHELE PARK SUBDIVISION NO. 1" FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY ON JUNE 6, 1956 IN MAP BOOK 18 AT PAGE 22, SANTA CRUZ COUNTY RECORDS.
5. APN: 028-741-12, -13, -14, AND -15
6. GENERAL PLAN: C-N NEIGHBORHOOD COMMERCIAL
7. EXISTING ZONING: C-1 NEIGHBORHOOD COMMERCIAL
8. PROPOSED ZONING: C-N NEIGHBORHOOD COMMERCIAL WITH R COMBINING DISTRICT DESIGNATION
9. EXISTING USE: RESIDENTIAL
10. PROPOSED USE: MIXED USE–COMMERCIAL AND RESIDENTIAL
11. GROSS AREA: 3.66± ACRES
12. NUMBER OF LOTS: 2
13. PUBLIC SEWER: SANTA CRUZ COUNTY SANITATION DISTRICT
14. PUBLIC WATER: SANTA CRUZ WATER DISTRICT
15. PUBLIC STORM: SANTA CRUZ COUNTY
16. BASIS OF BEARING: THE BEARING N13°47'23"E, BETWEEN MONUMENTS FOUND ALONG THE CENTERLINE OF LILLA COURT AS SAID BEARING IS SHOWN ON THAT CERTAIN SUBDIVISION MAP OF TRACT 1277, ENTITLED MICHELE PARK SUBDIVISION FILED FOR RECORD ON JUNE 27, 1991, IN BOOK 84 OF MAPS AT PAGE 44, RECORDS OF SANTA CRUZ COUNTY, AND AS SHOWN HEREON.
17. TOPOGRAPHY:
    1. THIS SURVEY WAS MADE IN ACCORDANCE WITH LAWS AND/OR MINIMUM STANDARDS OF THE STATE OF CALIFORNIA.
    2. ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
    3. TOPOGRAPHIC AND PLANIMETRIC FEATURES SHOWN ON THIS MAP WERE COMPILED BY PHOTOGRAMMETRIC PROCESS BASED ON AERIAL PHOTOGRAPHY DATED 3/15/90 AND SUPPLEMENTED WITH GROUND SURVEY DATA.
18. FLOOD ZONE: ZONE X
    AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. PER FLOOD INSURANCE RATE MAP (FIRM), NO. 06087C0501E, COMMUNITY NO. 060293 (COUNTY OF SANTA CRUZ), PANEL 0501, SUFFIX E, EFFECTIVE DATE MAY 18, 2012 FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).
19. EASEMENTS: EXISTING EASEMENT DESCRIPTIONS ARE SHOWN ON THIS SHEET. PROPOSED EASEMENTS AND EXISTING TO REMAIN ARE SHOWN ON SHEET TM-2.

VESTING TENTATIVE MAP SHEET INDEX

BKF 100+ YEARS — 1730 N. FIRST STREET, SUITE 600, SAN JOSE, CA 95112, (408) 467-9100, www.bkf.com — ENGINEERS · SURVEYORS · PLANNERS

VESTING TENTATIVE MAP
1500 CAPITOLA ROAD
TITLE SHEET

CA
COUNTY OF SANTA CRUZ

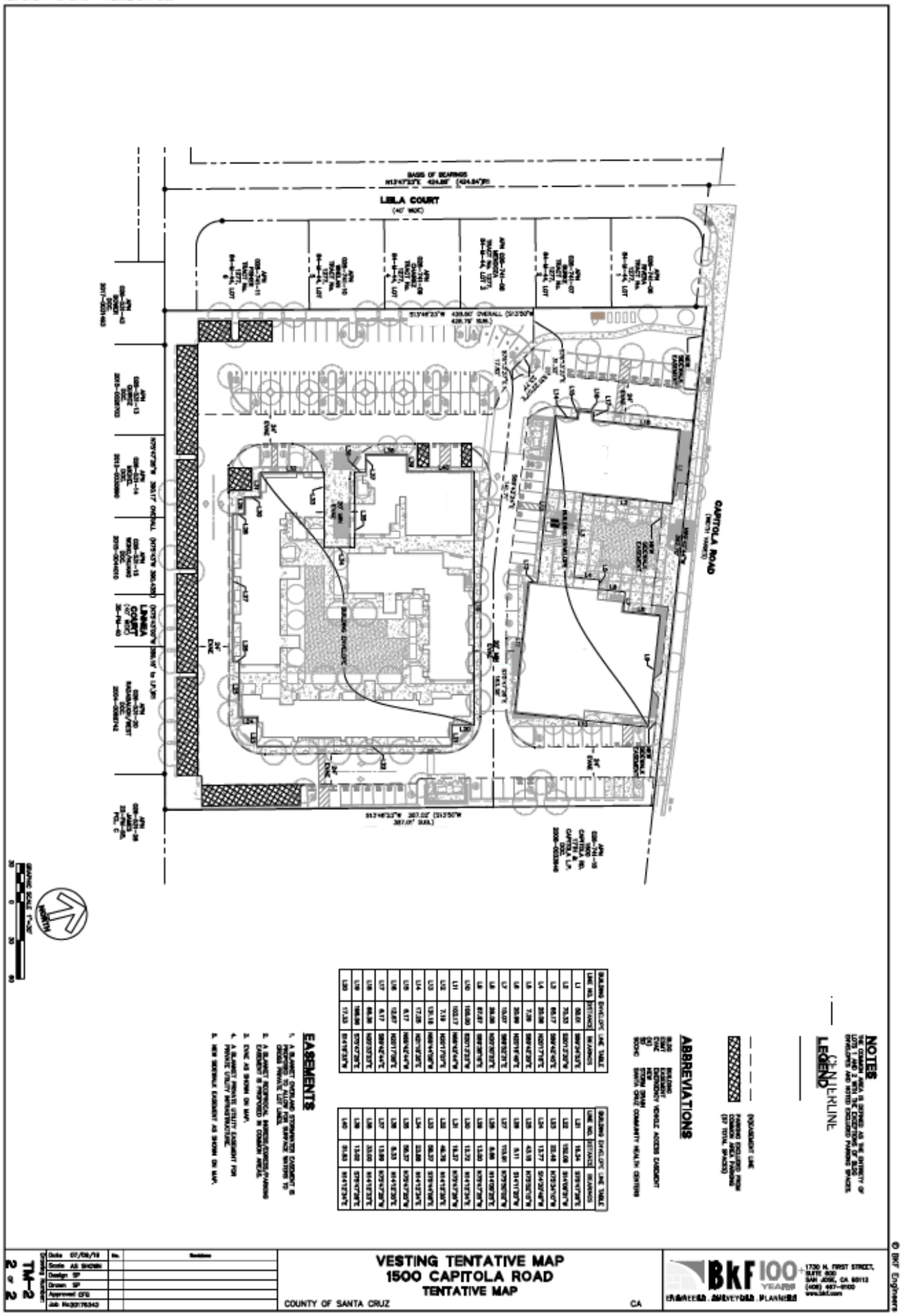
No.	Revisions	Date

Date: 07/09/19
Scale: AS SHOWN
Design: SP
Drawn: SP
Approved: GFG
Job Number: 13666278

Drawing Number: TM-1
1 OF 2

ATTACHMENT NO. 2
Page 1 of 2

882/011706-0079
13666278.12 a10/23/20



Date	07/09/19	No.	Revisions
Scale	AS SHOWN		
Design	SP		
Drawn	SP		
Approved	DTG		
Job No.	20176343		

Drawing Number: TM-2 2 of 2

VESTING TENTATIVE MAP
1500 CAPITOLA ROAD
TENTATIVE MAP

COUNTY OF SANTA CRUZ CA

BKF 100 YEARS
1730 N. FIRST STREET, SUITE 600
SAN JOSE, CA 95112
(408) 467-9100
www.bkf.com
ENGINEERS · SURVEYORS · PLANNERS

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

[See following document]

	Task/Event	Time for Performance
1.	Developer submits copies of Developer's most recent audited Financial Statement and most recent internally prepared, unaudited financial statement (Section 6.5)	Within five (5) days after the Effective Date
2.	Successor Agency provides Preliminary Title Report for the Capitola Property (Section 5.8)	Within thirty (30) days after the Effective Date
3.	Developer provides written notice of approval or disapproval of Title Exceptions (Section 5.8)	Within fifteen (15) days of the later of the receipt of the Preliminary Title Report or the date Developer receives the documents underlying Title Exceptions
4.	Developer to submit application for all discretionary permits (Section 4)	**Complete**
5.	Developer provides to Successor Agency a copy of all reports, studies and test results prepared by Developer's consultants, without representation or warranty (Section 5.1)	Within five (5) days after Developer's receipt
6.	Developer submits evidence of preliminary commitments for Project financing to County Administrative Officer (Section 6.6)	Within five (5) days of Developer's receipt of formal written notification of preliminary award by financing entity
7.	Developer submits Project design plans (construction plans for building permit) to Successor Agency (Section 10.3)	Within ninety (90) days of obtaining all preliminary commitments for Project Financing
8.	Successor Agency approval of Project design plans (construction plans for building permit) (Section 10.3)	Within thirty (30) days after Developer's submission to Successor Agency
9.	Developer provides evidence of insurance to Successor Agency (Sections 7.2(b), 10.6)	Prior to, and as a condition of, the Close of Escrow
10.	Successor Agency approves or disapproves Developer's evidence of insurance (Sections 7.2(b),10.6)	Within fifteen (15) days after submittal by Developer

11.	Developer executes and delivers to Successor Agency or Escrow Holder Grant Deed, County Regulatory Agreement, County Deed of Trust, and Notice of Affordability Restrictions (Section 7.2(r))	Prior to, and as a condition of, the Close of Escrow
12.	Successor Agency executes and delivers to Escrow Holder Grant Deed, County Regulatory Agreement, and Notice of Affordability Restrictions (Section 8.1)	Prior to, and as a condition of, the Close of Escrow
13.	Developer executes and delivers to Successor Agency the County Note (Section 7.2(r)	Prior to, and as a condition of, the Close of Escrow
14.	All of Developer's and County's conditions precedent to the Close of Escrow have been satisfied, or waived by the appropriate Party, and the Close of Escrow occurs (Section 8.1)	No later than the Outside Closing Date
15.	Developer submits an application to TCAC for Tax Credits (Section 6.3)	In the first round of applications for Tax Credits following the Effective Date; and if despite Developer's good faith efforts to obtain an allocation in such round, and due to no fault of Developer, Developer does not receive such an allocation, then in the second round of applications for Tax Credits following the Effective Date
16.	Developer submits to the County Administrative Officer for review and approval all preliminary commitments for the Project Financing (Section 6.6)	Promptly upon receipt of an allocation of Tax Credits from TCAC
17.	Close of Developer's Project Financing (if early closing occurs pursuant to Section 2.2(a)	Not later than the Outside Closing Date
18.	Escrow Holder disburses portions of County Development Loan (Section 9.1)	Within fifteen (15) days after Escrow Holder's receipt of a satisfactory disbursement request, approved by County

19.	Developer submits to Planning Director person or entity proposed as the Property Manager (County Regulatory Agreement, Section 7.01)	Within ninety (90) days prior to Developer's completion of Project.
20.	Developer submits for Planning Director's review and approval, Management Plan for the Project (County Regulatory Agreement, Section 7.02)	Within ninety (90) days prior to Developer's completion of Project
21.	Developer completes construction of the Project, obtains a certificate of occupancy from the County (or equivalent document if County does not issue certificate of occupancy), and requests County issue of Release of Construction Covenants (Sections 10.1 and 10.5)	Within twenty (20) months after Developer commences construction
22.	County issues a Release of Construction Covenants or provides Developer with a written explanation why a Release of Construction Covenants shall not be issued (Section 10.16)	Within ten (10) business days after County receipt of written request from Developer for Release of Construction Covenants pursuant to Section 10.16 of the Agreement
23.	Developer set aside Operating Reserve and Capital Replacement Reserve and provides evidence thereof to Planning Director (County Regulatory Agreement, Sections 10 & 11)	At close of Take-Out Loan
24.	Developer performs final audit to determine Cost Savings for the Project (Section 6.8a)	Prior to the Conversion Date
25.	Developer provides Cost Savings to County (Section 6.8b)	The later of sixty (60) days after receipt by Developer of the final investor capital contribution and County's issuance of a Release of Construction Covenants
26.	Developer submits to County an accounting of the Capital Replacement Reserve. (Affordable Housing Regulatory Agreement, Section 10)	On or before April 1 of each year subsequent to completion of construction of the Project.

27.	Developer submits annual report pursuant to Health and Safety Code Section 33418 to County (County Regulatory Agreement, Section 9.02)	No later than September 1 following the June 30 end of each fiscal year for the term of the County Regulatory Agreement

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Agreement including, without limitation, extension due to Force Majeure. Times of performance under the Agreement, including the Outside Closing Date, may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the non-requesting Party's sole and absolute discretion (subject to events of force majeure set forth in this Agreement.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

The Project will be comprised of four wood-framed buildings no more than three stories tall. The buildings will house one, two, and three bedroom rental apartments with adjacent on-grade parking for residents and their guests, as well as parking shared between the Project and the adjacent Dientes Component of Capitola Project and SCCHC Component of Capitola Project. The Project will contain 57 rental apartments. One of these apartments will be reserved for the manager to live on-site. In addition to the residential apartments, the Project will include common area facilities, including landscaped outdoor space, an indoor community space, a leasing office, a resident services office, a laundry room and a bicycle storage room. Additional features will include a maintenance shed and a trash enclosure. The Project will have access to Capitola Road by two vehicular drive aisles and a pedestrian pathway.

The Project shall be developed in compliance with the terms and conditions of Resolution No. 2019-08, adopted by the Santa Cruz Board of Supervisors on November 5, 2019, and all conditions of approval issued in connection therewith, and with all requirements of the Water Board and Air District.

ATTACHMENT NO. 5

FORM OF GRANT DEED

[See following document]

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

MP Live Oak Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: _____

AND ALL TAX STATEMENTS TO:

SAME AS ABOVE

(Space Above for Recorder's Use)
Exempt from Recordation Fee per Gov. Code § 27383

DOCUMENTARY TRANSFER TAX IS $_____ Computed on the consideration or value of property conveyed.

The undersigned declares exemption under the following: Exempt from fee per Government Code Section 27388.1 (a)(2); recorded concurrently in connection with a transfer subject to the imposition of documentary transfer tax

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic ("**Grantor**"), hereby grants to MP LIVE OAK ASSOCIATES, L.P., a California limited partnership ("**Grantee**"), the real property located in the County of Santa Cruz, State of California, described on Exhibit 1 attached hereto and made a part hereof (the "**Property**"), with all improvements thereon, subject to all matters of record and subject to the following:

Grantee, on behalf of itself and its successors and assigns to all or any portion of the Property, covenants and agrees as follows:

1. Nondiscrimination Covenants. Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or

occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land. The foregoing covenants shall run with the land.

2. Nondiscrimination Clauses in Agreements. Grantee agrees for itself and any successor in interest that Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the rental, sale, or lease of the Property, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts relating to the sale, transfer, or leasing of the land or any interest therein: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The foregoing nondiscrimination covenants shall remain in effect in perpetuity.

[Signatures on next page]

GRANTOR:

SANTA CRUZ COUNTY REDEVELOPMENT SUCCESSOR AGENCY, a public body, corporate and politic

Date:_____ By: _____
Carlos J. Palacios, County Administrative Officer

ATTEST:

GRANTEE:

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

Date:_____ By: _____
Jan Lindenthal
Assistant Secretary

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

Exhibit 1 to Grant Deed

Legal Description

[To be inserted prior to Close of Escrow]

ATTACHMENT NO. 6

ASSIGNMENT OF ARCHITECTURAL AGREEMENTS

[See following document]

ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS

FOR VALUE RECEIVED, the undersigned, MP LIVE OAK ASSOCIATES, L.P., a California limited partnership ("**Developer**"), assigns to COUNTY OF SANTA CRUZ, a political subdivision of the State of California ("**County**"), all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, "**Architectural Agreements**"), and

2. All plans and specifications, blueprints, sketches, shop drawings, working drawings, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, and grading plans, and all amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively, "**Plans and Specifications**"), heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively, "**Architect**"), for or on behalf of Developer in connection with the Real Property described on Exhibit "A" attached hereto. The Plans and Specifications, as of the date hereof, are those which Developer have heretofore, or will hereafter deliver to County. The Architectural Agreements include, but are not limited to, the architectural agreement or contract between Wald, Ruhnke, & Dost Architects LLP and MidPen Housing Corporation, dated June 6, 2018.

This ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS ("**Assignment**") constitutes a present, absolute and unconditional assignment to County.

Developer acknowledges that by accepting this Assignment, County does not assume any of Developer's obligations under the Architectural Agreements with respect to the Plans and Specifications.

Developer represents and warrants to County that: (a) no default by Developer, or event which would constitute a default by Developer after notice or the passage of time, or both, exists with respect to said Architectural Agreements, and (b) all copies of the Architectural Agreements and Plans and Specifications delivered to County are complete and correct. Developer has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications. Notwithstanding the foregoing, this Assignment shall be subordinated to any assignment required to be made by Developer to the "Construction Lender" (as that term is defined in that certain Affordable Housing and Property Disposition Agreement entered into by and between the Santa Cruz County Redevelopment Successor Agency (the predecessor-in-interest to County) and Developer on or about _____, 2020 (the "**AHPDA**")) at the "Close of Escrow" (as that term is defined in the AHPDA).

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Developer consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Developer and County.

The attached Architect's/Engineer's Consent and Exhibit "A" are incorporated by reference.

Executed by _____ on _____, 20__.

"Developer"

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

Date:_____

By: _____
Jan Lindenthal
Assistant Secretary

"County"

COUNTY OF SANTA CRUZ, a political subdivision of the State of California

Date:_____

By: _____
Kathleen Molloy, Planning Director

ARCHITECT'S/ENGINEER'S CONSENT

The undersigned architect and/or engineer (collectively referred to as "**Architect**") hereby consents to the foregoing Assignment to which this Architect's/Engineer's Consent ("**Consent**") is a part, and acknowledges that there presently exists no unpaid claims due to the Architect/Engineer arising out of the preparation and delivery of the Plans and Specifications to _____ and/or the performance of the Architect's obligations under the Architectural Agreements described in the Assignment.

Architect agrees that, by virtue of the foregoing Assignment, County has succeeded to all of _____'s right, title and interest in, to and under the Architectural Agreements and the Plans and Specifications and, therefore, so long as the Architect continues to receive the compensation called for under the Architectural Agreements, County and its successors and assigns may, at their option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of County and its successors and assigns in the same manner as if performed for the benefit or account of _____ in the absence of the Assignment.

Architect warrants and presents that it/he has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed on _____, 20__.

