

**DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND
EDEN HOUSING, INC.**

THIS AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN JOSE, (the "City"), and EDEN HOUSING, INC., a California nonprofit public benefit corporation ("Developer"), as of March 29, 2011 (the "Effective Date") concerning the Ford Road Supportive Housing Project and the Ford & Monterey Family Housing Project. (as hereafter defined). The City and the Developer covenant and agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT

A. [§ 101] Purpose of the Agreement

The purposes of this Agreement are: (a) to expand the community's supply of affordable housing, which housing is located outside a redevelopment project area will benefit the San José Redevelopment Agency's Project Areas in San José through the development by Developer of the Site, as defined below, with the proposed residential apartments (the "Units"). The development and rehabilitation of the Site for a special needs housing development and a separate multifamily rental housing development pursuant to this Agreement (the "Projects") generally described in the Scope of Development (**Attachment No. 3**), and the fulfillment generally of the Agreement, are in the vital and best interest of the City of San José and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements under which the Projects has been undertaken and is being assisted.

City and Developer agree that the construction of the Projects at the earliest possible date will result in an enhancement of the quality of life of the present and future residents of the City of San José which otherwise might not occur to the same degree or which might not occur at all, or which might occur only at a substantially later date in the absence of the assistance by the City. Hence, the provisions of this Agreement are acknowledged to be to the mutual benefit of Developer and the City. The affordable housing to be developed on the Site will directly benefit the nearby Agency's Redevelopment Project Areas by providing housing stock. Development of housing at the Site will directly benefit San José economically in three ways. First, for Phase I (as defined

below) alone, the Developer expects to pay the City fees up to \$600,000 in order to proceed with the development process. Second, total local impacts for communities in the area are defined as benefits of the direct construction activity itself as well as the impact of local residents who earn money from the construction activity and spend part of it within the area. Third, according to National Association of Homebuilders metrics, it is also anticipated that proceeding with and completing the development of the Projects will create 30 local jobs in San José in the first year, directly and indirectly, and 8 local jobs each year thereafter.

B. [§ 102] The Site

The “Site” consists of certain real property owned by the City which is to be groundleased to Developer by the City pursuant to this Agreement (the “Property”). The Site is shown on the “Site Map” which is attached to this Agreement as **Attachment No. 1**. The Property is an approximately a .5 acre portion (“Phase I”) known as Ford & Monterey Special Needs Housing, plus a 2.5 acre portion (“Phase II”) known as Ford & Monterey Family Housing, for a total of 3.01 acres located at the corner of Ford Street and Monterey Road. Phase I and Phase II are generally referred to hereafter as the “Ford Road Supportive Housing Project.” Phase I will be developed first for special needs tenants with mental disabilities and Phase II will be developed for family housing at a future date by Developer as well, as more specifically set forth in the Method of Financing attached hereto as **Attachment No. 7**, and the Proforma attached hereto as **Attachment No. 7-A**. The City will enter into a 75-year term groundlease with Developer or Ford Road Supportive Housing, Inc., a wholly-controlled affiliate of Developer, for Phase I. After the Site has been subdivided in accordance with Section 808, City and Developer or an approved assignee of Developer for the Phase II, as described in Section 105, will enter into a second 75-year groundlease for Phase II. See Section 808 regarding subdivision of the Site.

C. [§ 103] Parties to the Agreement

1. [§ 104] The City

The City is a municipal corporation, exercising governmental functions and powers as a Charter City.

The principal office of the City is located at 200 East Santa Clara Street, San José, California 95113.

"City" as used in this Agreement includes the Redevelopment Agency of the City of San José and any assignee of or successor to its rights, powers and responsibilities.

2. [§ 105] The Developer

For Phase I, the Developer is Eden Housing, Inc. The City hereby approves the assignment of Developer's rights under this DDA to Ford Road Supportive Housing, Inc., a nonprofit public benefit corporation wholly-controlled by Eden Housing, Inc. For Phase II, the developer will be a limited partnership formed for tax credit financing purposes, whose general partner is a controlled affiliate of Developer. The principal office of the Developer is located at 22645 Grand Street, Hayward, California 94541.

3. [§ 106] Prohibition against Change in Ownership Management and Control of Developer

The Developer recognizes that, in view of

- (a) the importance of the Projects to the general welfare of the community;
- (b) the public aids that have been made available by law and by the government for the purpose of making the Projects possible; and
- (c) the fact that a change in ownership or control of the Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of the Developer or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by the Developer; the qualifications and identity of Developer, and its principals, are of particular concern to the community and the City. The Developer further recognizes that it is because of those qualifications and identity that the City is entering into this Agreement with the Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth in Section 105.

For the reasons cited above, the Developer represents and agrees for itself and any successor in interest that prior to the issuance of a Certificate of Compliance by the City pursuant to Section 322 of this Agreement, the

Developer shall not assign all or any part of this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld. Pursuant to the terms of this Agreement, this Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in the Developer prior to the completion of the development of the Site, as evidenced by the issuance by the City of a Certificate of Compliance. The prohibition against transfers set forth in this Section 106 shall apply to Phase I until the Certificate of Completion is issued for the special needs rental housing project on Phase I. The prohibition against transfers set forth in this Section 106 shall apply to Phase II until the Certificate of Completion is issued for the multifamily rental housing project on Phase II.

4. [§107] Material Obligations; Conditions Precedent

(a) For purposes of this Agreement, the phrase "Developer's Material Obligations" shall mean and include the Developer's obligation to perform the following acts subject to, within the times specified, and as required by this Agreement, each of which is more fully described hereinafter: (a) to prepare, complete and submit to the City for its approval Construction Documents as defined in Sections 304 and 305 herein; (b) to submit to the City a Project Budget, updates to the Project Budget and evidence of financing pursuant to Section 213 for each Phase; (c) to commence and complete construction in the manner and within the times specified in this Agreement; (d), and (e) to fully execute and comply with the City Loan Documents evidencing the two loans from the City in the aggregate amount of \$1,430,000 (the "Loans"). The Loan Documents for Phase I are attached hereto as **Attachment No. 6**, and include a Promissory Note secured by a Leasehold Deed of Trust Assignment of Rents and Fixture Filing, Leasehold Deed of Trust, Assignment of Rents and Fixture Filing, a Loan Agreement, A 75-Year Leasehold Affordability Restrictions, a Hazardous Materials Agreement, a Completion Guaranty, a Notice of Affordability Restriction, an Assignment of Plans and Specifications, and Architect's Consent and Certification, and to submit to City any and all documents to be required at the time of the development of Phase I. The Loan Documents for Phase II shall be in a form substantially similar to those loan documents for Phase I, and will include a promissory note, leasehold deed of trust, loan agreement, amended and restated affordability restrictions, hazardous materials agreement, completion guaranty, Notice of Affordability Restriction, Assignment of Plans and Specifications, and Architect's Consent and Assignment, and to submit to City any and all documents to be required at the time of the development of Phase II.

(b) For purposes of this Agreement, the phrase "City's Material

Obligations" shall mean the City's obligation to perform the following acts, subject to, and when and as required by this Agreement, each of which is more fully described hereinafter: (a) subject to the terms and conditions contained herein, to ground lease the Phase I portion of the Property to the Developer and the Phase II portion of the Property to the Phase II developer as provided herein; (b) to review and approve or disapprove pursuant to the terms of this Agreement matters or items submitted by Developer for approval under this Agreement, (c) to make the Loans to Developer..

(c) It is expressly understood and acknowledged by the parties hereto that any obligation of the Developer or the City referred to in this Agreement shall be subject to the satisfaction of any conditions precedent to such performance as set forth in this Agreement.

5. [§108] Schedule of Performance

The parties agree that each has obligations under this Agreement that are not shown on the "Schedule of Performance", attached to this Agreement as **Attachment No. 4**, and that the omission or partial omission of these obligations from the Schedule of Performance shall in no way relieve the parties of their respective obligations nor modify those obligations in any manner.

II. [§200] DISPOSITION OF THE PROPERTY

A. [§201] Lease of the Property

In accordance with and subject to all the terms, covenants, and conditions of this Agreement, in consideration of the Developer's agreement to develop the Site (Phase I) as required by this Agreement, the City agrees to groundlease the Property to the Developer and Developer agrees to lease the Property from the City under the terms set forth in the form of groundlease attached hereto as **Attachment No 5**. In accordance with and subject to all the terms, covenants, and conditions of this Agreement, in consideration of the Developer's agreement to develop the Phase II portion of the Property as required by this Agreement, the City agrees to ground lease the Phase II portion of the Property to the Developer or an affiliate of Developer (if compatible with the requirements of Developer's lenders) and Developer agrees to lease the Phase II portion of the Property from the City under terms to be agreed to between City and Developer to be set forth in the form of ground lease similar to that attached as **Attachment No. 5**.

B. [§202] Escrow

(1) Escrow No. 54605-817881-08 has been opened with North American Title Company located at 21060 Redwood Road, Suite 110, Castro Valley, CA 94546, in connection with the groundlease of the Site, (the "Escrow Agent" or "Title Company"), for the purposes set forth in this Agreement. This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow contemplated by this Agreement.

(2) The City and the Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent is hereby empowered to act under this Agreement, and upon indicating its acceptance in writing, delivered to the City and the Developer within five (5) days of receipt of a copy of this Agreement, the Title Company shall carry out its duties as Escrow Agent hereunder.

(3) Upon delivery of the Memorandum of Groundlease contemplated by this Agreement to the Escrow Agent by the City pursuant to Section 204 of this Agreement, the Escrow Agent shall record the Memorandum of Groundlease in accordance with these escrow instructions provided that the leasehold possession to the Property can be vested in the Developer in accordance with the terms and provisions of this Agreement.

(4) The City and the Developer shall deliver to the Escrow Agent all funds and documents necessary for each Loan in conformity with, and within the times, and in the manner provided in this Agreement.

(5) The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges, and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

(a) The amount of the premium for a California Land Title Association standard owner's policy ("CLTA policy") of title insurance for the Property insuring the title to the Property in the face amount of the Loan for each Phase;

(b) The amount of the premium, in excess of the amount deposited into escrow by the Developer under Section 202(5)(a) above, for an CLTA owner's policy plus any additional endorsements required by the Developer; and

(c) One-half (1/2) of any transfer taxes or recording fees, if any, arising out the transactions hereunder.

(6) The City shall timely and properly execute, acknowledge, and deliver the Groundlease for each Phase of the Property along with the Memorandum of Groundlease substantially in the form attached hereto as **Attachment No. 5**, delivering to the Developer leasehold possession of the Property in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such lease, if such be the fact.

(7) The Escrow Agent is authorized to:

(a) Pay, and charge the Developer and the City for any fees, charges and costs payable by such party pursuant to these instructions. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fees, charges and costs necessary to clear title and close the escrow.

(b) Deliver the appropriate documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by the City and the Developer.