"Architect"

_____,
a _____

By: _____
Name: _____
Its: _____

Architect's Address:

_____
_____
_____
_____
Phone No.: (_____) _____
Fax No.: (_____) _____

EXHIBIT "A"

PROPERTY DESCRIPTION

[To be inserted prior to Close of Escrow]

ATTACHMENT NO. 7

COUNTY NOTE

[See following document]

PROMISSORY NOTE

$5,315,585
_____, 20__ Santa Cruz, California

FOR VALUE RECEIVED, MP LIVE OAK ASSOCIATES, L.P., a California limited partnership ("**Borrower**"), as maker and obligor, promises to pay to the **COUNTY OF SANTA CRUZ**, a political subdivision of the State of California ("**County**"), as holder and beneficiary, or order, at County's office at 701 Ocean Street, Room 418, Santa Cruz, CA 95060, or such other place as County may designate in writing, the sum of (a) Five Million Three Hundred Fifteen Thousand Dollars ($5,315,585), or so much thereof as may be disbursed hereunder ("**Note Amount**"), and (b) all costs and expenses payable hereunder, in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This County Promissory Note ("**Note**") is given in accordance with that certain Affordable Housing and Property Disposition Agreement executed by the Santa Cruz County Redevelopment Successor Agency ("**Successor Agency**"), as "Successor Agency," and thereafter assigned by Successor Agency to County, and Borrower, dated as of _____, 2020 ("**Agreement**"). The rights and obligations of Borrower and County under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement. An Event of Default by Developer under any of the provisions of the Agreement, and/or a default under any and all attachments and all breakout documents executed, attested and/or recorded in implementation of the Agreement, including, without limitation, the County Deed of Trust and County Regulatory Agreement, or the income and/or rent restrictions as set forth in the regulatory agreement which may be required to be recorded against the Property with respect to the issuance of Tax Credits for the Project and/or the regulatory agreement with the institutional lender responsible for placing the Tax-Exempt Bonds (collectively, the "**Transaction Documents**") shall, after the expiration of any cure period under the respective agreement or document, be a default under this Note (a "**Default**"), and a default under this Note, after notice and expiration of a ten (10) day cure period, shall be an Event of Default under the Agreement and a default under the Transaction Documents.

2. Interest. The Note Amount shall bear simple interest at three percent (3%) per annum.

3. Repayment of Note Amount. The Note Amount shall be paid by the Borrower's annual payment to County of fifty percent (50%) of the Residual Receipts from operation of the Project, as determined by a Residual Receipts calculation from the

operation of the Project the preceding calendar year; provided, however, that said fifty percent (50%) shall be divided proportionately with the lender(s) of any other loan(s) obtained by Borrower that is payable from Residual Receipts. Annual Residual Receipts payments shall be made by the Borrower by cashier's check and shall be delivered on or before June 1st for each year during the term of this Note commencing in the first calendar year following the date construction of the Project has been completed, as evidenced by Borrower's obtainment of a certificate of occupancy (or other equivalent document, if the County of Santa Cruz does not issue certificates of occupancy), and continuing until the Note Amount and all unpaid interest thereon has been repaid in full. Additionally, the Note Amount shall be paid by any or all of the following: (i) one hundred percent (100%) of the Refinancing Net Proceeds immediately upon any refinancing of the loans secured by the Property (or any part thereof), subject to any required pro rata split with other public agency lenders, to the extent applicable, (ii) one hundred percent (100%) of the Transfer Net Proceeds immediately upon any transfer in whole or in part of the Project, subject to any required pro rata split with other public agency lenders, to the extent applicable, and (iii) any Cost Savings, pursuant to Section 6.8 of the Agreement.

As used herein, *"Affiliate"* means any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with Borrower, whether by direct or indirect ownership of equity interests, by contract or otherwise, where "**Person**" means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, "**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and "**Controlling**" and "**Controlled**" means exercising or having Control.

As used herein, "*Annual Financial Statement*" means each certified financial statement of Borrower for the Project using generally accepted accounting principles ("GAAP"), as separately accounted for this Project, including Operating Expenses and Annual Project Revenue, prepared annually at Borrower's expense, by an independent certified public accountant reasonably acceptable to County.

As used herein, "*Annual Project Revenue*" means all gross income and all revenues of any kind from the Project in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, actually received by or paid to or for the account or benefit of Borrower or any of their agents or employees, from any and all sources, resulting from or attributable to the ownership, operation, leasing and occupancy of the Project, determined on the basis of generally accepted accounting principles applied on a consistent basis, and shall include, but not be limited to: (i) gross rentals paid by tenants of the Project under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from the U.S. Department of Housing and Urban Development or any other person or organization, received on behalf of tenants under their leases, (ii) amounts paid by residents of the Project to Borrower or any Affiliate of Borrower on account of Operating Expenses for further disbursement by Borrower or such Affiliate to a third party or parties,

(iii) late charges and interest paid on rentals, (iv) rents and receipts from licenses, concessions, vending machines, coin laundry and similar sources, (v) other fees, charges or payments not denominated as rental but payable to Borrower in connection with the rental of office, retail, storage, or other space in the Project, (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases, and (vii) interest and other investment earnings on security deposits, reserve accounts and other Project accounts to the extent disbursed for other than the purpose of the reserve. Notwithstanding the foregoing, gross income shall not include the following items: (a) security deposits from tenants (except when applied by Borrower to rent or other amounts owing by tenants); (b) capital contributions to Borrower by its members, partners or shareholders (including capital contributions required to pay any Deferred Developer Fee); (c) condemnation or insurance proceeds; (d) funds received from any source actually and directly used for initial development of the Project; (e) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Project; (f) Transfer Net Proceeds; or (g) Refinancing Net Proceeds.

As used herein "*Capital Replacement Reserve*" shall have the meaning ascribed thereto in the County Regulatory Agreement.

As used herein, *"CPI Adjustment***"** means the increase in the cost of living index, as measured by the Consumer Price Index for all urban consumers, San Francisco-Oakland-Hayward statistical area, all items (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") in effect as of the date on which a certificate of occupancy is issued for the Project (or other equivalent document if the County of Santa Cruz does not issue certificates of occupancy) to the CPI in effect as of the date on which an adjustment is made. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

As used herein, "*Debt Service*" means payments made in a calendar year pursuant to the approved Construction Loan or the Take-Out Loan, as applicable, obtained for the construction/development, and ownership of the Project, as set forth in the Project Budget, or any permitted refinancing or modification thereof, but excluding payments made pursuant to this Note, and payments made on any other "soft" debt.

As used herein, "*Deferred Developer Fee*" means the portion of the Borrower's development fee, if any, that is payable out of the Annual Project Revenue and not from capital sources, as set forth in the Project Budget. Disbursement of the Deferred Developer Fee (all or any part thereof) shall be subject to the provisions of the next paragraph.

In connection with Borrower's eligibility to disburse all or any part of the Deferred Developer Fee, in the event the cost of completing the Project exceeds the amount set forth in the final Budget; then, to the extent necessary, the funds otherwise available to pay the developer fee from capital sources shall be expended and used to pay the remaining costs of completing the Project to the extent necessary to ensure the completion of the Project and the balance of the developer fee shall be paid as Deferred Developer Fee in accordance with the priority set forth in the Partnership Agreement, and/or payable from the proceeds of any approved refinancing or transfer of the Property and/or the Project. In no event shall Borrower be eligible for disbursement of the Deferred Developer Fee or any part thereof prior to completion of the Project, as approved by the Planning Director as evidenced by the issuance by County of the Release of Construction Covenants.

As used herein, "*Operating Expenses*" means actual, reasonable and customary (for comparable high quality rental developments in Santa Cruz County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, which are in accordance with the annual Operating Budget approved by County pursuant to Section 9 of the County Regulatory Agreement, including, without limitation, painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, and other actual, reasonable and customary operating costs which are directly incurred and paid by Borrower, but which are not paid from or eligible to be paid from the Operating Reserve or any other reserve accounts. In addition, Operating Expenses shall include a social services fee in an amount approved by County, as evidenced by County's approval of Borrower's Project Budget, which amount shall be increased annually thereafter by three percent (3%) per year, provided Borrower provides the social services described in (a) the Tenant Services Agreement that was included in Borrower's tax credit application, and (b) the Scope of Development. Operating Expenses shall not include any of the following: (i) salaries of employees of Borrower or Borrower's general overhead expenses, or expenses, costs and fees paid to an Affiliate of Borrower, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms' length transaction between unrelated parties in the Santa Cruz County area for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Borrower, would be Operating Expenses; (iii) optional or elective payments with respect to the Construction Loan; (iv) any payments with respect to any Project-related loan or financing that has not been approved by County; (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Borrower prior to completion of the Project with respect to the development of the Project, or any portion thereof, including, without limitation, all predevelopment and preconstruction activities conducted by Borrower in connection with the Project, including without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and the construction of the Project and any on site or off site work in connection therewith; or (vi)

depreciation, amortization, and accrued principal and interest expense on deferred payment debt.

As used herein, "*Operating Reserve*" shall have the meaning ascribed thereto in the County Regulatory Agreement.

As used herein, "*Partnership Agreement*" means the agreement which sets forth the terms of the Borrower's limited partnership, as such agreement may be amended from time to time.

As used herein, "*Refinancing Net Proceeds"* means the proceeds of any approved refinancing of the Construction Loan, the Take-Out Loan, or other approved financing secured by the Property, net of the following actual costs and fees incurred: (i) the amount of the financing which is satisfied out of such proceeds, (ii) reasonable and customary costs and expenses incurred in connection with the refinancing, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of authorized loans to the Project made by the limited partners of Borrower, including interest at the rate set forth in the Partnership Agreement for such loans, (v) the balance, if any, of authorized operating loans or development loans made by the general partners of a limited partnership that succeeds to Borrower's interest in the Agreement and the Project, including interest at the rate set forth in the Partnership Agreement for such loans, (vi) the return of capital contributions, if any, to the Project made by the general partners of a limited partnership that succeeds to Borrower's interest in the Agreement and the Project, and (vii) the amount of proceeds required to be reserved for the repair, rehabilitation, reconstruction or refurbishment of the Project.

As used herein, "*Reserve Deposits*" means any payments to the Capital Replacement Reserve account and payments to the Operating Reserve account pursuant to Sections 10 and 11, respectively, of County Regulatory Agreement or such higher amounts as may be otherwise required by (i) any lender of a Project-related loan that has been approved by County, or (ii) the Investor, pursuant to the terms of the Partnership Agreement.

As used herein, "*Residual Receipts*" means Annual Project Revenue ***less*** the sum of:

(i) Operating Expenses;

(ii) Debt Service;

(iii) Reserve Deposits to the Capital Replacement Reserve;

(iv) Reserve Deposits to the Operating Reserve;

(v) Deferred Developer Fees;

(vi) Unpaid Tax Credit adjustment amounts, if any, pursuant to the Partnership Agreement;

(vii) Current asset management fee in an amount approved by County, as evidenced by County's approval of Borrower's Project Budget, which shall be increased annually thereafter by three percent (3%);

(viii) Current partnership management fee in an amount approved by County, as evidenced by County's approval of Borrower's Project Budget, which shall be increased annually thereafter by three percent (3%);

(ix) Repayment of loans to the Project, if any, made by the limited partner(s) of Borrower pursuant to the Partnership Agreement, including interest at the rate set forth in the Partnership Agreement, for eligible development and/or operating expense deficits or other eligible loans (provided that if made during the compliance period Borrower shall provide to Planning Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Planning Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans);

(x) Repayment to the administrative and/or managing general partners of Borrower for loans to the Project for development advance(s) pursuant to the Partnership Agreement, operating deficit advance(s) pursuant to the Partnership Agreement, credit adjuster payment(s) pursuant to the Partnership Agreement), and/or development fee advance(s) pursuant to the Partnership Agreement, and with all such loans to be repaid without interest (provided that if made during the compliance period, then if Borrower wants to deduct the repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Borrower shall provide to Planning Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Planning Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans); and

(xi) Repayment to the administrative and/or managing general partners of Borrower of certain loans made to the Project after the expiration or earlier termination of the Partnership Agreement to cover shortfalls in funding for Operating Expenses in excess of the Operating Expenses included in the approved annual Operating Budget for the year in which such loan is made (if at all), all such loans to be repaid without interest (provided that if made during the compliance period, then if Borrower wants to deduct the repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Borrower shall provide to Planning Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Planning Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans); and

In the event any calculation of Annual Project Revenue less subsections (i) through (xi) inclusive above results in a negative number, then Residual Receipts shall be zero ($0) for that year and shall not carry over to the next or any other subsequent year.

In addition, none of the fees, costs, expenses, or items described above in calculation of Residual Receipts shall include any duplicate entry/item, or double accounting for a cost item. The calculation of Residual Receipts shall be conducted at Borrower's sole cost and expense, by a third party auditor and submitted to Borrower annually, along with Borrower's payment of Residual Receipts.

As used herein, "*Transfer Net Proceeds*" means the proceeds of any sale or other transfer, in whole or part, of the Property or Borrower's interests therein, net only of (i) the reasonable and customary costs and expenses incurred in connection with such transfer; (ii) the amount of the financing which is satisfied out of such proceeds, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of loans to the Project made by the limited partners of Borrower, including interest thereon as provided in the Partnership Agreement, (v) the balance, if any, of operating loans or development loans made by the general partners of Borrower, including interest thereon as provided in the Partnership Agreement, and (vi) the return of capital contributions, if any, to the Project made by the general partners of Borrower.

4. Security. Borrower's obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding hereunder, be secured by the County Deed of Trust, which County Deed of Trust shall only be subordinated to the approved deed(s) of trust for the Construction Loan and Take-Out Loan, and if applicable any loan from the California Department of Housing and Community Development where such subordination is required pursuant to applicable regulations, and such encumbrances approved by County in writing, pursuant to a written subordination agreement in a form approved by County counsel. Upon execution of the same, the terms of the County Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein.

5. Maturity. This Note shall be due and payable on the fifty-fifth (55th) anniversary of the date a certificate of occupancy has been issued for the Project (or other equivalent document if the County of Santa Cruz does not issue certificates of occupancy).

6. Application of Payments. All payments shall be applied (i) first, to costs and fees owing under this Note, (ii) second, to the payment of unpaid accrued interest owing under this Note for each calendar year in which no payment was made by Borrower pursuant to Section 3 above, (iii) third, to the payment of accrued interest for the preceding calendar year, and (iv) fourth, to payment of principal.

7. Waivers.

(a) Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at County's sole discretion and that County may

accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

(b) No extension of time for payment of this Note made by agreement by County with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

(d) Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in or to properties securing this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

(e) No previous waiver and no failure or delay by County in acting with respect to the terms of this Note or the County Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Note, the County Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the County Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

8. Attorneys' Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, Borrower will pay all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

9. Joint and Several Obligation. This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

10. Amendments and Modifications. This Note may not be changed orally, but only by an amendment approved by County and evidenced in a writing signed by Borrower and by County.

11. County May Assign. County may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

12. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of County, which consent shall not unreasonably be withheld, except pursuant to a transfer that is authorized under Section 15 of the Agreement.

13. Acceleration and Other Remedies. Upon the occurrence of a Default, County may, at County's option, declare the outstanding principal amount of this Note,

together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the County Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as further set forth in the County Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. County shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as County may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of County in exercising any right hereunder, under the Agreement or under the County Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of County's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

14. Alternate Rate. Upon the occurrence of any Default, or upon the maturity hereof (by acceleration or otherwise), the entire unpaid principal sum, at the option of County, shall bear interest, from the date of occurrence of such Default or maturity and after judgment and until collection, at the "**Alternate Rate**", such rate being the highest interest rate then permitted by law. Interest calculated at the Alternate Rate, when and if applicable, shall be due and payable immediately without notice or demand. Borrower agrees that in the event of any Default, County will incur additional expense in servicing the loan evidenced by this Note and will suffer damage and loss resulting from such Default. Borrower agrees that in such event County shall be entitled to damages for the detriment caused thereby, which damages are extremely difficult and impractical to ascertain. Therefore, Borrower agrees that the Alternate Rate (as applied to the unpaid principal balance, accrued interest, fees, costs and expenses incurred) is a reasonable estimate of such damages to County, and Borrower agrees to pay such sum on demand.

15. Consents. Borrower hereby consents to: (a) any extension (whether one or more) of the time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such extension, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

16. Interest Rate Limitation. County and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted

to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

17. Successors and Assigns. Whenever "County" is referred to in this Note, such reference shall be deemed to include County and its successors and assigns, including, without limitation, any successor to its rights, powers, and responsibilities, and any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of County and County's successors and assigns.

18. Miscellaneous. Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Santa Cruz or the United States District Court of the Northern District of California, as County may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

19. Non-Recourse Obligation. Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights County may have (as a secured party or otherwise) hereunder or under the Agreement or the County Deed of Trust to recover directly from Borrower any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by County as a result of fraud, intentional misrepresentation or bad faith waste, and any costs and expenses incurred by County in connection therewith (including without limitation reasonable attorneys' fees and costs).

20. Accounting.

(a) **Accounting Terms and Determinations**. Unless otherwise specified herein, (i) all accounting terms used herein shall be interpreted, (ii) all accounting determinations hereunder shall be made, and (c) all books, records and financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP, consistently applied, except for changes approved by County.

(b) **Financial Reporting and Accounting Covenants**. Borrower shall permit the representatives of County at any time or from time to time, upon three (3) business days' notice and during normal business hours, to inspect, audit, and copy all

of Borrower's books, records, and accounts relating to the Property. Borrower shall furnish or cause to be furnished to County the following:

(i) **Annual Financial Statement.** Borrower shall submit to County, on or before May 1 of each year commencing in the first year after the issuance of the first certificate of occupancy for the Project, an Annual Financial Statement, with respect to the Project that has been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such Annual Financial Statement presents the financial position, results of operations, and cash flows of the Project fairly and in accordance with GAAP.

(ii) **Tax Returns**. As soon as available, but in no event later than thirty (30) days after the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower.

(iii) **Audit Reports**. Not later than ten (10) days after receipt thereof by Borrower, copies of all reports submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower, made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit. If any such audit report results in Borrower restating Residual Receipts upward for any calendar year, then Borrower shall accompany delivery of such audit report to County with the additional payment to County resulting from said restatement pursuant to Section 3 of this Note. If any such audit report results in Borrower restating Residual Receipts downward for any calendar year, Borrower may carry forward the overpayment made to County pursuant to such Section 3 as a credit against payments thereunder in subsequent calendar years.

(c) **Late Payment**. If any annual payment required pursuant to Section 3 above is not received by County within ten (10) calendar days after payment is due, Borrower shall pay to County a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by County.

(d) **Dispute Regarding Annual Financial Statement**. If County disputes any Annual Financial Statement, County shall notify Borrower of such dispute within sixty (60) days after receipt of an Annual Financial Statement and the parties shall cause their representatives to meet and confer concerning the dispute and to use all reasonable efforts to reach a mutually acceptable resolution of the matter in question within thirty (30) days after County's notice of such dispute. If the parties are unable to reach a mutually acceptable resolution within such thirty (30) day period, then, within twenty (20) days after the expiration of such period, Borrower and County shall appoint a national firm of certified public accountants to review the dispute and to make a determination as to the matter in question within thirty (30) days after such appointment. If the parties cannot, within ten (10) days, agree upon the firm to be appointed, then, upon the application of either party, such firm shall be appointed by the Presiding Judge of the Superior Court for the County of Santa Cruz, California. Such firm's determination shall

be final and binding upon the parties. Such firm shall have full access to the books, records and accounts of Borrower and the Property.

(e) **Underpayment**. If any audit by County reports an underpayment by Borrower on this Note, Borrower shall pay the amount of such underpayment, together with the late charge set forth in Section 20(c) of this Note, to County within ten (10) days after written notice thereof to Borrower or, in the event of a dispute, after timely notice to Borrower of the resolution of such dispute by the independent firm of certified public accountants, as the case may be, and if such underpayment amounts to more than five percent (5%) of the disputed payment for the period audited, then, notwithstanding anything to the contrary in this section, Borrower shall pay to County, within ten (10) days after written demand, County's reasonable costs and expenses in conducting such audit and exercising its rights under this Section 20 of this Note.

BORROWER:

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

Date:_____

By: _____
Jan Lindenthal
Assistant Secretary

ATTACHMENT NO. 8

COUNTY DEED OF TRUST

[See following document]

RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attn: Planning Director

APN: 026-193-41, 42, & 43 [Free Recording Requested
Government Code Sections 6103 and 27383]

DEED OF TRUST
WITH ASSIGNMENT OF RENTS

NOTE: RIDER ATTACHED TO THIS DEED OF TRUST CONTAINING TERMS INCLUDING SECURITY AGREEMENT AND FIXTURE FILING.