(c) Record any instruments delivered through the escrow if necessary or proper to vest title in the Property in the Developer in accordance with the terms and provisions of these escrow instructions as contained in this Agreement.

(8) Any funds received in the escrow shall be deposited by the Escrow Agent in a general escrow account with any state or national bank doing business in the State of California. Such funds shall not be combined with other funds of the Escrow Agent.

(9) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both the City and the Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(10) Any amendment to these escrow instructions as contained in this Agreement shall be in writing and signed by both the City and the Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

(11) All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 801 of this Agreement for notices, demands, and communications between the City and the Developer. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations, if any, of the City or the Developer to specific performance.

(12) The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 through 205, inclusive, of this Agreement.

(13) The City shall not be liable for any real estate commissions or brokerage fees which may arise from this Agreement. The City and the Developer each represent that it has not engaged any broker, agent, or finder in connection with this transaction.

C. [§203] Conveyance of Property

1. [§204] Conveyance of Leasehold Interest in the Property

(a) Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, and subject to satisfaction of those obligations set forth as items 1-5 in the Schedule of Performance, the Property shall be conveyed to the Developer (in accordance with the provisions of this Section 204), on or prior to the date specified on the Schedule of Performance. The City and the Developer agree to perform all acts necessary to grant a leasehold possessory interest in the Property in accordance with the foregoing provisions and in compliance with the requirements of the Schedule of Performance.

(b) Possessory interest in the Property shall be delivered to the Developer concurrently with the conveyance of the leasehold estate to the Property, except that limited Developer access may be permitted before conveyance of the leasehold estate as permitted in Section 212 of this Agreement.

2. [§205] Condition of Title

Subject to the provisions, covenants, conditions and restrictions applicable to the Property or any portion thereof under this Agreement, the City shall convey

to the Developer only a leasehold interest and absolutely no interest in the underlying fee title interest.

3. [§206] Time for and Place of Delivery of Grant Deed

Subject to any mutually agreed upon extension of time, the City shall deposit the Groundlease substantially in the form attached hereto as **Attachment No. 5**, with the Escrow Agent on or before the date established as the close of escrow for each of the Loans pursuant to the Schedule of Performance.

4. [§207] Title Insurance for the Property

Concurrently with recordation of the recordable Loan Documents and the Memorandum of Groundlease, Title Company shall provide and deliver to the City a CLTA standard lender's title insurance policy issued by the Title Company insuring the Loan in the full face amount of the Loan for each Phase. The Title Company shall also provide the Developer with a copy of said title insurance policy for its records.

5. [§208] Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Property and taxes upon this Agreement or any rights thereunder, levied, assessed, or imposed for any period commencing prior to conveyance of title shall be paid by the City. Ad valorem taxes and assessments, if any, on the Property and taxes upon this Agreement or any rights thereunder, levied, assessed, or imposed for any period commencing after closing of the escrow shall be paid by the Developer. The City acknowledges that the Developer shall apply for welfare tax exemption under Revenue and Taxation Code Section 214 (f) or (g).

6. [§209] Occupants of the Property

Title to the leasehold estate in the Property shall be conveyed free of any possession or right of possession by any third party. The City and Developer agree that this Section shall not be interpreted to apply to the rights provided by Section 500.

7. [§210] Condition of the Property

The groundlease of the Property shall be conveyed in an "as is" condition, with no warranty, express or implied, by City as to the condition of the soil, geology, or the presence of known or unknown faults. It shall be the sole responsibility of the Developer, at Developer's expense, to investigate and determine the condition of the Property. If the condition of the Property is not suitable for the uses to which the Property will be put (including a determination by Developer that the existence of Hazardous Substances (as defined below) on the Property render the Projects unfeasible), Developer may terminate this Agreement prior to delivery of leasehold possession of the Property. After delivery of leasehold possession of the Property, if the conditions are not in all respects entirely suitable for the uses to which the Property will be put, then, except as provided below, it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Property in a condition entirely suitable for its intended development. The Developer agrees to hold the City harmless from any and all claims by or liability to the Developer, its successors or assigns for costs or damages alleged to arise out of the condition of the Property or any portion thereof, except for the City's failure to disclose any known condition which a seller of real property is required by law to disclose to the buyer of real property. Provided, however, that this obligation of the Developer shall not be imputed to the United States of America, acting by and through the Secretary of Housing and Urban Development (hereafter "HUD") or the "HUD Secretary") in the event that the HUD Secretary becomes a lender of Developer and acquires the leasehold estate to the Phase I portion of the Property (and all appurtenances thereto) through foreclosure or deed in lieu of foreclosure. Such exemption of the HUD Secretary from the foregoing hold harmless protection of the City shall hereafter be referred to as the "HUD Immunity".

D. [§211] Hazardous Substances

(1) Hazardous Substances, as used in this Agreement, shall include, without limitation, any flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls, and chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials of any kind, except those materials commonly and lawfully used in the construction and maintenance of the type of residential developments contemplated by this Agreement.

(2) After delivery of leasehold possession of the Property to Developer, Developer agrees to perform and be solely responsible for the clean-

up of any Hazardous Substances on, in, under or within the Property, and to comply with all related provisions of the Scope of Development, at the sole cost, risk and expense of Developer.

(3) After delivery of leasehold possession of the Property to Developer, the Developer shall defend, indemnify and hold harmless the City, the City and their officers, agents, employees, contractors, and consultants from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean-up of Hazardous Substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean-up of Hazardous Substances on, in or under the Property and which occurred after delivery of title and possession of the Property to Developer. The HUD Immunity shall apply with respect to the foregoing indemnification of the City.

E. [§212] Preliminary Work

Prior to the groundlease of the Property, representatives of the Developer shall have the right of access to the Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to determine the suitability of the Property (including without limitation reviews relating to Hazardous Substances) and to carry out this Agreement. The Developer shall indemnify the City and hold the City harmless for any injury or damages arising out of any activity pursuant to this Section. The HUD Immunity shall apply with respect to the foregoing indemnification of the City.

F. [§213] Submission of Evidence of Financing

The Developer intends to separately finance each Phase of the Projects. The specific manner of financing each Phase of the Projects is to be determined by Developer with the approval of the City based on the submittals herein, which approval shall not be unreasonably withheld.

(1) Not later than the time specified in the Schedule of Performance, the Developer shall submit to the City for its review a budget detailing all estimated costs for each Phase of the Projects including, but not limited to, construction permitting and financing costs and a reasonable contingency fund ("Project Budget").

(2) Prior to the commencement of construction for each Phase of the Projects, but not later than the time specified in the Schedule of

Performance, the Developer shall submit to the City for its review an updated Project Budget for each Phase and submit to the City for its approval evidence of financing for the costs of each Phase.

(3) All submissions of evidence of financing must be consistent with the Project Budget and sufficient to assure the City that adequate funds are available.

(4) Acceptable evidence of financing shall include: (1) an unconditional, firm and enforceable commitment by a recognized institutional lender, or investor with respect to Phase II, subject only to routine non-discretionary conditions, or other conditions approved by the City or (2) a certified financial statement, or other financial statement or form of financial confirmation, in such form reasonably satisfactory to the City. Other evidence may be accepted based on the reasonable discretion of the City.

III. [§300] DEVELOPMENT OF SITE

The terms and provisions of this Part III, Section 300 through Section 324, shall apply to each Phase separately.

A. [§301] Development of Site by the Developer

1. [§302] Scope of Development

The Developer shall develop the Site in accordance with and within the limitations established in the Scope of Development (**Attachment No. 3**) and the plans and documents approved by the City pursuant to this Agreement. For purposes of this Agreement, the terms "construct," "develop," "construction," or "development" shall mean and refer to the development of the Site as provided in the Scope of Development.

2. [§303] Design Development Drawings

The City has approved the Developer's "Design Development Drawings". The Design Development Drawings shall be mutually agreed upon between the Developer and the City.

3. [§304] Submission of Construction Documents

The Developer shall prepare "Construction Documents" for all on-site and off-site improvements required by the Scope of Development. The Developer shall submit the Construction Documents to the City of San José Building Department ("Building Department"), and concurrently submit the Construction Documents and related documents for the development of the Site to the City. The Construction Documents may be modified as provided in Section 305. The City shall approve the Construction Documents if they are consistent with the Design Documents to be approved and the terms of this Agreement. The Construction Documents shall include working drawings, specifications, materials boards, and detailed landscaping plans. The Construction Documents must be complete and coordinated in accordance with standard professional practice and must be in sufficient detail to obtain a building permit from the Building Department and be consistent with the Scope of Development. The Construction Documents shall be submitted to the City and Building Department within the time(s) set forth in the Schedule of Performance. The "Final Construction Documents" shall be the Construction Documents approved in writing by the Building Department.

4. [§305] City Approval of Construction Documents

(a) As set forth herein, the City shall have the right of review (including, but not limited to, architectural review) and approval of all plans, drawings and related documents for the development of the Site which are a part of the Construction Documents, including any proposed changes therein. The City's approval of the Construction Documents and any plans, drawings and related documents shall not be unreasonably withheld.

(b) The City neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Projects, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Projects, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment with respect to such matter, and any review, inspection, supervision, exercise of judgment or information supplied to the Developer or to any third party by the City in connection with such matter is for the public purpose of carrying out redevelopment, including the provision of moderate income housing, in accordance with this Agreement, and neither Developer nor any third party is entitled to rely thereon.

(c) The final submittal of the Construction Documents shall be reviewed by the Building Department and the City; however, after the written approval of the Construction Documents by the Building Department, City shall have no further right to review or change the Final Construction Documents without the prior consent and approval of Developer.

///

5. [§306] Construction Contract

Developer shall engage a general contractor for the Projects, acceptable to the City which acceptance by the City shall not be unreasonably withheld.

6. [§307] Land Use Approvals

The Developer shall develop the Site in accordance with all applicable local land use requirements (“Land Use Approvals”), and further agrees that any proposed design changes and the Final Construction Documents to be approved by the City in accordance with this Agreement shall comply with the Land Use Approvals.

7. [§308] Cost of Construction

The cost of developing the Site and of constructing all on-site and off-site improvements as required by this Agreement shall be borne solely by the Developer. All cost overruns to develop each Phase as described in this Agreement shall, subject to the Developer’s right to use the proceeds of the Loan and other proceeds from its lenders, be the sole responsibility of the Developer and shall be deemed additional equity contributions of Developer.

8. [§309] Schedule of Performance and Progress Meetings

The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance (**Attachment No. 4**), or within such extensions of such times as may be granted by the City or as provided for in Section 805 of this Agreement. The Schedule of Performance is

also subject to revision from time to time as mutually agreed upon in writing by and between the Developer and the City.

The City and Developer shall meet on a regular basis, at least quarterly, during construction to review compliance of the construction with the Final Construction Documents and the terms of this Agreement. Necessary changes or alterations in the plans will be discussed along with coordination of approval of the changes and other pertinent matters. The City shall have the reasonable right to inspect construction as well as the right to accept or reject work found not to be in accordance with the Final Construction Documents.