This DEED OF TRUST WITH ASSIGNMENT OF RENTS AND RIDER ATTACHED HERETO ("Deed of Trust"), is made _____, _____, between MP LIVE OAK ASSOCIATES, L.P., a California Limited Partnership, herein called TRUSTOR, whose address is 303 Vintage Park Drive, Suite 250, Foster City, CA 94404, OLD REPUBLIC TITLE COMPANY, a California corporation, herein called TRUSTEE, and COUNTY OF SANTA CRUZ, a political subdivision of the State of California, herein called BENEFICIARY.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's estate, dated on or about the date hereof, in that property in the County of Santa Cruz, State of California, described in Exhibit "A" (the "Property"),

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of FIVE MILLION THREE HUNDRED FIFTEEN THOUSAND FIVE HUNDRED EIGHTY-FIVE DOLLARS ($5,315,585), with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the Property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official

Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

SEE RIDERS ATTACHED TO THIS DEED OF TRUST

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears

to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance when the Trustor does not repair the Property as obligated in A.1 above.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto”.

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default (beyond any applicable cure period, and during the continuance of such default), Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter

upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary

hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE0

TO _____, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, an all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

_____

_____

_____

_____

Please mail Deed of Trust,

Note and Reconveyance to

_____

_____

Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[To be inserted]

RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS

This RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS ("**Rider**") is executed this ___ day of _____ by MP LIVE OAK ASSOCIATES, L.P., a California limited partnership, herein "Trustor," in favor of the COUNTY OF SANTA CRUZ, a political subdivision of the State of California, herein "**Beneficiary**," the same parties to that certain form Deed of Trust With Assignment of Rents, of even date hereto, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

Reference is made to (i) that certain County Promissory Note executed by Trustor on or about the date set forth above, the repayment of which by Trustor is secured by this Deed of Trust ("**County Note**"), (ii) that certain Affordable Housing and Property Disposition Agreement between Trustor and the Santa Cruz County Redevelopment Successor Agency ("**Successor Agency**"), and assigned by the Successor Agency to Beneficiary on or about the same date hereof, dated for identification purposes only as of _____ (collectively, the "**Agreement**"), and (iii) that certain Affordable Housing Regulatory Agreement, by and between Trustor and Beneficiary, for the benefit of Beneficiary, and recorded in the Office of the Santa Cruz County Recorder ("**County Regulatory Agreement**").

The parties hereto agree:

1. Property. The estate subject to this Deed of Trust is Trustor's fee estate in the real property legally described in the foregoing Deed of Trust to which this Rider is attached (the "**Property**").

2. Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations ("**Secured Obligations**"):

   a. Payment to Beneficiary of all indebtedness at any time owing under the terms of the County Note;

   b. Payment and performance of all obligations of Trustor under this Deed of Trust;

   c. Payment and performance of all obligations of Trustor under the Agreement and the County Regulatory Agreement.

   d. Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

   e. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

3. Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations.

4. Incorporation. All terms of the County Note, Agreement, and County Regulatory Agreement, and the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

5. Mortgagee-in-Possession. Neither the assignment of rents set forth in the Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property.

6. No Cure. In the event Beneficiary collects and receives any rents under the Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a curing of the default, except if and to the extent the same are sufficient to cure all monetary defaults and no other defaults then exist.

7. Possession Upon Default. Upon the occurrence of and during the continuation of a default, Beneficiary, after having given notice and the applicable cure periods having expired with the default having not been cured (hereinafter, a "**default**"), may, at its option, without any action on its part being required and without in any way waiving such default, take possession of the Property in accordance with applicable law and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper, and may collect and receive all rents and profits, with full power to make, from time to time, all commercially reasonable alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the County Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Beneficiary or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and

shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.

8. Receiver. In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred and not have been cured within any applicable cure period, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application and without notice, notice of hearing being hereby expressly waived. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

9. Notice to Beneficiary. Notices to Beneficiary shall be sent to Beneficiary addressed to:

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attn: Planning Director
Reference: 17th & Capitola Redevelopment Project

10. Limited Partner Cure Rights. Notwithstanding anything to the contrary set forth herein, Beneficiary shall not exercise any right hereunder without providing the limited partner of Trustor with not less than thirty (30) days prior written notice and right to cure any default giving rise to the exercise of said remedy. Beneficiary agrees that any cure tendered by the limited partner of Trustor shall be accepted or rejected on the same terms and conditions as if tendered directly by Trustor.

11. Subordination Acknowledgement. Beneficiary hereby acknowledges that the loan secured by this Deed of Trust is also subordinate to the extended use agreement required to be executed by Borrower pursuant to Section 42(h)(6)(B) of the Internal Revenue Code, for purposes of the low-income housing tax credits to be allocated to Trustor. In addition, Beneficiary hereby acknowledges that the loan secured by this Deed of Trust is further subordinate to Section 42(h)(6)(e)(ii) of the Internal Revenue Code, which prohibits the eviction or termination of a tenancy, other than for good cause, of an existing tenant of any low-income housing tax credit unit or any increase in the gross rent with respect to such unit, not otherwise permitted under Section 42, for a period of three (3) years after the date the Property is acquired by Beneficiary through foreclosure or instrument in lieu of foreclosure.

[signatures on next page]

IN WITNESS WHEREOF, Trustor has executed this Rider on the date of Trustor's acknowledgment herein below, to be effective for all purposes as of the day and year first set forth above.

TRUSTOR:

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

By: _____
Jan Lindenthal
Assistant Secretary

Date:_____

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

ATTACHMENT NO. 9

PROJECT BUDGET

[see following pages]

1500 Capitola Road: Residential

PROJECT SUMMARY

SITE, BUILDING AND UNIT DETAILS

LAND

Acreage	2.36	acres
Density	24.15970839	units/acre
# of Stories	3	

BUILDING

Residential (Leasable)	49,872	*sf*
Circulation & Common	9,328	*sf*
Garage	18,300	*sf*
Commercial	-	sf

PARKING

# of residential spaces	61
residential parking ratio	1.07

UNIT MIX

Unit Type	# Units	Average Rent
Studios/SRO	0	-
1-Bedroom	26	2,000
2-Bedroom	14	2,724
3-Bedroom	16	2,824
4-Bedroom	0	-
Manager's Units	1	
Total Unit Count	***57***	
Average Affordability		*48.2%*

FINANCING ASSUMPTIONS

Debt Coverage Ratio	1.15
Construction Rate	3.75%
Permanent Rate	4.25%
Perm Loan Amortization	30 yrs.

TAX CREDIT ASSUMPTIONS

Credit & Equity	$ 23,750,000
Price/ Raise	$ 0.95
Basis Boost	Yes
Tax Credit Eligible	100%

OPERATING & SERVICES EXPENSE

Operating Expenses	$7,300 per unit
Annual Escalation	3.5%
Resident Services Fee	$1,835 per unit
Replacement Reserves	$450 per unit

SOURCES

CONSTRUCTION SOURCES		per unit
Construction Loan	$ 26,515,553	$ 312,860
Tax Credit Investor Proceeds	$ 2,375,000	$ 33,465
County of Santa Cruz Loan	$ 5,315,585	$ 186,512
Accrued Deferred Interest	$ 149,650	$ 5,251
Costs Deferred until Conversion	$ 2,917,273	$ 102,360
MediCal Capacity Grant (part of GP Spo	$ 625,000	$ 21,930
Building Electrification Grant Program	$ 142,500	$ 5,000
	$ -	$ -
total	***$ 38,040,561***	***$ 667,378***

PERMANENT SOURCES		per unit
Amortizing Perm Loan, Tranche A	$ 3,231,225	$ 56,688
Amortizing Perm Loan, Tranche B	$ 8,306,715	$ 145,732
Tax Credit Investor Proceeds	$ 23,750,000	$ 416,667
GP Equity	$ 100	$ 2
Deferred Developer Fee	$ -	$ -
County of Santa Cruz Loan	$ 5,315,585	$ 93,256
Accrued Deferred Interest	$ 149,650	$ 2,625
NPLH	$ 2,243,930	$ 39,367
MediCal Capacity Grant (part of GP Spo	$ 625,000	$ 10,965
Building Electrification Grant Program	$ 142,500	$ 2,500
	$ -	$ -
total	***$ 43,764,705***	***$ 767,802***

USES

ACQUISITION		per unit
Acquisition	$ 1,709,838	$ 29,997
Relocation	$ 5,000	$ 88
Hard Cost	$ 31,361,355	$ 1,032,012
Architecture and Engineering	$ 1,637,843	$ 28,734
Construction Financing	$ 1,789,608	$ 29,867
Permanent Financing	$ 48,076	$ 1,248
Legal	$ 140,500	$ 2,465
Reserves	$ 1,603,811	$ 33,264
Other Soft Cost	$ 2,415,395	$ 62,805
Developer Fee	*$ 1,803,778*	$ 126,403
TOTAL DEVELOPMENT COSTS	***$ 43,764,705***	$ 1,100,030
TCD w/o DF	*$ 41,960,927*	$ 973,627

DEVELOPER FEE

15% of TDC	$ 6,294,139
Total Fee	$ 1,803,778
GP Equity	$ 100
Deferred Developer Fee	$ -
Net Developer Fee	$ 1,803,678

CASH FLOW

	Yr 1	Yr 5	Yr 10	Yr 15	Yr 30
	2022	2026	2031	2036	2051
Effective Gross Income	$ 1,398,894	$ 1,511,026	$ 1,666,181	$ 1,840,026	$ 2,500,128
Operating Expenses	*$ (416,100)*	*$ (477,484)*	*$ (567,102)*	*$ (673,539)*	*$ (1,128,412)*
Services Expenses	*$ (104,595)*	*$ (120,025)*	*$ (142,552)*	*$ (169,307)*	*$ (283,649)*
Reserves	$ (25,650)	$ (25,650)	$ (25,650)	$ (25,650)	$ (25,650)
Net Operating Income	$ 794,124	$ 820,822	$ 851,250	$ 876,958	$ 903,975
Debt Service	$ (690,542)	$ (690,542)	$ (690,542)	$ (690,542)	$ (681,117)
Net Cash Flow	$ 103,582	$ 130,281	$ 160,708	$ 186,416	$ 222,858
DCR	1.15	1.19	1.23	1.27	1.33

ATTACHMENT NO. 10

COUNTY REGULATORY AGREEMENT

[See following document]

REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attention: Planning Director

This document is exempt from a recording fee pursuant to Government Code Sections 6103 and 27383.

AFFORDABLE HOUSING REGULATORY AGREEMENT

This **AFFORDABLE HOUSING REGULATORY AGREEMENT** (this "**Regulatory Agreement**"), dated for purposes of identification only as of _____ (the "**Date of Regulatory Agreement**"), is entered by and between the **COUNTY OF SANTA CRUZ**, a political subdivision of the State of California, (the "**County**"), and **MP LIVE OAK ASSOCIATES, L.P.**, a California limited partnership (the "**Developer**"). County and Developer are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

The following recitals are a substantive part of this Regulatory Agreement; all capitalized terms set forth in the Recitals shall have the meanings ascribed to such terms in Section 1 hereof.

A. Developer owns fee title to that certain real property located in the County of Santa Cruz, State of California more particularly described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference (the "**Property**")

B. Developer is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income families.

C. Developer acquired the Property from the Santa Cruz County Redevelopment Successor Agency (the "**Successor Agency**") pursuant to that certain Affordable Housing and Property Disposition Agreement between the Successor Agency and Developer, dated as of _____ ("**Agreement**"). On or about the same date hereof, the Successor Agency assigned all of its rights and obligations under the Agreement to County.

D. Pursuant to the Agreement, Developer is required to construct and operate on the Property a fifty-seven (57) unit multifamily apartment project with all but one of such units restricted for occupancy by income-restricted households (the "**Project**"). The Agreement further provides that the Parties execute and record this Regulatory Agreement against the Property, to ensure that the Property shall be operated continuously, in perpetuity, as

an affordable rental apartment complex in accordance with the terms hereof.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS.

"30% AMI Household" means those person(s) or households whose income does not exceed thirty percent (30%) of AMI.

"30% AMI Unit" means the ten (10) Affordable Units that are required to be rented to and occupied by 30% AMI Households, with four (4) of such units containing one (1) bedroom, three (3) of such units containing two (2) bedrooms, and three (3) of such units containing three (3) bedrooms.

"40% AMI Household" means those person(s) or households whose income does not exceed forty percent (40%) of AMI.

"40% AMI Unit" means the twelve (12) Affordable Units that are required to be rented to and occupied by 40% AMI Households, with five (5) of such units containing one (1) bedroom, two (2) of such units containing two (2) bedrooms, and five (5) of such units containing three (3) bedrooms.

"50% AMI Household" means those person(s) or households whose income does not exceed fifty percent (50%) of AMI.

"50% AMI Unit" means the sixteen (16) Affordable Units that are required to be rented to and occupied by 50% AMI Households, with eight (8) of such units containing one (1) bedroom, four (4) of such units containing two (2) bedrooms, and four (4) of such units containing three (3) bedrooms.

"60% AMI Household" means those person(s) or households whose income does not exceed sixty percent (60%) of AMI.

"60% AMI Unit" means the thirteen (13) Affordable Units that are required to be rented to and occupied by 60% AMI Households, with seven (7) of such units containing one (1) bedroom, three (3) of such units containing two (2) bedrooms, and three (3) of such units containing three (3) bedrooms.

"80% AMI Household" means those person(s) or households whose income does not exceed eighty percent (80%) of AMI.

"80% AMI Unit" means the five (5) Affordable Units that are required to be rented to and occupied by 80% AMI Households, with two (2) of such units containing one (1) bedroom, two (2) of such units containing two (2) bedrooms, and one (1) of such units containing three (3) bedrooms.

"Additional Regulatory Agreements" means the Tax Credit Regulatory Agreement, the Bond Regulatory Agreement (applicable only if the Project is financed by issuance of Tax-Exempt Bonds), and any other regulatory agreement Developer is

required to execute as a condition to obtaining financing to develop and/or operate the Project.

"Affiliate" means any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise, where "**Person**" means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, "**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and "**Controlling**" and "**Controlled**" means exercising or having Control.

"Affordable Units" means the following fifty-six (56) rental units in the Project:

(i) twenty-six (26), one (1) bedroom, one (1) bath units;

(ii) fourteen (14), two (2) bedroom, one (1) bath units; and

(iii) sixteen (16), three (3) bedroom, one (1) bath units.

"Affordable Rent" means the maximum Monthly Rent that may be charged to and paid by 30% AMI Households, 40% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households, as applicable, for the Affordable Units, as annually determined pursuant to Health and Safety Code Section 50053(b), as of the date hereof, and the regulations promulgated pursuant to and incorporated therein.

"Agreement" is defined in Recital C hereof.

"**AHAP Contract"** means an Agreement to Enter into Housing Assistance Payments Contract entered into by and between Developer and the Housing Authority of the County of Santa Cruz.

"**Air District**" means the Monterey Bay Air Resources District.

"AMI" means the median family income (adjusted for household size) for the Santa Cruz County Area promulgated and published annually by HCD pursuant to Title 25, Section 6932 of the California Code of Regulations. If HCD ceases to annually publish median incomes, the Parties shall agree upon an adequate substituted manner for determining AMI.

"Annual Project Revenue" has the meaning ascribed thereto in the County Note.

"Approved Financing" means the financing approved by the Successor Agency pursuant to the Agreement, as set forth in the Project Budget attached to the Agreement, obtained by Developer for the acquisition of the Property and the construction/development and ownership of the Project. In addition, "Approved Financing" shall include any refinancing of the Approved Financing which has been approved by County.

"Approved Pro Forma" means that certain pro forma created in connection with the Project Budget attached to the Agreement.

"**Bond Regulatory Agreement**" means the regulatory agreement with the Institutional Lender responsible for placing the Tax-Exempt Bonds (applicable only if the Project is financed by issuance of Tax-Exempt Bonds).

"Capital Replacement Reserve" means a capital replacement reserve for the Project (i) in an initial amount approved by County, as evidenced by County's approval of Developer's development budget (or such greater amount required under any Additional Regulatory Agreement, under the Partnership Agreement, or by any lender of a Project-related loan that has been approved by County) set aside in a separate interest-bearing trust account, commencing upon the rental of the Affordable Units, and (ii) replenished from annual deposits in an amount approved by County, as evidenced by County's approval of Developer's initial Operating Budget, adjusted annually by the CPI Adjustment (unless otherwise agreed to by Developer and County) or as required under the Partnership Agreement (or such greater amount required under any Additional Regulatory Agreement, or under the Partnership Agreement).

"Certification of Continuing Program Compliance" means an annual recertification form substantially in the form attached hereto and incorporated herein as Exhibit "E".

"Certificate of Occupancy" means the final certificate of occupancy issued by the County for the completion of construction of the Project.

"Close of Escrow" means generally, the closing for the Approved Financing, and particularly, the time and day that this Regulatory Agreement and the Grant Deed are filed for record with the Santa Cruz County Recorder.

"Close of Escrow Date" means the date on which the Close of Escrow occurs.

"Construction Financing" means the construction loan for the Project, in the approximate amount of Twenty-Seven Million Dollars ($27,000,000). If the Project is financed through issuance of Tax-Exempt Bonds, then Construction Financing shall be understood to mean the proceeds of such Tax-Exempt Bonds.

"**County**" means the County of Santa Cruz, a political subdivision of the State of California.

"**County and Successor Agency and County and Successor Agency Personnel**" means County, the Successor Agency, and all of their respective officers, officials, directors, members, employees, agents, and representatives.

"County Deed of Trust" means that certain deed of trust executed by Developer, as "Trustor," in favor of County, as "Beneficiary," securing Developer's repayment under the County Note.

"County Loan" means the loan provided by County to Developer pursuant to the Agreement to assist Developer with certain predevelopment costs incurred by Developer and with the costs to acquire and develop the Property.

"County Note" means that certain County Promissory Note executed by Developer on or about the same date hereof, that evidences Developer's obligation to repay the County Loan.

"CPI Adjustment" means the percentage increase in the cost of living index, as measured by the Consumer Price Index for all urban consumers, San Francisco-Oakland-Hayward statistical area, all items (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") between the CPI figure in effect as of the date on which the Certificate of Occupancy is issued and the CPI figure in effect as of the date on which an adjustment is made. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

"Date of Regulatory Agreement" is defined in the initial paragraph hereof.

"Default" means the failure of a Party to perform any action or covenant required by the Agreement or hereunder within the time periods provided in the Agreement or hereunder, respectively, following notice and opportunity to cure, as set forth in Section 13.1 of the Agreement and Section 16.01 hereof, respectively.

"Developer" means MP Live Oak Associates, L.P., a California limited partnership, and any permitted assignees of Developer.

"Eligible Tenant" means, with respect to a 30% AMI Unit, a 30% AMI Household, with respect to a 40% AMI Unit, a 40% AMI Household, with respect to a 50% AMI Unit, a 50% AMI Household; with respect to a 60% AMI Unit, a 60% AMI Household; and with respect to an 80% AMI Unit, an 80% AMI Household.

"Environmental Laws" means (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. §1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (viii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.

"Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County, the Water Board, the Air District, and any other political subdivision, agency, instrumentality, or other entity exercising jurisdiction over County, Developer, the Project, or the Property, including common law.

"**HAP Contract"** means a Housing Assistance Payments contract entered into by and between Developer and the Housing Authority of the County of Santa Cruz.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "acutely hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate, or (xiv) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment. For purposes hereof, "Hazardous Materials" excludes materials and substances in quantities as are commonly used in constructing and operating apartment complexes, provided such materials and substances are used in accordance with all applicable laws.