9. [§310] Indemnification and Insurance

Without limiting the force and effect of any other indemnity provisions in this Agreement, Developer agrees to, and shall, indemnify, protect, defend and hold the City and the City and their officers, employees, agents, successors and permitted assigns harmless from and against any and all claims, proceedings, liabilities, losses, damages, fees, costs, and expenses (including attorney's fees and court costs) arising after the conveyance of the Property from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (i) which shall occur on the Site, or (ii) which in any way arises out of the construction, development, management and/or operation of the Projects, including, but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after the City issues the Certificate of Compliance; notwithstanding the foregoing, Developer's obligations to indemnify and hold harmless exclude only such claim, loss or liability to the extent it is due to the negligence or willful misconduct of the City and/or City and/or their officers, employees, agents, successors or assigns. These indemnity obligations shall survive the termination of this Agreement. The HUD Immunity shall apply to the foregoing indemnification of the City.

Developer shall have and maintain the insurance policies set forth in the Loan Documents. Additionally, Developer shall be required to name the City and the City as additional insureds for purposes of obtaining insurance coverage against any claims, proceedings, liabilities, losses, damages, fees, costs and expenses (including court costs) arising after the conveyance of the Property from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any persons which shall occur on property adjacent to the Site which arises out of the construction, development, management and/or operation of the Projects. All policies, endorsements, certificates and/or binders shall be subject to the reasonable approval by the Risk Manager of the City.

RD: MDC

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies as set forth in the Insurance Requirements and all such insurance or bond shall name City and the Redevelopment Agency as additional insureds. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Sites carries workers' compensation insurance as required by law.

10. [§311] Antidiscrimination During Construction; Equal Opportunity

The Developer, for itself and its successors and assigns agrees that in the construction of the improvements on the Site provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants for employment will receive consideration for employment without regard to race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.

(c) The Developer will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. [§312] Local, State, and Federal Laws

The Developer shall carry out the construction of the improvements and all other work on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

12. [§313] City and Other Governmental City Permits

Before commencement of any work or improvement upon the Site, the Developer shall secure or shall cause to be secured, any and all permits which may be required by the City or any other governmental City affected by such construction, development or work. The City shall provide all proper assistance to the Developer in securing these permits and certificates. The Developer shall pay such fees as may be required in connection therewith. The parties acknowledge that Developer will seek to obtain the right to construct the Projects as described in Attachment No. 3.

13. [§314] Rights of Access

Representatives of the City and the City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements on the Site as provided in this Agreement and interviewing workers for the purpose of determining Developer's compliance with Section 323 below. Such representatives of the City shall be those who are so identified by the City's Housing Director. Such representatives shall attempt to minimize any disruption to any construction work being performed during any inspection. If any inspection or interview may be performed during non-working hours, such representatives shall use good faith efforts to schedule such inspections and/or interviews during non-working hours. The City and hereby indemnifies and hold the Developer harmless for any injury or damages arising out of any activity of any such representatives performed and conducted on the Site pursuant to this Section.

B. [§315] Prohibition Against Transfer

(1) Prior to the recordation of the Certificate of Compliance for the Project (referred to in Section 322 of this Agreement), the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Site or the improvements thereon, without prior written approval of the City. This prohibition shall not apply to the Site subsequent to the recordation of such Certificate of Compliance. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the sale for occupancy of all or any of the Units, nor shall it prohibit

granting any security interests described in this Agreement for financing the acquisition and development of the Site.

(2) If, contrary to the provisions of this Agreement, the Developer does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign any part of the Site or the improvements thereon prior to the completion of the Project as evidenced by a Certificate of Compliance, the City shall be entitled to the consideration payable for such sale, transfer, conveyance or assignment.

(3) Prior to recordation of a Certificate of Compliance, any proposed transferee shall be subject to prior written approval by the City. Any proposed transferee shall have the qualifications and financial responsibility necessary and adequate, as determined by the City, to fulfill the obligations undertaken in this Agreement by the Developer. Prior to City approval or disapproval of the proposed transfer, the Developer and the proposed transferee shall submit to the City, for its review and approval, all instruments and other legal documents proposed to effect any such transfer, and a written instrument in a form recordable among the land records, binding upon the proposed transferee and its successors and assigns and for the benefit of the City, by which the proposed transferee shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions to which the Developer is subject.

(4) In the absence of specific written agreement by the City, no sale, transfer, conveyance or assignment of the Site, or approval thereof by the City, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

(5) Notwithstanding the above, Developer shall not be required to seek the approval of the City and this Agreement shall not be terminated in connection with any assignment or transfer of this Agreement ("Transfer") to the extent such Transfer applies only to Phase II and (i) such Transfer is to any entity in which Developer is the managing general partner or the managing member and Developer retains control of the day to day operations of such entity; and (ii) the transferee has delivered to the City a fully executed Completion Guarantee in the form included in **Attachment No. 8** executed by Developer. Developer shall provide the City with written notice of any such Transfer.

C. [§316] Security Financing; Right of Holders

The terms of this Agreement may be modified by written amendments by Developer and City's Housing Director as reasonably necessary for a lender so long as such change(s), if any, do not modify or change the substantial rights and obligations of the City as set forth in this Agreement.