"Hazardous Materials Contamination" means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

"HCD" means the California Department of Housing and Community Development.

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

"Institutional Lender" means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars ($100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an "incorporated admitted insurer" (as that term is used in Section 1100.1 of the California Insurance Code); a "foreign (other state) bank" (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a "foreign (other nation) bank" provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange.

"**Investor**" has the meaning ascribed thereto in Section 15.01 hereof.

"Legal Description" means that certain legal description of the Property which is attached hereto and incorporated herein as Exhibit "A".

"Map" means a map depicting the Property which is attached hereto and incorporated herein as Exhibit "B".

"Marketing Plan" means a marketing plan for the rental of the Affordable Units which provides, to the extent authorized by applicable federal, state and local laws and regulations, that a preference be given to applicants who are currently residents of the County or currently work in the County and, with respect to fourteen (14) of the Affordable Units, a preference to applicants who are currently residents of the Live Oak are of the County or currently work in the Live Oak area of the County. The Successor Agency shall have approved the Marketing Plan, in its reasonable discretion, as one of Successor Agency's conditions to the Close of Escrow pursuant to the Agreement. The Marketing Plan is further discussed in Section 4.03 hereof.

"**MidPen**" means MidPen Housing Corporation, a California nonprofit public benefit corporation.

"Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water,

electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

"Notice" means a notice in the form prescribed by Section 17.01 hereof.

"Official Records" means the Official Records of the County of Santa Cruz, California.

"Operating Budget" means an operating budget for the Project, which budget shall be subject to the annual written approval of County in accordance with Section 9.01 hereof.

"Operating Expenses" has the meaning ascribed thereto in the County Note.

"Operating Reserve" means an operating reserve for the Project (i) in an initial amount approved by County, as evidenced by County's approval of Developer's development budget (or such greater amount required under any Additional Regulatory Agreement, under the Partnership Agreement, or by any lender of a Project-related loan that has been approved by County) set aside in a separate interest-bearing trust account, commencing upon the rental of the Affordable Units, and (ii) replenished by an amount approved by County, as evidenced by County's approval of Developer's initial Operating Budget, from annual deposits of the Annual Project Revenue, to the extent available, such that the balance of the Operating Reserve consists of not less than three (3) months of projected Operating Expenses, adjusted annually by the CPI Adjustment (unless otherwise agreed to by Developer and County) or as required under the Partnership Agreement (or such greater amount required under any Additional Regulatory Agreement, or under the Partnership Agreement), provided in no event shall the balance in such account exceed a sum equal to one (1) year of debt service for the Project (or such greater amount required under any Additional Regulatory Agreement, pursuant to any of the Approved Financing or under the Partnership Agreement). Developer's requirement to maintain the Operating Reserve shall terminate at such time as the Project has achieved a minimum annual debt service ratio of 1.15 for three (3) years following the date Developer has initially rented ninety-five percent (95%) of the Affordable Units to Eligible Tenants in accordance with the terms of this Regulatory Agreement.

"Partnership Agreement" means the agreement which sets forth the terms of Developer's limited partnership, as such agreement may be amended from time to time.

"Permanent Financing" means a loan in an amount not to exceed the amount of the Construction Financing from an Institutional Lender to be secured by a deed of trust against the Property which replaces the Construction Financing upon Developer's completion of the construction of the Project. If the Project is financed through issuance of Tax-Exempt Bonds, then Permanent Financing shall be understood to mean the proceeds of such Tax-Exempt Bonds.

"Planning Director" means the person duly appointed to the position of Planning Director of the County of Santa Cruz, or his or her designee. The Planning Director shall represent County in all matters pertaining to this Regulatory Agreement. Whenever a reference is made herein to an action or approval to be undertaken by County, the Planning Director is authorized to act unless this Regulatory Agreement specifically provides otherwise or the context should otherwise require.

"Project" means an affordable rental Project consisting of fifty-seven (57) residential dwelling units and all required on-site improvements necessary to serve the Project.

"Property" means that certain real property (i) consisting of approximately two and thirty-six hundredths (2.36) acres, (ii) located in the County of Santa Cruz, (iii) depicted on the Map, and (iv) described in the Legal Description.

"Regulatory Agreement" means this Regulatory Agreement.

"Release of Construction Covenants" means the document which evidences Developer's satisfactory completion of construction of the Project, as set forth in Section 10.16 of the Agreement, substantially in the form which is attached thereto as Attachment No. 12 and incorporated therein by reference.

"Scope of Development" means that certain Scope of Development which is attached to the Agreement as Attachment No. 4 and incorporated therein by reference. The Scope of Development describes the scope, amount and quality of the construction to be done by Developer pursuant to the terms and conditions of the Agreement and this Regulatory Agreement.

"Tax Credits" means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq*.

"Tax Credit Regulatory Agreement" means the regulatory agreement which may be required to be recorded against the Property with respect to the issuance of Tax Credits for the Project.

"Tax Credit Rules" means Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, and the rules and regulations implementing the foregoing, as the same may be amended from time to time.

"**Tax-Exempt Bonds**" means tax-exempt multi-family housing revenue bonds.

"TCAC" means the California Tax Credit Allocation Committee.

"**Water Board**" means Central Coast Regional Water Quality Control Board**.**

SECTION 2. COVENANTS REGARDING CONSTRUCTION OF THE IMPROVEMENTS.

Developer shall carry out the design, construction, and operation of the Project in compliance with applicable Governmental Requirements and all of the terms and conditions set forth in the Agreement.

SECTION 3. COVENANTS REGARDING USE.

3.01 Covenants To Use In Accordance With County Code And This Agreement. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that Developer shall devote the Property, in perpetuity, to the uses specified in the Santa Cruz County Code, and this Regulatory Agreement. All uses conducted on the Property, including, without limitation, all activities undertaken by Developer pursuant to this Regulatory Agreement, shall conform to all applicable provisions of the Santa Cruz County Code. The foregoing covenants shall run with the land.

3.02 Covenant Regarding Specific Uses. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that Developer shall use the Property, in perpetuity, to operate the Project.

3.03 Covenants Regarding Term And Priority Of Agreement. This Regulatory Agreement shall remain in effect in perpetuity, notwithstanding the payment in full of the County Loan. Developer's performance under this Regulatory Agreement is secured by the County Deed of Trust, and Developer shall not be entitled to a reconveyance of the County Deed of Trust; provided that, upon Developer's repayment of the County Loan, Developer shall be entitled to a partial reconveyance of the County Deed of Trust solely to release therefrom Developer's obligations to repay the County Loan. This Regulatory Agreement shall unconditionally be and remain at all times prior and superior to the liens created by the Construction Financing, the Permanent Financing, the Tax Credit Regulatory Agreement, Bond Regulatory Agreement, any other Additional Regulatory Agreement, and any other documents related to any of the foregoing and all of the terms and conditions contained therein, and to the lien of any new mortgage debt which is for the purpose of refinancing all or any part of the Construction Financing or Permanent Financing.

SECTION 4. COVENANTS REGARDING AFFORDABLE UNITS.

Developer shall provide for the Affordable Units in accordance with this Section.

4.01 Residential Use. Without County's prior written consent, which consent may be given or withheld in County's sole and absolute discretion, none of the Affordable Units in the Project will at any time be utilized on a transient basis or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park, nor shall the Affordable Units be used as a place of business except as may otherwise be allowed by applicable law.

4.02 Provision of Affordable Units; Conversion of 30% AMI Units and 40% AMI Units. Developer shall make available, restrict occupancy to, and rent the Affordable Units to Eligible Tenants, in perpetuity, at Affordable Rents. Notwithstanding anything to the contrary in this Regulatory Agreement, after the fifty-fifth (55th) anniversary of the occupancy of the Project, the 30% AMI Units and 40% AMI Units shall convert to 50% AMI Units; provided, however, that such conversion shall not occur with respect to any individual 30% AMI Unit or 40% AMI Unit until such 30% AMI Unit or 40% AMI Unit becomes vacant.

4.03 Selection of Tenants.

(a) Developer shall be responsible for the selection of tenants for the Affordable Units in compliance with all lawful and reasonable criteria, as set forth in the Marketing Plan. Developer shall not refuse to lease to (i) a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria, or (ii) an applicant who would be qualified to be a tenant in accordance with the approved tenant selection criteria but for a poor credit rating resulting from a foreclosure of a mortgage on a single family home previously owned by the applicant.

(b) The initial lease-up of the Affordable Units shall be done pursuant to a lottery. The Marketing Plan shall include procedures for conducting the lottery. A representative of County may, but shall not be obligated to, attend the lottery. Notwithstanding anything in this Agreement to the contrary, none of Developer or MidPen, and their respective officials, directors, and employees, and the immediate family members of their respective officials, directors, and employees shall be eligible to participate in the lottery for the initial lease-up of the Affordable Units. As used herein, the term “immediate family member” shall mean and include a parent or step-parent, grandparent or step-grandparent, sibling or step-sibling and child or step-child.

(c) Following the initial lease-up of the Affordable Units, Developer shall maintain a waiting list of persons interested in renting an Affordable Unit. Subject to Sections 4.05 and 4.07 below, at such time as an Affordable Unit becomes available for rental, Developer shall rent such Affordable Unit to the first person on the waiting list that qualifies as an Eligible Tenant to rent the Affordable Unit. Developer shall use commercially reasonable efforts to lease Affordable Units that become available as quickly as possible.

4.04 Occupancy By Eligible Tenant. An Affordable Unit occupied by an Eligible Tenant who qualified as an Eligible Tenant at the commencement of the occupancy shall be treated as occupied by an Eligible Tenant until a recertification of such Eligible Tenant’s income in accordance with Section 4.08 below demonstrates that such tenant no longer qualifies as an Eligible Tenant at the applicable income level. An Affordable Unit previously occupied by an Eligible Tenant and then vacated shall be considered occupied by an Eligible Tenant until the Affordable Unit is reoccupied, provided Developer

uses its best efforts to re-lease the vacant Affordable Unit to an Eligible Tenant. Any vacated Affordable Unit shall be held vacant until re-leased to an Eligible Tenant.

4.05 Occupancy Restrictions. The maximum number of occupants that may reside in an Affordable Unit shall be as follows: three (3) persons in a one (1) bedroom Affordable Unit; five (5) persons in a two (2) bedroom Affordable Unit; seven (7) persons in a three (3) bedroom Affordable Unit; and nine (9) persons in a four (4) bedroom Affordable Unit. Notwithstanding the foregoing, if a household that was in compliance upon initial occupancy thereafter increases in number, such that such household exceeds the maximum occupancy allowed pursuant to this Section 4.05, and there exist Affordable Units of the size necessary to accommodate such household, then Developer shall place the household at the top of the waiting list for a unit of the appropriate size, and Developer shall not be default hereunder during such time as the household is waiting for an Affordable Unit of the appropriate size to become available. Developer shall comply with all applicable minimum occupancy restrictions promulgated by HUD, TCAC, and/or any other applicable funding source. Notwithstanding the foregoing, the minimum household size for an Affordable Unit shall be one (1) person per bedroom.

4.06 Income Computation and Certification. Immediately prior to an Eligible Tenant's occupancy of an Affordable Unit, Developer shall obtain an Income Computation and Certification Form in the form attached hereto and incorporated herein as Exhibit "C", or on a similar form required by any Additional Regulatory Agreement if such form requires inclusion of the same information as required in Exhibit "C" (or, if such form does not require inclusion of the same information as required in Exhibit "C", then in addition to providing such form, Developer shall also separately provide all of the information required in Exhibit "C" that is not required to be included by such form), from each such Eligible Tenant dated no more than one hundred twenty (120) days prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, Developer shall provide such further information as may be reasonably required in the future by County for purposes of verifying a tenant's status as an Eligible Tenant. Developer shall use good faith efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process:(i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from the applicant's current employer; (iii) obtain an income verification form from the Social Security Administration, California Department of Social Services, and/or California Employment Development Department if the applicant receives assistance from any of said agencies; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other evidence and/or verification of such applicant's total income received during the calendar year from any source, taxable or nontaxable, or such other information as is satisfactory to County. Developer shall maintain in its records each Income Computation and Certification Form obtained pursuant to this section for a minimum of five (5) years.

4.07 Rental Priority. Subject to all applicable Governmental Requirements, and any funding obtained by Developer to operate and/or develop the Project that has been approved by County, during the term of this Regulatory Agreement, Developer shall use its reasonable commercial efforts to lease the Affordable Units to Eligible Tenants in the following order of priority: (a) Eligible Tenants who have been or will be displaced by an

activity of the Successor Agency or County, or (b) Eligible Tenants who live and/or work in the County.

4.08 Recertification. Within one hundred twenty (120) days prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Tenant, and on each anniversary date thereafter, Developer shall recertify the income of such Eligible Tenant by obtaining a completed Income Recertification Form, in the form attached hereto and incorporated herein as Exhibit "D", based upon the current income of each known occupant of the Affordable Unit; provided, however, that if any Additional Regulatory Agreement requires Developer to obtain a recertification form which requires inclusion of the same information as required in Exhibit "D" (or, if such recertification form does not require inclusion of the same information as required in Exhibit "D", then in addition to providing such form, Developer shall also separately provide all of the information required in Exhibit "D" that is not required to be included by such form), then Developer shall not be deemed to be in default hereunder if during the term of such Additional Regulatory Agreement Developer obtains from each Eligible Tenant the recertification form required pursuant to said Additional Regulatory Agreement.

If, after renting an Affordable Unit (the "**Original Unit**"), the household income increases above the income level permitted for the Original Unit, but meets the income level permitted for another Affordable Unit at the Project (the "**Other Unit**"), the household shall continue to be permitted to reside in the Original Unit provided that Developer shall increase the rent for the Original Unit to the rent level designated for the Other Unit, and shall restrict and designate subsequent available Affordable Units as necessary to obtain the affordability mix required by this Agreement.

If, after renting an Affordable Unit, the household income increases above the income level permitted for an 80% Unit, that household may not be permitted to remain in the unit unless requiring such household to move will violate the Tax Credit Rules. In such event, Developer shall notify County in writing of such occurrence, and shall inform County of (1) its plans for removing the household from the Affordable Unit, or (2) the specific rule in the Tax Credit Rules that prohibits such action providing written evidence of the same.

4.09 Certification of Continuing Program Compliance. During the term of this Regulatory Agreement, on or before each July 1 following the date County issues a Release of Construction Covenants for the Project, Developer shall annually advise County of the occupancy of the Project during the preceding calendar year by delivering a Certification of Continuing Program Compliance in the form attached hereto and incorporated herein as Exhibit "E", stating (i) the Affordable Units of the Project which have been rented to and are occupied by Eligible Tenants and (ii) that to the knowledge of Developer either (a) no unremedied default has occurred under this Regulatory Agreement, or (b) a default has occurred, in which event said certification shall describe the nature of the default and set forth the measures being taken by Developer to remedy such default.

4.10 Leases; Rental Agreements for Affordable Units. Developer shall enter into a written lease, the form of which shall comply with the requirements of this Regulatory Agreement, which each tenant/tenant household of the Affordable Units. Developer shall

submit the form of lease, or a copy of any executed lease, to County upon written request by County.

4.11 Reliance on Tenant Representations. Each tenant lease shall contain a provision to the effect that Developer has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

4.12 Monitoring and Record Keeping. Representatives of County shall be entitled to enter the Property during normal business hours, upon not less than twenty-four (24) hours' notice, to monitor compliance with this Regulatory Agreement, to inspect the records of the Property, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with County in making the Property and all Affordable Units thereon available for such inspection or audit. Developer agrees to maintain records in a businesslike manner, and to maintain copies of original tenant certifications for fifteen (15) years (or such longer period as required under the Tax Credit Rules) and all other records pertaining to the Project for five (5) years.

4.13 Remedy For Violation of Rental Requirements.

(a) It shall constitute a default for Developer to charge or accept for any Affordable Unit rent amounts in excess of the amount provided for in Section 4.02 of this Regulatory Agreement. In the event that Developer charges or receives such higher rental amounts, Developer shall be required to reimburse the tenant that occupied said Affordable Unit at the time the excess rent was received for the entire amount of such excess rent received, provided that such tenant can be found following reasonable inquiry, and to pay to such tenant interest on said excess amount, at the rate of six percent (6%) per annum, for the period commencing on the date the first excess rent was received from said tenant and ending on the date reimbursement is made to the tenant. For purposes of this Section 4.13, "reasonable inquiry" shall include Developer's review of information provided by the tenant as part of the tenant's application, and forwarding information provided by the tenant, and Developer's reasonable attempts to contact the tenant and any other persons listed in either of such documents. If, after such reasonable inquiry, Developer is unable to locate the tenant, Developer shall pay all of such amounts otherwise to be paid to the tenant to County.

(b) Except as otherwise provided in this Regulatory Agreement, it shall constitute a default for Developer to knowingly (or without investigation as required herein) initially rent any Affordable Unit to a tenant who is not an Eligible Tenant. In the event Developer violates this Section, in addition to any other equitable remedy County shall have for such default, Developer, for each separate violation, shall be required to pay to County an amount equal to (i) the greater of (A) the total rent Developer received from such ineligible tenant, or (B) the total rent Developer was entitled to receive for renting that Affordable Unit, plus (ii) any relocation expenses incurred by County as a result of Developer having rented to such ineligible person. The terms of this Section shall not apply if Developer rents to an ineligible person as a result of such person's fraud or misrepresentation.

(c) It shall constitute a default for Developer to knowingly (or without investigation as required herein) rent an Affordable Unit in violation of the leasing preference requirements of Section 4.07 of this Regulatory Agreement. In the event Developer violates this Section, in addition to any other equitable remedy County shall have for such default, Developer, for each separate violation, shall be required to pay County an amount equal to the greater of (A) the total rent Developer received from such ineligible tenant, or (B) the total rent Developer was entitled to receive for renting that Affordable Unit.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN THIS SECTION 4.13 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT COUNTY WOULD SUFFER DUE TO THE DEFAULTS BY DEVELOPER SET FORTH IN THIS SECTION 4.13, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF REGULATORY AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO COUNTY AND ACCOMPLISHMENT OF COUNTY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION 4.13 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION 4.13, BUT NOTHING IN THIS SECTION 4.13 SHALL BE INTERPRETED TO LIMIT COUNTY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY AND IN THAT REGARD COUNTY MAY DECLARE A DEFAULT UNDER THE TERMS OF THE COUNTY NOTE, THE AGREEMENT, OR OTHER AGREEMENTS ENTERED INTO BY AND BETWEEN COUNTY AND DEVELOPER. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS REGULATORY AGREEMENT.

DEVELOPER'S INITIALS: COUNTY'S INITIALS:

_____ _____

4.14 Relationship to Additional Regulatory Agreements. Notwithstanding any other provisions set forth in this Regulatory Agreement and subject to the following sentence, to the extent that the provisions related to tenant selection, tenant income levels and unit rent levels set forth in any Additional Regulatory Agreement are less restrictive than those provisions set forth in this Section 4, then the provisions set forth in this Section 4 shall govern and control. To the extent of any inconsistency between this Regulatory Agreement and any Additional Regulatory Agreement regarding Affordable Rent for the Affordable Units, the more restrictive agreement or covenants shall prevail unless compliance with such more restrictive provisions would violate the provisions of the less restrictive document.

Developer agrees to perform all of Developer's obligations under this Regulatory Agreement, and under each of the Additional Regulatory Agreements. In the event County is prevented by a final, non-appealable order of a court of competent jurisdiction in a lawsuit involving the Project, or by an applicable and binding published appellate opinion, or by a final, non-appealable order of a regulatory body having jurisdiction, from enforcing, for any reason, the affordability restrictions set forth in this Regulatory Agreement or in the Agreement, then in such event, unless prohibited to TCAC, County shall be a third-party beneficiary under the Additional Regulatory Agreements, and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default hereunder.

4.15 AHAP Contract; HAP Contract; PBV Units. Developer shall use commercially reasonable efforts to secure and enter into an AHAP Contract and HAP Contract, and to continually renew such contracts throughout the term of this Regulatory Agreement. Notwithstanding anything to the contrary in this Regulatory Agreement, during the term of any HAP Contract for the Property, the Affordable Units subject to project-based-voucher assistance pursuant to the HAP Contract (the "**PBV Units**") shall be subject to the tenant selection and rental requirements and restrictions set forth in the HAP Contract, and to the extent that with respect to the PBV Units there is a conflict between the terms of this Regulatory Agreement and the terms of the HAP Contract, then with respect to the PBV Units the terms of the HAP Contract shall control. For the avoidance of doubt, the PBV Units shall not be subject to the tenant selection and priority requirements set forth in Sections 4.03 and 4.07 of this Regulatory Agreement. Any effective AHAP Contract and HAP Contract shall constitute an Additional Regulatory Agreement.

SECTION 5. COVENANT TO PAY TAXES AND ASSESSMENTS.

Developer shall pay prior to delinquency all ad valorem real estate taxes, special taxes, assessments and special assessments levied against the Property, subject to Developer's right to contest any such tax in good faith and any property tax exemption.

SECTION 6. COVENANTS REGARDING MAINTENANCE.

Developer shall maintain the Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the County Code, and in accordance with HUD's Housing Quality Standards. Developer shall maintain the improvements and landscaping on the Property in accordance with the "Maintenance Standards," as hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Regulatory Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards (the "**Maintenance Standards**"):

(a) The Property shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable high quality, well-managed apartment complexes, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths, and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves, and other debris are properly disposed of by maintenance workers.

Upon County's written notification to Developer of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency, or such longer period as is reasonably necessary to complete the cure, provided Developer commences the correction, remedy, or cure within such thirty (30) day period and diligently pursues such correction, remedy, or cure to completion.

SECTION 7. COVENANTS REGARDING MANAGEMENT.

Developer shall provide for the management of the Project in accordance with this Section.

7.01 Property Manager. Developer shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with property management standards for other comparable high quality, well-managed rental housing projects and commercial developments in Santa Cruz County, California. Developer may contract with a property management company or property manager to operate and maintain the Project in accordance with the terms of this Section ("**Property Manager**"); provided, however, the selection and hiring of the Property Manager (and each successor or assignee) is and shall be subject to prior written approval of County. Developer shall conduct due diligence and background evaluation of any potential outside property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have prior experience with projects and properties comparable to the Project and the references and credit record of such manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to County for review and approval. A complete and true copy

of the results of such background evaluation shall be provided to County. Approval of a Property Manager by County shall not be unreasonably withheld or delayed and shall be in County's reasonable discretion, and County shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing management of the Project. Furthermore, the identity and retention of any approved Property Manager shall not be changed without the prior written approval of County, which approval shall not be unreasonably delayed, and shall be in County's reasonable discretion. The selection by Developer of any new Property Manager also shall be subject to the foregoing requirements. County hereby approves MidPen Property Management as the initial Property Manager.

7.02 Management Plan. Not less than ninety (90) days prior to County's issuance of a certificate of occupancy, Developer shall prepare and submit to the Planning Director for review and approval an updated and supplemented management plan which includes a detailed plan and strategy for long-term marketing for the Affordable Units, operation, maintenance, repair, and security of the Project, method of selection of tenants, rules and regulations for tenants, and other rental policies for the Affordable Units (the "**Management Plan**"). Subsequent to approval of the Management Plan by the Planning Director, the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. Developer and Property Manager may from time to time submit to the Planning Director proposed amendments to the Management Plan, which are also subject to the prior written approval of the Planning Director.

7.03 Social Services. Prior to and as one of Successor Agency's conditions to the Close of Escrow under the Agreement, Developer shall have prepared and submitted to the Planning Director for review and approval a resident services plan (the "**Resident Services Plan**"). Developer shall provide a variety of social services at the Project; as set forth in the Resident Services Plan. No changes may be made to the Resident Services Plan without the prior written approval of the Planning Director, which shall be given or withheld in his or her reasonable discretion. Developer's social service program shall be targeted to the needs of the residents of the Project which shall include, in addition to all of the services listed in Developer's applications for Tax Credits and Tax-Exempt Bonds (applicable only if Developer finances the Project with Tax-Exempt Bonds), the following services: after school programs of an ongoing nature for school age children, and the availability of a services coordinator to the tenants. Developer shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled, including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive change in the scope, amount, or type of supportive services to be provided at the Property, whether or not such change requires a change to the Resident Services Plan, shall be subject to prior reasonable approval of County. County shall respond to any such proposed changes within thirty (30) days after submittal to County by Developer.

7.04 Gross Mismanagement. In the event of "Gross Mismanagement" (as that term is defined below) of the Affordable Units or any part of the Project, County shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct

and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of Notice from County. If such condition(s) acts, or inactions of gross mismanagement do persist beyond such period, County shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) replace the Property Manager with a new property manager of County's selection at the sole cost and expense of Developer. If Developer takes steps to select a new property manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Regulatory Agreement, the term "**Gross Mismanagement**" shall mean management of any part of the Project in a manner which materially violates the terms and/or intention of this Regulatory Agreement to operate a high quality, well-managed residential complex, and shall include, but is not limited to, any one or more of the following:

(a) knowingly leasing Affordable Units to tenants who exceed the prescribed income levels;

(b) knowingly allowing the tenants of Affordable Units to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

(c) underfunding Capital Replacement or Operating Reserve accounts, unless funds are not available to deposit in such accounts;

(d) failing to timely maintain the Project in accordance with the Management Plan and the manner prescribed herein;

(e) failing to submit timely and/or adequate annual reports to County as required herein;

(f) committing fraud or embezzlement with respect to Project funds, including without limitation funds in the reserve accounts;

(g) failing to reasonably cooperate with the County of Santa Cruz Sheriff's Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;

(h) failing to reasonably cooperate with the County Fire District or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(i) failing to reasonably cooperate with the County Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Property and/or Project, in maintaining a safe environment within the Project; and

(j) spending funds from the Capital Reserve account(s) for items that are not defined as capital costs under the standards imposed by generally accepted

accounting principles (GAAP) (and/or, as applicable, generally accepted auditing principles.)

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Regulatory Agreement within any contract between Developer and its Property Manager.

7.05 Property Inspections. Developer acknowledges and agrees that County and its employees and authorized agents shall have the right to conduct inspections of the Project and the individual Affordable Units, both exterior and interior, at reasonable times and upon reasonable notice (not less than 48 hours prior notice) to Developer and/or an individual tenant. If such notice is provided by the County or its representative(s) to Developer, then Developer (or its Property Manager) shall immediately and directly advise tenants of such upcoming inspection and cause access to the area(s) and/or units to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Affordable Unit in order for each and every tenant and tenant household to be aware of this inspection right.

7.06 Drug Free Covenant. Developer shall use its best efforts to maintain a drug free environment on the Property. Developer covenants to County that Developer shall use its best efforts to ensure that all persons working or residing on the Property shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as said term is defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007 (or successor statutes) on the Property.

SECTION 8. COVENANTS REGARDING NONDISCRIMINATION.

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

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the rental, sale or lease of the Property, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds,

leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In deeds**: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) **In leases**: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) **In contracts**: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of County, its successors and assigns, and any successor in interest to the Property, together with any property acquired by Developer pursuant to this Regulatory Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity.

SECTION 9. OPERATING BUDGET OR ANNUAL BUDGET; ANNUAL AND QUARTERLY REPORTS

9.01 Operating Budget**.** Developer shall submit to County on or before November 1 of each year an operating budget for the Project ("**Operating Budget**" or "**Annual Budget**"), which budget, including the format thereof, shall be subject to the written approval of the Planning Director or designee, which approval shall not be unreasonably withheld or conditioned so long as such budget is not inconsistent with this Regulatory Agreement. The Planning Director's discretion in review and approval of each proposed annual Operating Budget or Annual Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including (as applicable), but not limited to, water, sewer, trash collection, gas, and electricity; maintenance and repairs including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial supplies; resident services pursuant to the Resident Services Plan; additional supportive services necessary to help residents maintain personal or household stability and housing status; any license or certificates of occupancy fees required for operation of the Project; general administrative expenses, including, but not limited to, advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by County (which such approval will not be unreasonably withheld); asset management fees; annual cash deposited into the Capital Replacement Reserve in an amount approved by County pursuant to Section 1 above, provided any changes to the amount deposited into the Capital Replacement Reserve will require County approval unless such change is a higher amount that is required by Developer's senior lender or the Investor, pursuant to the terms of the Partnership Agreement; cash deposited into the Operating Reserve for the Project and such other reserves as may be required by Developer's senior lender or the Investor; and debt service payments of loans in senior position to this loan . In the event Developer requires an amendment to an approved Annual Budget, then Developer shall submit a written request to the Planning Director explaining the requested amendment and reasons therefor; the Planning Director shall reasonably review and approve (or disapprove) each request for an amendment to an approved Annual Budget. The Planning Director shall communicate to Developer his or her reasonable approval or disapproval of a proposed annual Operating Budget or Annual Budget within thirty (30) days after receipt thereof; as to each amendment, the Executive Developer shall communicate to Developer his or her reasonable approval or disapproval within fifteen (15) days after receipt of a complete submittal requesting an amendment to an approved Annual Budget. In the event the Planning Director fails to approve a proposed annual Operating Budget or Annual Budget within thirty (30) days after receipt thereof, Developer may operate the Project in accordance with such proposed annual Operating Budget or Annual Budget until the Planning Director notifies Developer that such proposed annual Operating Budget or Annual Budget is not approved; provided, however, that in such case any expenditure made by Developer prior to the Planning

Director's notification that the proposed annual Operating Budget or Annual Budget is not approved shall be deemed an approved expenditure.

9.02 Annual Reports. Developer covenants and agrees to submit to County an annual report (the "Annual Report"), which shall include the information required by California Health & Safety Code Section 33418.The Annual Report shall include for each Affordable Unit the rental rate and the income and family size of the occupants. The Developer shall submit the Annual Report on or before September 1st of the year following the year covered by the Annual Report. The Developer shall provide for the submission of household information and certification in its leases with tenants.

9.03 Quarterly Reports. Upon execution of this Regulatory Agreement and until permanent loan conversion, Developer shall also submit on a quarterly basis a quarterly report for the management of the Property (the "**Quarterly Report**"). The Quarterly Report shall describe the Project-related tasks performed in the past 3 months and the expected Project-related tasks to be performed in the upcoming 3 months. The report should include an updated Project schedule, including a schedule for completing milestones and/or tasks, and should indicate the status of the Project in relationship to this timeline. Developer shall document any changes from the timeline submitted with the most recent funding application. From time to time, County may request from Developer an updated Project pro forma which shall include a development budget with sources and uses, debt sizing, calculations and pricing for the Tax Credits, 30-year operating pro forma, base year income projection, and maintenance and operating expenses; Developer will have thirty (30) days to satisfy such request. The Quarterly Report shall be in a form that is reasonably acceptable to the Planning Director. The Planning Director, in his/her sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver shall not operate to waive any subsequent requirement of the Quarterly Report. After receipt of such certified financial statements for the Project, County may request additional financial analysis or obtain a third party review at County's own expense, of financial statements for the Project to verify the accuracy of the payments by Developer on the County Note or the required deposits into the Capital Replacement Reserve.

SECTION 10. COVENANTS REGARDING CAPITAL REPLACEMENT RESERVE.

Promptly upon the conversion of Developer's Construction Financing to Permanent Financing, Developer shall establish the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements, and replacements to the Project fixtures and equipment which may be capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to County an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Project shall include only those items with a long useful life, including, without limitation, the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures

replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting.

SECTION 11. COVENANTS REGARDING OPERATING RESERVE.

Promptly upon conversion of Developer's Construction Financing to Permanent Financing, Developer shall establish the Operating Reserve. The Operating Reserve shall be used to cover shortfalls between Annual Project Revenue and actual operating expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve. Developer shall, not less than once per every twelve (12) months, submit to County evidence reasonably satisfactory to County of compliance herewith.

SECTION 12. EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS REGULATORY AGREEMENT AFTER COMPLETION OF CONSTRUCTION.

County is deemed the beneficiary of the terms and provisions of this Regulatory Agreement and of the covenants running with the land, without regard to whether County has been, remains or is an owner of any land or interest therein in the Property or in the Project. County shall have the right, if this Regulatory Agreement or any of the covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Regulatory Agreement and covenants may be entitled. The County is hereby deemed to be a third party beneficiary of this Regulatory Agreement and the covenants contained herein with the right, but not the obligation, to enforce the terms hereof. Except as provided in the following sentence, the covenants contained in this Regulatory Agreement shall remain in effect until the expiration of the Affordability Period. The covenants regarding discrimination as set forth in Section 8 shall remain in effect in perpetuity.

SECTION 13. COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS.

13.01 Compliance With Laws. Developer shall comply with (i) all Governmental Requirements applicable to the Project and/or Property, (ii) any permit issued pursuant to the National Pollutant Discharge Elimination System ("**NPDES**") and applicable to the Project and/or Property, and (iii) all rules and regulations of any assessment district of the County with jurisdiction over the Property.

13.02 Indemnity. Developer shall save, protect, defend, indemnify and hold harmless County and Successor Agency and County and Successor Agency Personnel from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines, and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees, and remedial and response costs) (the

foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by any of County and Successor Agency and County and Successor Agency Personnel by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result of (i) Developer's failure to comply with all applicable Governmental Requirements; (ii) Developer's failure to comply with any applicable NPDES permit; (iii) Developer's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination, (iv) Developer's breach of its obligations under Section 13.03 and Section 13.04 hereinafter; or (v) any Liabilities incurred under any Governmental Requirements relating to the acts described in the foregoing clauses (i), (ii), (iii), and (iv). Except for obligations assumed by Developer in Section 13.03 and Section 13.04 hereinafter, Developer shall have no indemnity obligation to any of the County and Successor Agency and County and Successor Agency Personnel for any Liabilities arising from or related to Successor Agency's or County's failure to comply with any Governmental Requirements, whether known or unknown, that existed or arose prior to the Date of Regulatory Agreement, regardless of when such Liabilities may accrue.

13.03 Duty to Prevent Hazardous Material Contamination. Developer shall take commercially reasonable action to prevent the exacerbation of an existing release of any Hazardous Materials located on the Property and the release of any new Hazardous Materials to the Property after the Date of Regulatory Agreement. For the avoidance of ambiguity only, nothing in the previous sentence shall limit Developer from maintaining Hazardous Materials existing on the Property prior to the Date of Regulatory Agreement or consolidating such Hazardous Materials on the Property, all to the extent permitted by Law. Developer's duty to prevent Hazardous Materials Contamination shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in Santa Cruz County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

13.04 Obligation of Developer to Remediate Premises. Notwithstanding the obligation of Developer to indemnify County and Successor Agency and County and Successor Agency Personnel pursuant to Section 13.02, and provided no Hazardous Materials exist on the Property as a result of either County or Successor Agency's actions, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Regulatory Agreement and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property, of any Hazardous Materials or Hazardous Materials Contamination. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work.

13.05 Environmental Inquiries. Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination,

or when Developer is required to report to any governmental agency any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination, shall concurrently notify the Planning Director, and provide to him/her a copy or copies, of the environmental permits, disclosures, applications, entitlements, or inquiries relating to the Property, the notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the Planning Director, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment in violation of law, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Planning Director a notification that the release occurred and a copy of any and all test results and final reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Planning Director, Developer shall furnish to the Planning Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits, test results and final reports including, without limitation, those reports and other matters which may be characterized as confidential. For the avoidance of ambiguity only, Developer shall be under no obligation to furnish any attorney-client privileged documents; provided, however, that Developer may not withhold from County facts regarding a violation of law that affects the Property

SECTION 14. INSURANCE REQUIREMENTS.

14.01 General. Commencing on the Date of Regulatory Agreement and continuing in perpetuity, Developer shall procure and maintain, at its sole cost and expense, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects County and any insurance or self-insurance maintained by County shall be considered in excess of Developer's insurance coverage and shall not contribute to it. If Developer normally carries insurance in an amount greater than the minimum amount required by County for this Regulatory Agreement, that greater amount shall become the minimum required amount of insurance for purposes of this Regulatory Agreement. Therefore, Developer hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Regulatory Agreement. Insurance is to be obtained from insurers reasonably acceptable to County.

If Developer utilizes one or more subcontractors in the performance of this Regulatory Agreement, Developer shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of Developer in this Regulatory Agreement, unless Developer and County both initial here ____ / ____.

14.02 Types of Insurance and Minimum Limits

(1) Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the Developer has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of Developer's vehicles used in the performance of this Regulatory Agreement, including owned, non-owned (e.g. owned by Developer's employees), leased or hired vehicles, in the minimum amount of $1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the Developer does not drive a vehicle in conjunction with any part of the performance of this Regulatory Agreement and Developer and County both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of $3,000,000 per occurrence, and $5,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of $_____combined single limit, if, and only if, this subparagraph is initialed by Developer and County ____ /____.

(5) Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as (i) County issues a final certificate of occupancy (or equivalent document, if County does not issue certificates of occupancy), and (ii) County issues a Release of Construction Covenants for the Project pursuant to the terms of the Agreement, and storage and transportation risks. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. County shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement. Notwithstanding anything to the contrary in this Section14.02, however, Developer's requirement to maintain the insurance required by this paragraph shall terminate on the date County issues a Release of Construction Covenants for the Project pursuant to the terms of the Agreement.

(6) Insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Santa Cruz County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent required by any Project lender or Investor. County shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement. Notwithstanding anything to the contrary in this Section14.02, however, Developer's

requirement to maintain the insurance required by this paragraph shall not commence until the date County issues a Release of Construction Covenants for the Project pursuant to the terms of the Agreement.

(7) Business interruption and extra expense insurance to protect Developer and County covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period. Notwithstanding anything to the contrary in this Section14.02, however, Developer's requirement to maintain the insurance required by this paragraph shall not commence until the date County issues a Release of Construction Covenants for the Project pursuant to the terms of the Agreement.

(8) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. Notwithstanding anything to the contrary in this Section14.02, however, Developer's requirement to maintain the insurance required by this paragraph shall not commence until the date County issues a Release of Construction Covenants for the Project pursuant to the terms of the Agreement.

14.03 Other Insurance Provisions

(1) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover Successor Agency and the County of Santa Cruz, and their respective officials, officers, members, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of Developer, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(2) All required policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days' prior written notice (10 days for nonpayment of premium) has been given to:

Santa Cruz County
Planning Department
Attn: Housing Manager
701 Ocean Street, Room 418
Santa Cruz, CA 95060

Should Developer fail to obtain such an endorsement to any policy required hereunder, Developer shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the County as a material term of this Agreement.