1. [§317] No Encumbrances Except Mortgages, Leasehold Deeds of Trust, Conveyances and Leases Back or Other Conveyance for Financing for Development

Notwithstanding Section 315, mortgages, leasehold deeds of trust, conveyances and leaseback, or any other form of conveyance required for financing are permitted to encumber the leasehold interest in the Site before the recordation of a Certificate of Compliance (referred to in Section 322 of this Agreement), for the purpose of securing loans of funds to be used for financing the expenditures necessary and appropriate to develop the Site under this Agreement. Any such mortgages, leasehold deeds of trust, conveyances and leaseback, or any other form of conveyance shall be subject to the covenants, conditions and restrictions applicable to the Site under this Agreement, except that any affordable restrictions on the leasehold shall be subordinated to such conveyances. The Developer shall notify the City in advance of any mortgage, deed of trust, conveyance and leaseback, or other form of conveyance for financing if the Developer proposes to enter into the same before the recordation of the Certificate of Compliance. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City, which approval the City agrees to give if the conveyance complies with the first sentence hereof and any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved by the City unless rejected in writing by the City within ten (10) days after the City receives notice of the identity of the proposed lender. Such lender approved by the City shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

The words "mortgage" and "leasehold deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development.

2. [§318] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement ("Authorized Lender") shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements on the Site or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such Authorized Lender to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3. [§319] Notice of Default to Mortgage, Leasehold Deed of Trust or Other Security Interest Holders: Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of development of the improvements on the Site, the City shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. The City will cooperate with any construction or permanent lender to the extent reasonably necessary to modify the provisions of this Section 319 to meet the requirements of such lender. Each such holder shall (insofar as the rights of the City are concerned) have the right at its option within ninety (90) days after the receipt of the notice to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within one hundred eighty (180) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such one hundred eighty (180) day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default of the Developer. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. Prior to entering into such an agreement, the holder shall submit evidence satisfactory to the City that such holder has the qualifications and financial responsibility necessary to perform such obligations. Any such holder that properly completes

such improvements shall be entitled, upon written request made to the City, to a Certificate of Compliance from the City.

4. [§320] Failure of Holder to Complete Improvements

In any case where, six months after default by the Developer in the completion of the improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site or any portion thereof has not exercised the option (as specified in Section 319 of this Agreement) to cure such default, or if it has exercised the option has not proceeded diligently to cure such default, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage, leasehold deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).
- (b) All expenses with respect to foreclosure or deed in lieu of foreclosure.
- (c) The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Site, such as insurance premiums and real estate taxes.
- (d) The costs of any improvements made by such holder.
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

5. [§321] Right of City to Cure Mortgage, Leasehold Deed of Trust, or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage,

leasehold deed of trust or other security interest with respect to the Site (or any portion thereof) prior to the completion of development, and the holder has not entered into an agreement to assume the Developer's obligations (as provided in Section 319 of this Agreement), the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the leasehold of the Site (or any portion thereof) to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to mortgages, deeds of trust, or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

D. [§322] Intentionally Omitted.

E. [§323] Prevailing Wages

Developer shall pay, or cause to be paid, prevailing wages, for all construction work required under this Agreement. For the purposes of this Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 *et seq.*), and as established by the Director of the California Department of Industrial Relations ("DIR"), or in the absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification. In any case where the prevailing wage is established by the DIR or by OEA, the general prevailing rate of per diem wages shall be adjusted annually in accordance with the established rate in effect as of such date. Developer shall indemnify and hold the City and Agency harmless from any costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages, including but not limited to, costs in investigating or conducting audits.

Developer shall require its construction contractor and subcontractors to complete and submit all prevailing wage compliance documentation to OEA. Following commencement of construction, Developer shall further require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request. The contractor for the construction of the Project shall be required to (1) grant the City and Agency access to the Project site at reasonable times for the purposes of enforcing the provisions of this Section; (2) provide the City and Agency with documentation relating to compliance with this Section; and (3) indemnify and hold the City and Agency harmless from any

costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages, including but not limited to, costs in investigating or conducting audits. The HUD Immunity shall apply to the foregoing indemnification of the City and Agency.

F. [§324] Construction Signs and Project Ceremonies

The Developer shall provide construction site signs that identify the development and give recognition to the City. The design and text of the signs shall be subject to prior review and approval by the City. The sign must be erected on the Site on or before commencement of construction on the Site. Developer shall be solely responsible for the cost of all project ceremonies, including groundbreaking, pre-opening and opening events. All such ceremonies shall be closely coordinated with City.

IV. [§400] USE OF THE SITE

A. [§401] Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof as follows:

(1) The Site shall be used in accordance with the provisions of this Agreement, the Scope of Development, the City's General Plan, the City Zoning ordinance, the permits issued for the Site, and all plans approved by the City pursuant to this Agreement.

(2) The Site, the improvements thereon and related landscaping and common areas shall be maintained in compliance with the San José Municipal Code, and all applicable federal, state and local laws and regulations.

Further, the Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof that until the issuance of a Certificate of Compliance:

B. [§402] Obligation to Refrain from Discrimination

The Developer covenants and agrees for itself, its heirs, successors, 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, or on the basis of actual or perceived gender identity 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 such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

C. [§403] Form of Nondiscrimination and Nonsegregation Clauses

All leases, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, or any portion thereof made or entered into by Developer, its successors or assigns, shall contain therein the following language:

(a) Leases:

"The grantee/lessee 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, or on the basis of actual or perceived gender identity 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 such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In Contracts:

"The contractor herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in

Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it 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 Property. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract."

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall the foregoing be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 403.

D. [§404] Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, Developer, their successors and assigns, the City and any successor in interest to the Site or any part thereof.

Unless necessarily implied, the covenants and obligations herein shall not be merged with the grant deed and shall survive the transfer of the Property and the recording of the grant deed.