(3) Developer agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide County on or before the Date of Regulatory Agreement with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

Santa Cruz County
Planning Department
Attn: Housing Manager
701 Ocean Street, Room 418
Santa Cruz, CA 95060

(4) Developer hereby grants to County a waiver of any right of subrogation which any insurer of said Developer may acquire against County by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

14.04 Developer's Continuing Indemnification Obligations. Developer agrees that the provisions of this Section shall not be construed as limiting in any way County's right to indemnification or the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

14.05 Remedies for Defaults Re: Insurance. In addition to any other remedies County may have, if Developer commits a default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, County may at its sole option, obtain such insurance and invoice the Developer for the amount of said premium. Exercise of the remedy set forth herein, however, is an alternative to other remedies County may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

14.06 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall, subject to the rights of the lender providing Construction Financing or Permanent Financing, promptly proceed to obtain all available insurance proceeds and, to the extent proceeds are available, take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as it existed prior to the

casualty, and Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Regulatory Agreement. County shall cooperate with Developer, at no expense to County, in an effort to obtain any governmental permits required for such repair, replacement, or restoration.

14.07 Indemnification. Developer shall defend (by counsel reasonably satisfactory to County), assume all responsibility for and hold County and Successor Agency and County and Successor Agency Personnel harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorney's fees and costs), which may be caused by the activities or performance of Developer or any of Developer's employees, agents, representatives, contractors, or subcontractors under (i) this Regulatory Agreement, (ii) a claim, demand or cause of action that any person has or asserts against Developer; (iii) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property; or (iv) the ownership, occupancy or use of the Property by Developer, whether such damage shall accrue or be discovered before or after termination of this Regulatory Agreement. The obligations and indemnifications in this Section 14.07 shall constitute covenants running with the land.

SECTION 15. ASSIGNMENT.

15.01 Generally Prohibited. Except as otherwise expressly provided to the contrary in this Regulatory Agreement, Developer shall not assign any of its rights or delegate any of its duties under this Regulatory Agreement, nor shall any changes occur with respect to the ownership and/or control of Developer, including, without limitation, stock transfers, sales of issuances, or transfers, sales or issuances of membership or ownership interests, or statutory conversions, without the prior written consent of the Planning Director, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at County's option, be void. Notwithstanding the foregoing, however, (i) Developer may admit Developer's Tax Credit investor (the "**Investor**") as a 99.99% Tax Credit limited partner without obtaining any consent, and such Investor may assign its interests as a 99.99% Tax Credit limited partner to a subsequent reputable institutional investor without any consent; and (ii) Developer may transfer the Project to MidPen or an Affiliate of MidPen pursuant to the right of first refusal or purchase option entered into between MidPen and the Partnership at the Close of Escrow pursuant to the Partnership Agreement; and (iii) the Investor may remove the general partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably acceptable to County. For purposes of this Section 15.01, if the Investor transfers to an entity in which the Investor or an Affiliate of the Investor is the general partner or managing member such transferee entity shall be deemed to be a "reputable institutional investor." This Section 15.01 shall not be applicable to the leasing of Affordable Units to Eligible Tenants in accordance with this Regulatory Agreement.

15.02 Release of Developer. Upon any such assignment made in compliance with Section 15.01 above which is evidenced by a written assignment and assumption agreement in a form approved by County's counsel, Developer shall be released from

any liability under this Regulatory Agreement arising from and after the date of such assignment.

SECTION 16. DEFAULTS AND REMEDIES.

16.01 Default. Subject to the extensions of time set forth in Section 17.02 of this Regulatory Agreement, failure by either Party to perform any action or covenant required by this Regulatory Agreement or under the Agreement within the time periods provided herein and therein following Notice and failure to cure as described hereafter, constitutes a "Default" under this Regulatory Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Regulatory Agreement or in the Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such Notice, cures, corrects or remedies such failure or delay, or if such Default cannot reasonably be cured within thirty (30) days, such Party commences such cure within thirty (30) days of receipt of such Notice and thereafter diligently prosecutes such cure to completion.

16.02 Remedies; Institution of Legal Actions. Developer's sole remedy for County's breach of this Regulatory Agreement shall be to institute an action at law or equity to seek specific performance of the terms of this Regulatory Agreement. Developer shall not be entitled to recover damages for any Default of County hereunder. County shall be entitled to seek any remedy available at law and in equity for Developer's breach of this Regulatory Agreement. All legal actions must be instituted in the Superior Court of the County of Santa Cruz, State of California, or in the United States District Court for District of California in which Santa Cruz County is located.

16.03 Termination by County. In the event that Developer is in Default of this Regulatory Agreement or the Agreement, and (i) such Default is material and (ii) Developer fails to cure such Default within the time set forth in Section 16.01 hereof, then County may, at County's option, terminate this Regulatory Agreement.

16.04 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against County, service of process on County shall be made by personal service upon the Planning Director or in such other manner as may be provided by law. In the event that any legal action is commenced by County against Developer, service of process on Developer shall be made in such manner as may be provided by law.

16.05 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Regulatory Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

16.06 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to

institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

16.07 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Regulatory Agreement, without regard to conflict of law principles.

SECTION 17. GENERAL PROVISIONS.

Notices, Demands and Communications Between the Parties. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement or which any party may desire to give the other ("**Notices**") shall be given in writing to the appropriate party, and shall be (a) delivered personally, (b) sent as a PDF or similar attachment to an e-mail, provided that such e-mail shall be followed with a hard copy sent by first-class mail, postage prepaid, within one (1) business day, (c) sent by certified mail, postage prepaid, or (d) sent by a reputable delivery service which provides a receipt with the time and date of delivery, addressed to a party, at the addresses set forth below, or to such other address as said party may hereafter or from time to time designate by written notice to the other party. All Notices shall be addressed as follows:

If to Developer:	MP Live Oak Associates, L.P. c/o MidPen Housing Corporation 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Attn: Jan Lindenthal Telephone No.: 650-356-2919 E-mail: jlindenthal@midpen-housing.org
If to County:	County of Santa Cruz 701 Ocean Street, Room 418 Santa Cruz, CA 95060 Attn: Planning Director Reference: 17th & Capitola Redevelopment Project Telephone No.: 831-454-2332 E-mail: HousingProgramsInfo@santacruzcounty.us
with a copy to	Rutan & Tucker, LLP 18575 Jamboree Road, 9th Floor Irvine, CA 92612 Attn: Allison LeMoine-Bui, Esq. Telephone No.: 714-641-5100 E-mail: alemoine-bui@rutan.com

Notice given by United States Postal Service or delivery service as provided herein shall be considered given on the earlier of the date on which said notice is actually received by the party to whom such notice is addressed, or as of the date of delivery, whether accepted or refused, established by the United States Postal Service return receipt or such overnight carrier's receipt of delivery, as the case may be. Notice given

by e-mail attachment as provided above shall be deemed given on the date on which the e-mail was sent, provided the recipient has confirmed receipt as evidenced by sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement, provided that, if recipient has not confirmed receipt of any notice or other communication to be delivered by e-mail attachment as provided above, notice shall be deemed given on the next business day, provided the such e-mail was followed up with a hard copy as required above). Any such notice not so given shall be deemed given upon receipt of the same by the party to which it is addressed.

Addresses for notice may be changed from time to time by notice to the other Party. Notwithstanding that Notices shall be deemed given when delivered, the non-receipt of any Notice as the result of a change of address of which the sending Party was not notified shall be deemed receipt of such Notice.

17.01 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Regulatory Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Regulatory Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine; restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of County which shall not excuse performance by County); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Regulatory Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Times of performance under this Regulatory Agreement may also be extended in writing by the mutual agreement of County and Developer. Notwithstanding any provision of this Regulatory Agreement to the contrary, the lack of funding to complete the construction of the Project shall not constitute grounds of enforced delay pursuant to this Section.

17.02 Relationship Between County and Developer. It is hereby acknowledged by Developer that with the exception of any membership interest of County in the general partner of Developer, the relationship between County and Developer is not that of a partnership or joint venture and that County and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, with the exception of (i) any membership interest of Landlord in the general partner of Tenant, and (ii) any provisions expressly set forth to the contrary in the Agreement, herein, or in the exhibits hereto, County shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. Developer agrees to indemnify, hold harmless and defend County from any claim made against County arising from a claimed relationship of partnership or joint venture between County and

Developer with respect to the development, operation, maintenance or management of the Property or the Project, except to the extent occasioned by the active negligence or willful misconduct of County or its designated agents or employees.

17.03 No Third Party Rights. The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Regulatory Agreement or of any covenant, duty, obligation or undertaking established herein.

17.04 County Approvals and Actions. This Regulatory Agreement shall be administered and executed on behalf of County by the Planning Director. The Planning Director shall have the authority to issue interpretations, waive terms and conditions, enter into implementing agreements and amendments of this Regulatory Agreement on behalf of County provided that such actions do not substantially change the uses or development permitted on the Property, materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of County provided herein, or materially decrease the revenues or other compensation to be received by County hereby. All other waivers or amendments shall require the formal consent of the Board of Directors of County.

17.05 Counterparts. This Regulatory Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

17.06 Integration. This Regulatory Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Regulatory Agreement. Each Party is entering this Regulatory Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material. This Regulatory Agreement constitutes the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

17.07 Real Estate Brokerage Commission. County and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

17.08 Attorneys' Fees. In any action between the Parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with, any of the terms or provisions of this Regulatory Agreement, the prevailing Party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs, expenses including, without limitation, litigation costs, reasonable attorneys' fees, and expert witness fees.

17.09 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Regulatory Agreement or of any of its terms. Reference to section numbers are to sections in this Regulatory Agreement, unless expressly stated otherwise.

17.10 Interpretation. As used in this Regulatory Agreement, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Regulatory Agreement shall be interpreted as though prepared jointly by both Parties.

17.11 No Waiver. All waivers of the provisions of this Regulatory Agreement must be in writing by the appropriate authorities of Developer and County. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Regulatory Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Regulatory Agreement.

17.12 Modifications. Any alteration, change or modification of or to this Regulatory Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

17.13 Severability. If any term, provision, condition or covenant of this Regulatory Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Regulatory Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

17.14 Computation of Time. The time in which any act is to be done under this Regulatory Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

17.15 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Regulatory Agreement, and in signing this Regulatory Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Regulatory Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Regulatory Agreement; and, they have freely signed this Regulatory Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Regulatory Agreement, and without duress or coercion, whether economic or otherwise.

17.16 Time of Essence. Time is expressly made of the essence with respect to the performance by County and Developer of each and every obligation and condition of this Regulatory Agreement.

17.17 Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably

necessary, helpful, or appropriate to carry out the purposes and intent of this Regulatory Agreement including, but not limited to, releases or additional agreements.

17.18 Non-Liability of Officials and Employees of County and the Successor Agency. No member, director, officer, employee, or volunteer of County of the Successor Agency shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by County or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement. Developer hereby waives and releases any claim it may have against any of the County and Successor Agency and County and Successor Agency Personnel with respect to any Default or breach by County or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement. Developer makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

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

_____
Developer's Initials

[End – signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Regulatory Agreement as of the respective dates set forth below.

"County"

COUNTY OF SANTA CRUZ, a political subdivision of the State of California

Date:_____

By: _____
Kathleen Molloy, Planning Director

"Developer"

MP LIVE OAK ASSOCIATES, L.P.,
a California limited partnership

By: MP Live Oak LLC, a California limited liability company
Its: General partner

By: Mid-Peninsula San Carlos Corporation, a California nonprofit public benefit corporation
Its: Sole member/manager

Date:_____

By: _____
Jan Lindenthal
Assistant Secretary

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

EXHIBIT “A”

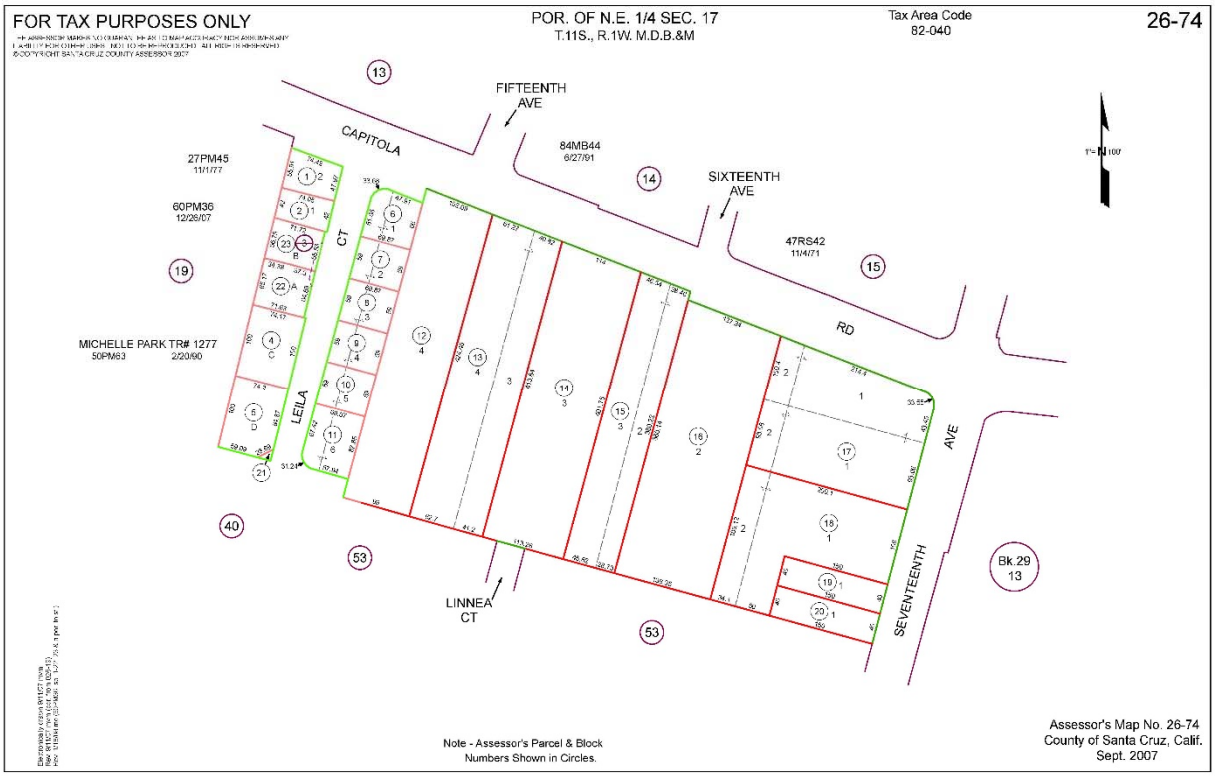
LEGAL DESCRIPTION OF THE PROPERTY

[To be inserted]

EXHIBIT “B”

MAP

[See following page]



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13666278.12 a10/23/20

EXHIBIT "C"

INCOME COMPUTATION AND CERTIFICATION FORM

(See following document)

COUNTY OF SANTA CRUZ

701 Ocean Street, Room 418, Santa Cruz, CA 95060

INCOME COMPUTATION AND CERTIFICATION FORM
(Affordable Housing Eligibility for Renter Occupied Unit

PART I. PROPERTY FINANCED WITH GOVERNMENT ASSISTANCE

Property Address:_____

PART II. TENANT HOUSEHOLD INFORMATION

		Date of Birth	Soc. Sec. #	Relationship

TOTAL NUMBER OF PERSONS IN HOUSEHOLD:_____ (Please list information on other household members below)

Mailing Address:_____ Telephone Numbers: Work(____) _____

_____ Home (____) _____

PART III. GROSS HOUSEHOLD INCOME Complete the following, attach copies of required verification as specified below. Attach a note explaining any significant changes in household income between the previous year and the current year. INFORMATION IS REQUIRED FOR ALL MEMBERS OF THE HOUSEHOLD AGE 18 OR OLDER REGARDLESS OF WHETHER THEY CONTRIBUTE TO THE COSTS OF THE HOUSEHOLD. If you are not required to file a tax return, please indicate this in Part V by your signature.

	ANN INCOME	ANN INCOME	
INCOME SOURCES	**for owner**	**others in hshld**	**VERIFICATIONS** (needed for file)
A. Employment earnings			Last tax return & last 3 pay stubs, employer verification

B. Self-employment earnings			Last 2 tax returns & current financial stmt
C. Social Security (OASDI)			Annual award letter
D. Supplemental Security Income (SSI)			Annual award letter
E. Public assistance (AFDC, general			Current benefit statement
assistance, unemployment, etc.)			
F. Pension (s)			Annual award letter, year end stmt, W-2
G. Interest income			Last 2 statements for all accounts
H. Investment income (stocks, bonds, real estate, etc.)			Last 2 statements for all accounts
I. Room rental			Rental agreement, copies of checks, etc.
J. Other income (list type/source)			
K. **TOTAL INCOME** (sum of A thru J)			/ 12 months = _____ mo. income

PART IV. PROPERTY STATUS

Will this property be your primary residence?_____

Will someone other than the individuals listed above be occupying this property?_____

If yes – Name of occupants:_____

Telephone Number: _____ Mailing Address: _____
_____

My/our housing expenses are as follows:

1.Monthly tenant rent_____
2.Average monthly utilities _____

PART V. TENANT CERTIFICATION

I/We understand that after the initial eligibility determination, completion of monitoring forms is required on an annual basis. I/We certify that I/we have disclosed all information pertaining to

my/our application and that the information presented in the foregoing Sections I through IV is true and accurate to the best of my (our) knowledge.

_____ _____
Tenant Date Tenant Date

For more information regarding this application, please contact management staff at (760) _____.

FOR OFFICE USE ONLY

____ Information verified
____ Income category
____ Maximum allowable annual income (_____% of median)
____ Applicant's annual income_____ gross monthly_____ max housing costs

Comments:_____

_____

_____

_____

_____

_____
Management Staff Date

EXHIBIT “D”

INCOME RECERTIFICATION FORM

(See following document)

COUNTY OF SANTA CRUZ
701 Ocean Street, Room 418 Santa Cruz, CA 95060

INCOME RECERTIFICATION FORM
(Renter Occupied Unit)

PART I. GENERAL INFORMATION

1. Property Owner Name _____

2. Renter Name _____

3. Property Address _____
County of Santa Cruz, CA _____(Please include P.O. Box No. if applicable)

4. Has there been a change in ownership of this property during the preceding 12 month period?
Yes( )No( )

(If yes, please explain) _____

PART II. UNIT INFORMATION

5. Number of Bedrooms _____
6. Number of Occupants _____
Names:

_____ _____

_____ _____

PART III. AFFIDAVIT OF RENTER

I, _____, and I, _____, as renters of units assisted pursuant to the County of Santa Cruz ("County") Affordable Housing Program (the "Program"), do hereby represent and warrant that the following computation includes all income (I/we) **anticipate receiving for the 12-month period commencing on January 1, 20___** (including the renter(s) and all family members of the renters):

(a) amount of wages, salaries, overtime pay, commissions, fees, tips and bonuses, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (before payroll deduction) _____

(b) net income from business or profession or rental of property (without deduction for repayment of debts or expansion of business)

(c) interest and dividends _____

(d) periodic receipts such as social security, annuities, pensions, retirement funds, insurance policies, disability or death benefits, alimony, child support, regular contributions or gifts from persons not occupying unit _____

(e) public assistance allowance or grant plus excess of maximum allowable for shelter or utilities over the actual allowance for such purposes _____

(f) regular and special pay and allowances of a member of armed services (whether or not living in the dwelling) who is head of the family or spouse _____

Subtotal (a) through (f)

LESS: Portion of above items which are income of a family member who is less than 18 years old or a full-time student (_____)

TOTAL ELIGIBLE INCOME _____

NOTE: The following items are not considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payment such as inheritances, insurance payments, capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

2. This affidavit is made with the knowledge that it will be relied upon by the Landlord and County to determine maximum income for eligibility and (I/we) warrant that all information set forth in this Part III is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 is reasonable and based upon such investigation as the undersigned deemed necessary.

3. (I/We) will assist the Landlord and County in obtaining any information or documents required to verify the statements made in this Part III and have **attached hereto a copy of our federal income tax return for the last year (20___)**.

4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable County to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

B. (My/Our) monthly housing expenses are limited to the following:

1. Base rent _____
2. Average Monthly Utilities _____
3. Other (explain) _____

(I/We) understand that completion of monitoring forms is required on an annual basis and agree to notify County in writing of any change in ownership or rental of the unit.(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Date_____ Renter(s)_____

EXHIBIT “E’

FORM OF CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

(See following document)

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

The undersigned, being duly authorized to execute this certificate on behalf of _____, owner of the _____ Project, hereby represents and warrants that:

1. He/she has read and is thoroughly familiar with the provisions of the Affordable Housing Regulatory Agreement between County and _____.

2. As of June 30, 20__, the following number of residential units in the Project (i) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (ii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (iii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; or (iv) are currently vacant and being held available for occupancy by Eligible Tenants and have been so held continuously since the date Eligible Tenants vacated such unit, as indicated:

i. _____ Units occupied by _____ Income Households

ii. _____ Units occupied by _____ Income Households

iii. _____ Units occupied by _____Income Households

iv. _____ Units occupied by _____Income Households

v. _____ Units occupied by _____Income Households

vi. _____ vacant Units

3. The unit number, unit size, rental amount charged and collected, number of occupants, and the income of the occupants for each Affordable Unit in the Project are set forth on the attached list. All Affordable Units in the Project are rented at Affordable Rent.

DEVELOPER NAME

_____,
a California limited partnership

Dated:_____, 20__ By:_____

_____
(Printed name and title)

ATTACHMENT NO. 11

NOTICE OF AFFORDABILITY RESTRICTIONS

(See following document)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attn: Planning Director

Exempt From Recording Fee Pursuant to Government Code § 27383

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Affordable housing restrictions have been recorded with respect to the property described below (referred to in this Notice as the "**Property**") which require that the Property be developed as an affordable rental housing development and that all of the units be rented to and occupied by persons and households of limited income at affordable rents.

Title of Document Containing Affordable Housing Restrictions: Affordable Housing Regulatory Agreement ("Agreement").

Parties to Agreement: MP LIVE OAK ASSOCIATES, L.P., a California limited partnership ("**Developer**"), and the County of Santa Cruz, a political subdivision of the State of California ("**County**").

The Agreement is recorded concurrently with this Notice, in the Official Records of Santa Cruz County.

Legal Description of Property: See Exhibit "A" attached hereto and incorporated herein by this reference.

Property Location: Located in the County of Santa Cruz.

Assessor's Parcel Numbers of Property: 026-193-41, 42, & 43.

Summary of Agreement:

- The Agreement requires Developer to develop a fifty-seven (57) unit rental Project on the Property, which property was sold to Developer by the Santa Cruz County Redevelopment Successor Agency;

- The Agreement restricts the rental of (i) ten (10) of the dwelling units to households whose incomes do not exceed thirty percent (30%) of the Santa Cruz County area median income, adjusted for household size; (ii) twelve (12) of the dwelling units to households whose incomes do not exceed forty percent (40%) of the Santa Cruz County area median income, adjusted for household size; (iii) sixteen (16) of the dwelling units to households whose incomes do not exceed fifty percent (50%) of the Santa Cruz County area median income, adjusted for household size; (iv) thirteen (13) of the dwelling units in the Project to households whose incomes do not exceed sixty percent (60%) of the Santa Cruz County area median income, adjusted for household size; and (v) five (5) of the dwelling units to households whose incomes do not exceed eighty percent (80%) of the Santa Cruz County area median income, adjusted for household size.

- The Regulatory Agreement restricts the rents that may be charged to such households to the maximum amount of rent, including a reasonable utility allowance, that does not exceed the rent permitted to be charged to the applicable household, as the case may be, determined pursuant to Health and Safety Code Section 50053(b).

- The term of the Agreement is in perpetuity.

This Notice does not contain a full description of the details of all of the terms and conditions of the Agreement. You will need to obtain and read the Agreement to fully understand the restrictions and requirements which apply to the Property.

This Notice is being recorded and filed in compliance with Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed against Developer, the fee owner of the Property, and County.

[signature on next page]

"County"

COUNTY OF SANTA CRUZ, a political subdivision of the State of California

By: _____
Kathleen Molloy, Planning Director

Date: _____, 20__

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, _____,
(insert name and title of the officer)
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.

Signature_____ (Seal)

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

[To be inserted]

ATTACHMENT NO. 12

RELEASE OF CONSTRUCTION COVENANTS

(See following document)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Santa Cruz
701 Ocean Street, Room 418
Santa Cruz, CA 95060
Attention: Planning Director

(Space Above for Recorder's Use)
Exempt from Recordation Fee per Gov. Code
§ 27383

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS ("Release") is made this ____ day of _____, by the **COUNTY OF SANTA CRUZ,** a political subdivision of the State of California ("County"), in favor of **MP LIVE OAK ASSOCIATES, L.P.**, a California limited partnership ("Developer").

R E C I T A L S

A. Developer owns fee title to that certain real property located in the County of Santa Cruz, State of California, more particularly described in the legal description attached hereto as Exhibit "A" ("Property").

B. On or about _____, 2020, the Santa Cruz County Redevelopment Successor Agency (the "Successor Agency") and Developer entered into that certain Affordable Housing and Property Disposition Agreement ("Agreement") which provides for Developer to develop on the Property a fifty-six (56) unit rental affordable housing development, as more particularly described therein as the "Project." The Successor Agency has assigned to County, and County has assumed from Successor Agency, all of Successor Agency's rights and obligations in and to the Agreement.

C. Pursuant to the Agreement, County is required to furnish Developer with this Release upon request by Developer after completion of construction of the Project.

D. The issuance by County of this Release shall be conclusive evidence that Developer has complied with the terms of the Agreement pertaining to the construction of the Project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the parties hereto agree as follows:

1. As provided in the Agreement, County does hereby certify that the construction of the Project has been satisfactorily performed and completed, and that such development and construction work complies with the Agreement.

2. This Release does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage security money loaned to finance the work of construction of improvements and development of the Property, or any part of thereof.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4. This Release does not terminate any other agreement or document executed by Developer in connection with the Agreement, including, without limitation, that certain Affordable Housing Regulatory Agreement recorded on _____, as Instrument No. _____, in the Official Records of the County of Santa Cruz (the "Official Records"), and that certain Deed of Trust recorded on _____, as Instrument No. _____, in the Official Records, all of which shall survive recordation of this Release.

IN WITNESS WHEREOF, County has executed this Release as of the date set forth above.

COUNTY OF SANTA CRUZ, a political subdivision of the State of California

By: _____
Kathleen Molloy, Planning Director

Date:_____

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)
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 w(pagithin instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

[To be inserted]

ATTACHMENT NO. 13

CHRONOLOGY OF ENVIRONMENTAL CONDITIONS RESULTING IN REQUIRED ENVIRONMENTAL MITIGATION THAT DECREASES PROPERTY VALUE

(See following document)

Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Drive, Watsonville, CA 95076
(831) 722-3580 // www.weber-hayes.com

September 30, 2020

Peter Detlefs
Economic Development Coordinator
County of Santa Cruz701 Ocean Street, Room 520
Santa Cruz, California 95060

Update: ***Chronology of Environmental Conditions Resulting in Required Environmental Mitigation that Decreases Property Value***

Site: **County of Santa Cruz Redevelopment Parcels**
1412, 1438, 1500 and 1514 Capitola Road, Santa Cruz (see *Location Map*, Figure 1)

Standard of care environmental assessment tasks were completed in furtherance of a proposed redevelopment project at the subject site (RRM 2020a, 2020b), dry cleaning solvents were discovered at the site, and a *Vapor Intrusion Mitigation System* plan was designed to be protective of human health and the environment (GeoKinetics, 2020). The design followed standard of care, regulatory agency guidelines established for all property developments (RWQCB-SFB, 2019). A copy of this guidance is included as Attachment A.

1.0 BACKGROUND

Standard of care environmental assessment tasks were completed in furtherance of a proposed redevelopment project at the 3.7-acre subject site[1]. Specifically, historical and regulatory research collected as part of a *Phase I Environmental Site Assessment* identified a potential environmental liability attributed to an agency-closed fuel leak located approximately 200 feet east of the subject property*(RRM, 2020a)*. The report concluded:

> *"It is possible that detectable residual hydrocarbon contamination from the former Live Oak Texaco at 1671 Capitola Road has spread in groundwater and possibly soil vapor, beneath the 1514 Capitola Road parcel."*

To address this potential environmental risk, two (2) soil vapor samples were collected on the subject site, along the northeastern property line (RRM, 2020b). The State-certified laboratory results did not contain any significant fuel-related contaminants but instead contained very elevated concentrations of the dry cleaning solvent PCE (tetrachloroethylene).

A follow-up review of historic land use at and in the vicinity of the site identified the likely source of the property line contamination to originate from a former dry cleaning business that previously operated on

---

[1]: The proposed redevelopment project would result in redevelopment of the underutilized site into a mixed-use development consisting of a medical clinic (Santa Cruz Community Health Center} and dental office (Dientes), and 57 affordable residential rental apartments (MidPen Housing Corporation).

the adjoining property to the east (i.e., Former Fairway Dry Cleaners, 1600 Capitola Road).

The California Regional Water Quality Control Board Central Coast Region (RWQCB-CCR), as the overseeing agency with jurisdiction for chemical release sites, was notified of the release (GeoTracker, 2020) and provided with a *Workplan to complete an Expedited Site Characterization for an Imminent Multi-use Redevelopment* (WHA, 2020a). In addition, a *Voluntary Cost Recovery* agreement was entered between the County of Santa Cruz (on behalf of the Santa Cruz County Redevelopment Successor Agency) and the RWQCB-CCR.

Confirmation Sampling of Chemical Release (Soil, Soil Vapor and Groundwater Testing)

On February 25, 2020, following notification to the CRWQCB-CCR, forty-four (44) passive soil gas samplers were installed in a grid pattern that extended outward from the northeastern property boundary which is the location of the former Fairway Dry Cleaners. This preliminary site screening confirmed this former Dry Cleaners was the source of a release of the dry cleaning solvent PCE to the subsurface. The highest concentrations of PCE (**1,830 ug/m^3**) were detected along the property boundary at levels significantly exceeding risk-based agency threshold limits for commercial and residential land uses (i.e, **67 and 15 ug/m^3,** respectively). The grid of shallow passive soil sampling data also showed that concentrations dropped off (attenuated) as you move westward away from the source (figure of plume footprint included as Attachment 2). Follow-up sampling of soil, soil gas, and groundwater samples:

a) Confirmed encroachment of dry cleaning solvent contamination from the adjoining property to the east. And,

b) Provided data needed for the design of a vapor barrier system for the proposed multi-use development project.

2.0 CONCLUSION AND RECOMMENDATION

Standard of care characterization sampling of a recently discovered chemical release has confirmed the source of the solvent contamination is from the adjoining property to the east where a dry cleaning business formerly operated (1600 Capitola Road, see Attachment 2). The overseeing regulatory agency concurs the source is on the adjoining property and has recently issued a directive to the adjoining property to start the source characterization and cleanup process (GeoTracker Former Fairway Dry Cleaners, 2020). See Attachment 3.

However, the responsible party (i.e. the property owners) are retired, without funds, and will need to obtain State grant monies, which may take a number of years to qualify. In the meantime, overseeing State and Local agencies (the RWQCB-CCR, and the County of Santa Cruz Health Services Agency) require installation of the *Vapor Intrusion Mitigation System* prior to occupancy of any residential or commercial development at the site.

Limitations: Our service consists of professional opinions and recommendations made in accordance with generally accepted geologic and engineering principles and practices. The analysis and conclusions in this report are based on sampling and testing which are necessarily limited. Additional data from future work may lead to modification of the opinions expressed herein. If you have any questions regarding this report, or any aspect of this project, please contact us at (831) 722-3580.

Sincerely,

WEBER, HAYES AND ASSOCIATES

By _____

Pat Hoban, PG
Principal Environmental Geologist

cc: County of Santa Cruz, Department of Public Works
- Kimberly Finley, Peter Detlefs

-

Attachment 1: Agency guidance Development on Properties with a Vapor Intrusion Threat
Attachment 2: Vicinity Map (aerial) and Active Soil Vapor Results
Attachment 3: RWQCB-CCR directive: to Initiate Investigation at the Adjoining Property, Former Fairway Dry Cleaners, 1600 Capitola Road, Santa Cruz, August 4, 2020

REFERENCES

California Regional Water Quality Control Board, San Francisco Bay Region (RWQCB-SFB):

- (RWQCB-SFB, 2019) guideline document: *"Fact Sheet: Development on Properties with a Vapor Intrusion Threat"*, July.
  - *https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&enforcement_id=6436799*

California Regional Water Quality Control Board, Central Coast Region (RWQCB-CCR):

- (GeoTracker, **SC-Development Properties**): RWQCB-CCR *Public-Right-to-Know* archive of site-specific reports for the 1412, 1438, 1500 and 1514 Capitola Road properties:
  - *https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000014098*
- (GeoTracker, **former Fairway Dry Cleaners**) RWQCB-CCR *Public-Right-to-Know* Information regarding the former Fairway Dry Cleaners solvent release site at 1600 Capitola Road:
  - *https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&document_id=6023573*

(References continued)

- (GeoTracker, **Texaco Fuel Leak**): Geotracker Archive of site-specific reports for the Live Oak Texaco fuel leak case at 1671 Capitola Road fuel leak site (reports dated between 1990-2012):
  - https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0608700286

GeoKinetics Consulting

- (GeoKinetics, 2020) *Vapor Intrusion Mitigation System (VIMS)* and the *Operating, Monitoring, and Maintenance (OM&M) Plan for the Santa Cruz Community Health Centers and Live Oaks Apartments located at 1412 to 1514 Capitola Road in Santa Cruz,* September 28.
  - https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&document_id=6029539

Remediation Risk Management, Inc. (RRM) reports regarding 1412, 1438, 1500, and 1514 Capitola Road:

- (RRM, 1994): *Remedial Action Summary Report for 1438 Capitola Road,* October 3.
- (RRM, 2020a): *Phase I Environmental Site Assessment (ESA),* January 6.
  - https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&document_id=6017423
- (RRM, 2020b): *Limited Soil Vapor Investigation (Phase II),* January 20.
  - https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&document_id=6017424

Weber, Hayes and Associates (WHA) reports for 1412, 1438, 1500 and 1514 Capitola Road, Santa Cruz:

- (WHA, 2020a): *Workplan – Expedited Site Characterization for an Imminent Multi-use Redevelopment,* Feb 17.
  - https://drive.google.com/open?id=182qjxlPfFHPRDrzmWrDbf3YC3lVRQFEo
- (WHA, 2020b): *Update: Passive Soil Gas Sample Results & Planned Follow-up Sampling,* Mar-20.
  - https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/9783261954/2020-03-20%20Update%20to%20Workplan.pdf

Attachment 1

CRWQCB-SFB guideline document:

Fact Sheet: Development on Properties with a Vapor Intrusion Threat

July 2019

Fact Sheet: Development on Properties with a Vapor Intrusion Threat – July 2019

The San Francisco Bay Regional Water Board (Regional Water Board) oversees an increasing number of cleanups at properties where volatile organic compounds (VOCs) are present in soil vapor and development is occurring. These VOCs can pose a health threat to building occupants if they migrate into buildings through vapor intrusion (VI). We will continue to require site cleanup where threats to human health or the environment exist. However, we recognize that achieving cleanup standards may take years given currently available remedial technologies, and therefore interim protective measures may be needed. Typically, VI mitigation systems (VIMS) are installed in the interim to mitigate VI threats. VIMS are not a substitute for cleanup. Operation, maintenance, and monitoring (OM&M) and agency oversight are typically warranted to ensure effectiveness. The Regional Water Board's approach to regulating VIMS has evolved since the 2014 release of our *Framework for Assessment of Vapor Intrusion at TCE-Contaminated Sites in the San Francisco Bay Region* (VI Framework). This fact sheet is intended to provide developers, cities, homeowners associations, and the public a summary of expectations for development at sites were VI may pose a threat.

Types of VIMS

Traditional VIMS for the soil vapor intrusion pathway can be divided into two main categories: Subslab Depressurization Systems (SSDS) and Vented VIMS. SSDS rely on active electromechanical means to divert subslab vapors and generate a constant negative pressure beneath a building's slab foundation to prevent contaminated vapors from migrating up into the building. Vented VIMS rely on passive or active mechanisms (e.g., thermal gradients, wind driven ventilation, or powered fans) to dilute vapors beneath the building and vent them into the outdoor air.

Updated Approach to VIMS

In the 2014 VI Framework, the Regional Water Board expressed a preference for passive venting systems, which have fewer moving parts and potentially require less maintenance, and we typically did not require monitoring after occupancy. Since 2014, our concerns about long-term effectiveness of VIMS have increased due to awareness of failures and limited monitoring at buildings with VIMS. We now prefer SSDS for slab on grade design because they provide greater protection and allow for simpler monitoring.

In 2019, the Regional Water Board also updated our approach to VI assessment by providing more stringent soil gas and groundwater VI Environmental Screening Levels (ESLs) based on empirical attenuation factors rather than those determined using the Johnson and Ettinger VI model. We also updated the ESL guidance to recommend verification of VI model predictions and evaluation of the sewer/utility conduit air pathway. See the ESL Webpage for more information.

Evaluating Effectiveness

For vented VIMS, ongoing monitoring of contaminant concentrations (subslab and/or indoor air) is needed to demonstrate effectiveness. Long-term monitoring of indoor air can be problematic because it requires access permission, is intrusive to occupants, and data interpretation can be challenging due to confounding factors from indoor and outdoor sources of VOCs. For SSDS, the measurement of cross-slab vapor pressure differential can be used to monitor if subsurface vapors are migrating into the building. Pressure differential monitoring can provide real-time, continuous readings more cost effectively than indoor air monitoring. This reduces the need for long-term indoor air monitoring except as a contingency measure.

Evaluating Operational Lifetime

The Regional Water Board encourages active cleanup to reduce or eliminate the ongoing need for VIMS. Therefore, the operational lifetime of the VIMS is related to the cleanup timeframe and may be years to decades until the VI threat is abated. OM&M and Regional Water Board oversight are needed for the entire duration to ensure

protectiveness. The operational lifetime of the VIMS will depend on site-specific data on the VI threat. An estimate of the operational lifetime should be included in the VIMS plans. The operational lifetime of the VIMS should be reevaluated as part of long-term monitoring reports and 5-year reviews conducted under our oversight. Soil vapor monitoring near the source of pollution where the VIMS is installed provides the best evidence to evaluate the VI threat and evaluate when VIMS are no longer needed. VIMS operation can be discontinued when we determine that the VI threat has ceased.

Regional Water Board Oversight

For cases under Regional Water Board oversight, we should be informed early in the development planning process of VI issues and the need for VIMS. When we concur that VIMS are necessary, we will typically need to review the documents summarized in Table 1, below. All documents should be prepared under the direction of an appropriately licensed professional. In addition, some documents will also require approval by local agencies including, but not limited to; the local building department, local environmental health agency, air quality agency, and local water agency. Local building departments routinely rely on regulatory oversight agency concurrence with milestone documents before granting building permits or approving occupancy.