Following the issuance of a Certificate of Compliance pursuant to Section 322 of this Agreement, with the exception of Sections 210, 211, and 310, any surviving covenants and obligations shall run with the land and not be personal to the Developer.

E. [§405] Effect of Violation of the Terms of this Agreement

The City and the Agency are deemed beneficiaries of the terms and provisions of this Agreement and the covenants running with the land, both for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement

and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the City and Agency. The City and Agency shall have the right if the covenants 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 Agreement and covenants are entitled.

F. [§406] Intentionally Omitted.

V. [§500] Intentionally Omitted.

VI. [§600] FINANCING

A. [§601] Method of Financing Development

The development of Phase I and Phase II shall be financed by as set forth in the Method of Financing attached hereto as **ATTACHMENT No. 7.**

VII. [§700] DEFAULTS, REMEDIES AND TERMINATION

From and after the Property is subdivided and conveyed to each separate Developer (Ford Road Supportive Housing, Inc. with respect to Phase I and to the limited partnership with respect to Phase II), the terms and provisions of this Part VII, Section 700 through Section 708, shall apply to each Developer and Phase separately. A default by the Developer of one Phase shall not be deemed a default by the Developer of the other Phase, and the City shall have the right to exercise its rights and remedies only against the defaulting Developer and its respective interests in the Property.

A. [§701] Defaults - General

Subject to the extensions of time approved by City, failure or delay by either party to perform any term or provision of this Agreement, constitutes a default under this Agreement.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party and the actions required to cure the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

If the default is not cured by the defaulting party within thirty (30) days after service of the notice of default, or in the case of a default which cannot be cured within thirty (30) days, the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable period of time after commencement, the defaulting party shall be liable to the other party for damages caused by such default, and the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

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. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

B. [§702] Legal Actions

1. [§703] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that County, or in the Federal District Court for the Northern District of California.

2. [§704] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§705] Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City and/or Agency, service of process on the City and/or Agency shall be made by personal service upon the Mayor of the City and/or the Executive Director of the Agency, as applicable, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City and/or the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. [§706] Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§707] Termination by City

The City at its option may terminate this Agreement in the event of the following:

(1) If prior to the issuance of a Certificate of Compliance, the Developer assigns or attempts to assign this Agreement, or any rights therein, or makes or attempts to make any total or partial sale, transfer or conveyance of the whole or any part of the Site or the improvements thereon, except as permitted by this Agreement.

(2) If the Developer is in default of any of Developer's Material Obligations, as set forth in Section 107, and such default is not cured within the times provided in Section 701 herein.

E [§708] Termination by Developer

Subject to Section 805 of this Agreement, the Developer may terminate this Agreement if the City fails to approve the evidence of financing within the time provided in the Schedule of Performance.

VIII. [§800] GENERAL PROVISIONS

A. [§801] Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as designated in Section 104 and Section 105 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 801. Such notices will be deemed delivered (3) three days after they are mailed.

B. [§802] Conflict of Interests

No member, official or employee of the City or the Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested.

C. [§803] Warranty Against Payment of Consideration for Agreement

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

D. [§804] Nonliability of Officials and Employees

No member, official, or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement. No officer, director, or employee of the Developer shall be personally liable to the City, in the event of any default or breach by the Developer or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

E. [§805] Enforced Delay: Extension of Time of Performance

Notwithstanding specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of the City or any other public or governmental City or entity (other than that acts or failure to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the fault 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. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

F. [§806] Inspection of Books and Records

The City has the right at all reasonable times to inspect the records of the Developer pertaining to the Site and/or the Project as necessary to confirm compliance with the terms of this Agreement, including, but not limited to, the prevailing wage provisions and the affordability requirements.

G. [§807] Approvals and Time Extension

Approvals required of the City or the Developer shall not be unreasonably withheld and approval or disapproval shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. City's Executive Director is authorized to approve and provide time extensions, budget modifications, approvals and necessary lender modifications allowed or required by this Agreement if, in the Executive Director's sole discretion, such time extensions, approvals and modifications are consistent with the provisions and intent of this Agreement.

H. [§808] Subdivision Map

The Developer shall prepare one or more subdivision maps for the Site as required by state law or as a funding condition of another lender for purpose of creating and establishing the Phase I and Phase II developments.. The City shall cooperate in signing the subdivision map dividing the Property into two separate parcels for each of the two Phases contemplated by this Agreement. The subdivision shall occur prior to the construction loan closing for Phase I. The two separate parcels are generally depicted in the Site Map attached as **Attachment 1**.

I. [§809] Intentionally Omitted.

IX. [§900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall be executed in duplicate originals each of which is deemed to be an original. This Agreement, together with its 8 Attachments, constitutes the entire understanding and agreement of the parties. Each said Attachment and the above Recitals are hereby incorporated herein. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

X. [§1000] TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City within thirty (30) days after the date of signature by the Developer for this Agreement to take effect, otherwise, this Agreement shall be deemed voided and shall have no effect.

This document is continued on the following page.

“CITY”

THE

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM

Mark DeCastro
Sr. Deputy City Attorney

By: _____

Name _____

Title: _____

“DEVELOPER”

EDEN HOUSING, INC., a California nonprofit public benefit corporation

By: _____

Name _____

Title: _____

ATTACHMENTS

| | |
|--------------------|---|
| Attachment No. 1 | Site Map |
| Attachment No. 2 | Legal Descriptions |
| Attachment No. 3 | Scope of Development |
| Attachment No. 4 | Schedule of Performance |
| Attachment No. 5 | Form of Groundlease and Memorandum of Groundlease |
| Attachment No. 6 | Loan Documents |
| Attachment No. 7 | Method of Financing |
| Attachment No. 7-A | Proforma Financing Summary |

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY
OF THE CITY OF SAN JOSE

and

EDEN HOUSING, INC.

for the

Ford Road Supportive Housing Project
(Phase I and II)

March 29, 2011

Ford Road DDA
T-8908.003/723910
Council Agenda: 3/29/11
Item No.: 4.3(b)

**DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov
for final document**

| | |
|--|----|
| DISPOSITION AND DEVELOPMENT AGREEMENT..... | 1 |
| I. [§ 100] SUBJECT OF AGREEMENT..... | 1 |
| A. [§ 101] Purpose of the Agreement | 1 |
| B. [§ 102] The Site..... | 2 |
| C. [§ 103] Parties to the Agreement..... | 2 |
| 1. [§ 104] The City | 2 |
| 2. [§ 105] The Developer | 3 |
| 3. [§ 106] Prohibition against Change in Ownership Management and Control of Developer..... | 3 |
| 4. [§107] Material Obligations; Conditions Precedent..... | 4 |
| 5. [§108] Schedule of Performance | 5 |
| II. [§200] DISPOSITION OF THE PROPERTY..... | 5 |
| A. [§201] Lease of the Property..... | 5 |
| B. [§202] Escrow | 6 |
| C. [§203] Conveyance of Property..... | 8 |
| 1. [§204] Conveyance of Leasehold Interest in the Property | 8 |
| 2. [§205] Condition of Title..... | 8 |
| 3. [§206] Time for and Place of Delivery of Grant Deed | 9 |
| 4. [§207] Title Insurance for the Property..... | 9 |
| 5. [§208] Taxes and Assessments..... | 9 |
| 6. [§209] Occupants of the Property | 9 |
| 7. [§210] Condition of the Property | 10 |
| D. [§211] Hazardous Substances | 10 |
| E. [§212] Preliminary Work..... | 11 |
| F. [§213] Submission of Evidence of Financing..... | 11 |
| III. [§300] DEVELOPMENT OF SITE | 12 |
| A. [§301] Development of Site by the Developer | 12 |
| 1. [§302] Scope of Development | 12 |
| 2. [§303] Design Development Drawings | 12 |

| | | |
|-----|--|----|
| 3. | [§304] Submission of Construction Documents | 13 |
| 4. | [§305] City Approval of Construction Documents | 13 |
| 5. | [§306] Construction Contract | 14 |
| 6. | [§307] Land Use Approvals | 14 |
| 7. | [§308] Cost of Construction | 14 |
| 8. | [§309] Schedule of Performance and Progress Meetings | 14 |
| 9. | [§310] Indemnification and Insurance | 15 |
| 10. | [§311] Antidiscrimination During Construction; Equal Opportunity... .. | 17 |
| 11. | [§312] Local, State, and Federal Laws..... | 17 |
| 12. | [§313] City and Other Governmental City Permits | 18 |
| 13. | [§314] Rights of Access | 18 |
| | | |
| B. | [§315] Prohibition Against Transfer | 18 |
| | | |
| C. | [§316] Security Financing; Right of Holders | 20 |
| 1. | [§317] No Encumbrances Except Mortgages, Leasehold Deeds of Trust, Conveyances and Leases Back or Other Conveyance for Financing for Development | 20 |
| 2. | [§318] Holder Not Obligated to Construct Improvements | 21 |
| 3. | [§319] Notice of Default to Mortgage, Leasehold Deed of Trust or Other Security Interest Holders: Right to Cure | 21 |
| 4. | [§320] Failure of Holder to Complete Improvements | 22 |
| 5. | [§321] Right of City to Cure Mortgage, Leasehold Deed of Trust, or Other Security Interest Default..... | 22 |
| | | |
| D. | [§322] Intentionally Omitted..... | 23 |
| | | |
| E. | [§323] Prevailing Wages | 23 |
| | | |
| F. | [§324] Construction Signs and Project Ceremonies..... | 24 |
| | | |
| IV. | [§400] USE OF THE SITE..... | 24 |
| | | |
| A. | [§401] Uses | 24 |
| | | |
| C. | [§403] Form of Nondiscrimination and Nonsegregation Clauses | 25 |
| | | |
| D. | [§404] Effect and Duration of Covenants | 26 |
| | | |
| E. | [§405] Effect of Violation of the Terms of this Agreement | 26 |
| | | |
| F. | [§406] Intentionally Omitted..... | 27 |
| | | |
| VI. | [§600] FINANCING | 27 |

| | | |
|-------|---|----|
| A. | [§601] Method of Financing Development..... | 27 |
| VII. | [§700] DEFAULTS, REMEDIES AND TERMINATION..... | 27 |
| A. | [§701] Defaults - General | 27 |
| B. | [§702] Legal Actions..... | 28 |
| 1. | [§703] Institution of Legal Actions..... | 28 |
| 2. | [§704] Applicable Law..... | 28 |
| 3. | [§705] Acceptance of Service of Process | 28 |
| C. | [§706] Rights and Remedies are Cumulative | 29 |
| D. | [§707] Termination by City | 29 |
| E. | [§708] Termination by Developer | 29 |
| VIII. | [§800] GENERAL PROVISIONS..... | 30 |
| A. | [§801] Notices, Demands, and Communications Between the Parties ... | 30 |
| B. | [§802] Conflict of Interests..... | 30 |
| C. | [§803] Warranty