Table 1. Documents Needed for a VIMS

Document Title	Milestone
VIMS Plan(s) – Including VIMS design, OM&M, contingency plans, and financial assurance.	Pre-construction
VIMS Construction Completion Report – Including as-built drawings	Post-construction and pre-occupancy
Long-Term Monitoring Reports	Ongoing post-construction
Five-Year Review Reports	Every five years post-construction

Financial Assurance

Financial assurance is typically required to ensure sufficient funds are available to operate, maintain, and monitor the VIMS, and pay regulatory oversight cost recovery for the anticipated operational lifetime of the VIMS. Prior to construction, a financial assurance mechanism should be created to fund costs associated with the VIMS (e.g., OM&M, reporting, potential contingency measures, Regional Water Board oversight). Financial assurance may be in the form of a trust fund, surety bond, letter of credit, insurance, corporate guarantee, qualification as a self-insurer by a financial means test, or other acceptable mechanism. A detailed cost estimate should be provided to quantify the amount of the financial assurance needed and should be based on the length of time that residual contamination may pose a vapor intrusion risk, up to 30 years.

Expectations for Regulatory Review Timeframes

For planning purposes, assume the Regional Water Board will need 60 days per submittal for review. Actual review times may vary depending on workload and project complexity (e.g., alternative designs, site complexity). Expectations for our oversight and review timeframes should be explicitly discussed with the site's case manager.

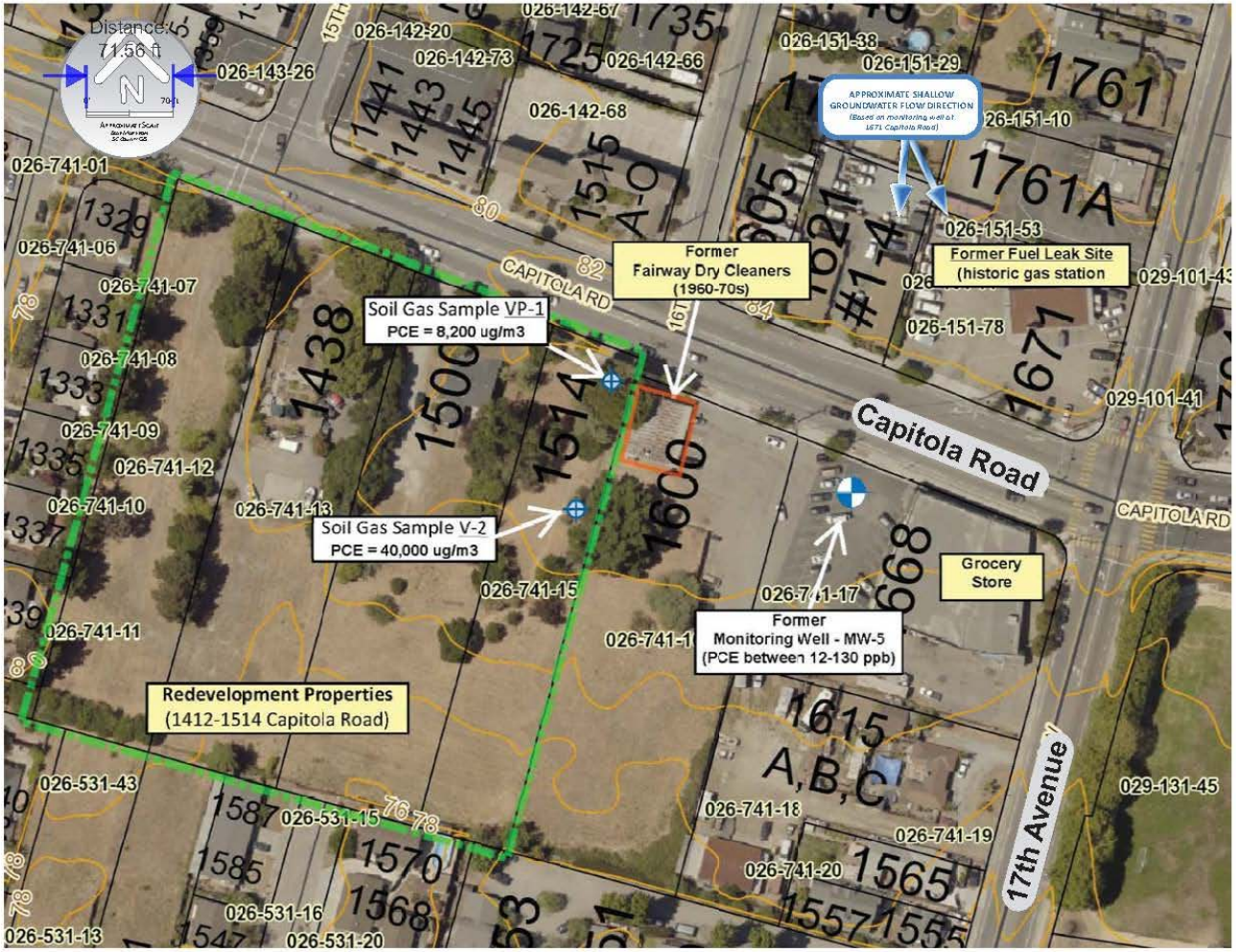
Questions or Comments

For general questions about our VIMS guidance, contact ESLs.ESLs@waterboards.ca.gov. For questions regarding a specific site, contact the Regional Water Board case manager. Contact information for the case manager can be accessed on the GeoTracker database (https://geotracker.waterboards.ca.gov/). To request oversight on a project, refer to the "Requesting Oversight" information and complete the new case application on our Site Cleanup Webpage (https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/sitecleanupprogram.html#RequestingOversight).

Attachment 2

Figure 1: Vicinity Map (aerial)

Figure 2: Soil Vapor Results
- Isocontour Map of Soil Vapor Detections



Vicinity Map
Supplemental Property Screening Assessment

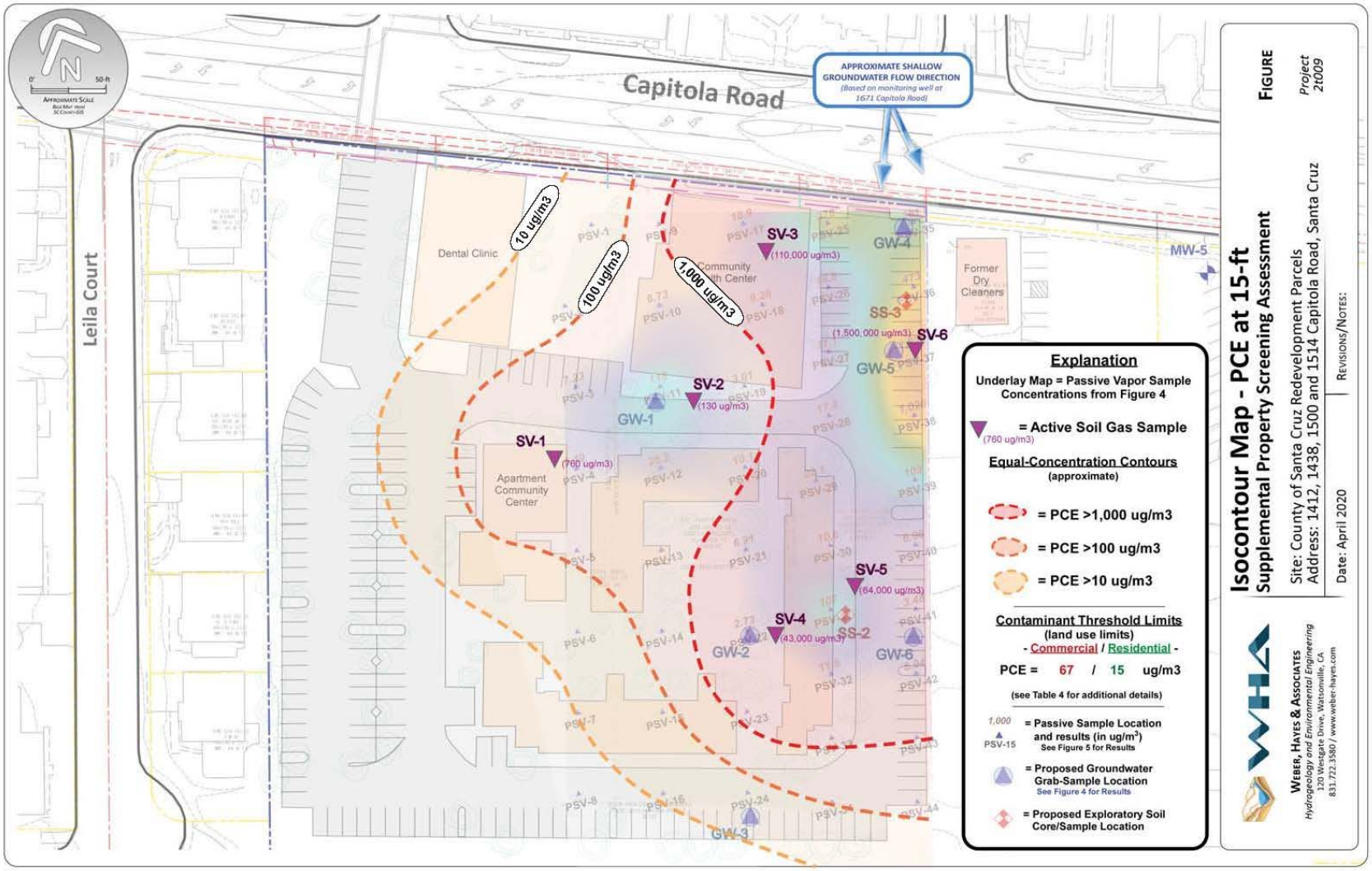
Site: County of Santa Cruz Redevelopment Parcels
Address: 1412, 1438, 1500 and 1514 Capitola Road, Santa Cruz

Date: April 2020

Revisions/Notes:

FIGURE 1
Project 2t009

Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Drive, Watsonville, CA
831.722.3580 / www.weber-hayes.com


Capitola Road
APPROXIMATE SHALLOW GROUNDWATER FLOW DIRECTION
(Based on monitoring well at 1671 Capitola Road)
Leila Court
Dental Clinic
Apartment Community Center
Former Dry Cleaners
10 ug/m3
100 ug/m3
1,000 ug/m3
SV-1 (760 ug/m3)
SV-2 (130 ug/m3)
SV-3 (110,000 ug/m3)
SV-4 (43,000 ug/m3)
SV-5 (64,000 ug/m3)
SV-6
SS-2
SS-3 (1,500,000 ug/m3)
GW-1
GW-2
GW-3
GW-4
GW-5
GW-6
MW-5
Explanation
Underlay Map = Passive Vapor Sample Concentrations from Figure 4
= Active Soil Gas Sample (760 ug/m3)
Equal-Concentration Contours (approximate)
= PCE >1,000 ug/m3
= PCE >100 ug/m3
= PCE >10 ug/m3
Contaminant Threshold Limits (land use limits)
- Commercial / Residential -
PCE = 67 / 15 ug/m3
(see Table 4 for additional details)
1,000 PSV-15 = Passive Sample Location and results (in ug/m3) See Figure 5 for Results
= Proposed Groundwater Grab-Sample Location See Figure 4 for Results
= Proposed Exploratory Soil Core/Sample Location
Isocontour Map - PCE at 15-ft
Supplemental Property Screening Assessment
Site: County of Santa Cruz Redevelopment Parcels
Address: 1412, 1438, 1500 and 1514 Capitola Road, Santa Cruz
Date: April 2020
Figure
Project 2t009
Revisions/Notes:
Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Drive, Watsonville, CA
831.722.3580 / www.weber-hayes.com

Attachment 3

RWQCB-CCR directive: to Initiate Investigation at the Adjoining Property
Former Fairway Dry Cleaners, 1600 Capitola Road, Santa Cruz
August 4, 2020

https://geotracker.waterboards.ca.gov/view_documents?global_id=T10000014098&document_id=6023573

August 4, 2020

17th & Capitola, LP
Huei Hsien Sally Chang
Chuan Sheng Frank Chang
1818 Harper Street
Santa Cruz, CA 95062

Certified Mail 7019 0700 0001 7649 9905

Dear Mr. Chang:

SITE CLEANUP PROGRAM: FORMER FAIRWAY DRY CLEANING AND LAUNDRY, 1600 CAPITOLA ROAD, SANTA CRUZ, SANTA CRUZ COUNTY – REQUIREMENT TO SUBMIT AN INVESTIGATION WORK PLAN AND COMPLETED QUESTIONAIRES PURSUANT TO CALIFORNIA WATER CODE SECTION 13267

On April 16, 2020, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) received a data submittal package[1] prepared by Weber, Hayes & Associates for a redevelopment project at 1412, 1438, 1500, and 1514 Capitola Road[2], Santa Cruz. Weber, Hayes performed the site characterization at the County of Santa Cruz Department of Public Works' request because volatile organic compounds, including the dry-cleaning solvent tetrachloroethylene (PCE), were detected in shallow soil vapor samples on the 1500 and 1514 Capitola Road properties in March 2020.

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) and the County of Santa Cruz Environmental Health oversee cleanup of waste discharges at properties throughout the County of Santa Cruz. Our regulatory oversight of the proposed development on Capitola Road has produced information that indicates 17th & Capitola, LP owns the parcel at 1600 Capitola Road, APN 019-028-15. Weber, Hayes provided information that Fairway Dry Cleaning and Laundry operated at APN 019-028-15 from 1964 to 1971, during which time it may have discharged dry-cleaning wastes to waters of the State. This letter is an order that requires you to take specific actions per a defined schedule as described below. The Central Coast Water Board may assess significant monetary penalties for failure to comply with this order, so please read this order carefully and contact us at the numbers indicated below if you have questions.

[1] The data submittal package: *Soil Vapor, Groundwater and Soil Sample Results – Expedited Site Characterization for an Imminent Multi-Use Development* can be found at this link: https://geotracker.waterboards.ca.gov/?surl=0sdbm

[2] More information about the development project can be found at this link: https://geotracker.waterboards.ca.gov/regulators/screens/menu?global_id=T10000014098

As detailed in Weber, Hayes' data submittal package, the highest soil vapor concentration of PCE was detected along the northeastern property boundary of 1514 Capitola Road in PSV-37 at 1,830 µg/m^3, which is above both residential and commercial environmental screening levels[3] for PCE, which are 67 µg/m^3 and 15 µg/m^3. In addition, the highest groundwater concentration of PCE was detected in GW-6 at 192 µg/L, which is above the California Maximum Contaminant level[4] for PCE (5 µg/L). The data submittal package and other reports produced for the development at Capitola Road indicate that PCE and other volatile organic compounds that may have originated from historical dry-cleaning operations at APN 019-028-15 have been discharged to the development properties.

To evaluate if APN 019-028-15 is the source of the PCE and dry-cleaning solvents found at the development properties, the Central Coast Water Board requires 17th & Capitola, LP to submit a work plan to investigate the presence and distribution of dry-cleaning solvents in soil vapor, soil, and groundwater. A work plan for this investigation is required by **September 30, 2020**. As part of the work plan, you must also include the completed questionnaires attached to this letter.

Legal Requirements

the Central Coast Water Board suspects that discharges of volatile organic compounds have occurred at APN 019-028-15 and that dry-cleaning solvents have degraded the local groundwater quality in this area.

This order identifies 17th & Capitola, LP as the fee title owner and the party responsible for the suspected discharge due to the type of operation and the nature and concentrations of the wastes at and near the property.

Section 13267(b)(1) of the California Water Code states, in part:

> In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.

Pursuant to section 13267(b) of the California Water Code, the Central Coast Water Board requires that 17th & Capitola, LP submit the following **by September 30, 2020**:

1) Completed Chemical Use and Storage Questionnaire, Attachment 1.
2) Completed Site Audit Questionnaire, Attachment 2.

---

[3] Information about San Francisco Bay Environmental Screening Levels can be found at this link: https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html

[4] Information about California Maximum Contaminant Levels can be found at this link https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chemicalcontaminants.html

3) Any information regarding former Fairway Dry Cleaning and Laundry operations and redevelopment of the parcel or change of use from a dry-cleaning to coin-operated laundry business.

4) Any maps or drawings showing the layout of current or historical business operations. For example, identify the location of existing utility lines, any former dry-cleaning equipment, underground used-oil storage tanks, heating oil tanks, sumps, clarifiers, etc. on APN 019-028-15.

5) An investigation workplan to evaluate whether chemicals were discharged to the environment from operations conducted historically or currently on parcel 019-028-15. The work plan must be prepared by a professional geologist or engineer licensed in California. The Central Coast Water Board suggests that you propose the installation of at least eight soil vapor, soil, and/or groundwater monitoring wells and propose to collect samples from each of these media.

The above items shall be submitted **by September 30, 2020,** to the Central Coast Water Board at dan.niles@waterboards.ca.gov, County of Santa, Environmental Health at John.Gerbrandt@santacruzcounty.us, and uploaded to the State Water Resources Control Board's GeoTracker database at this internet link: http://geotracker.waterboards.ca.gov/?gid=T10000015553

Additional Legal Requirements

The Central Coast Water Board, under authority of California Water Code section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 order. The perjury statement shall be signed by a senior authorized company representative (not by a consultant). The perjury statement shall be in the following format:

> I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The State Water Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information for all site cleanup programs, starting January 1, 2005. To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker[5] by the due dates specified in the Central Coast Water Board letters and orders issued to you or for the property. However, we

[5] All of the information on electronic submittals and GeoTracker contacts can be found at http://www.waterboards.ca.gov/ust/electronic_submittal

may request that you submit hard copies of selected documents and data to the Central Coast Water Board in addition to electronic submittal of information to GeoTracker.

This order is made pursuant to the provisions of section 13267 of the California Water Code. Pursuant to section 13268 of the California Water Code, a violation of an order made pursuant to California Water Code section 13267 may subject you to monetary civil liability of up to $1,000 per day.

The historical information and work plan required by the Central Coast Water Board is needed to evaluate the extent of discharges of wastes in groundwater beneath and potentially migrating from the subject parcel. 17th & Capitola, LP is required to submit these reports because soil vapor and groundwater wastes have been detected adjacent to your parcel. Current and historical business operations at the subject parcel may be the source of the wastes in soil vapor and groundwater. More detailed information is available in the Central Coast Water Board's public file on this matter and on the GeoTracker database.

The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is necessary to determine the nature and scope of the discharges of waste at and near the property that have impacted the beneficial uses of waters of the state.

The issuance of this order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This order requires a review of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.

Any person affected by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with section 13320 of the California Water Code and Title 23, California code of Regulations, Section 2050. The petition must be received by the State Board within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions are available at the State Water Board web site.[6]

If you have any questions, please contact Dan Niles at (805) 549-3355 or by email at dan.niles@waterboards.ca.gov or Sheila Soderberg at (805) 549-3592.

Sincerely,

for Matthew T. Keeling
Executive Officer

[6] State Water Resources Control Board petition instructions: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml

Attachment 1: Chemical Use and Storage Questionnaire
Attachment 2: Site Audit Questionnaire

cc:
Kimberly Finley, County of Santa Cruz, Kimberly.Finley@santacruzcounty.us
Julie Conway, County of Santa Cruz, Julie.Conway@santacruzcounty.us
John Gerbrandt, County of Santa Cruz, John.Gerbrandt@santacruzcounty.us
Pat Hoban, Weber, Hayes & Associates, pat@weber-hayes.com
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Water Board internal file: r:\rb3\shared\scp\sites\santa cruz co\santa cruz\1600 capitola road - fairway dry cleaners\08-03-2020_scp_fairwaydc_13267order.docx

GeoTracker file: http://geotracker.waterboards.ca.gov/?gid=T10000015553

BizFlow Task A07000 Site Cleanup Program

ATTACHMENT NO. 14

ENVIRONMENTAL MITIGATION COSTS

Required Mitigation	Cost
VIMS	$ 1,293,838.00
OM&M	725,726.00
Air District Contingency	97,835.00
Total Mitigation Cost	$ 2,117,399.00

TABLE OF CONTENTS

Page

List of Attachments: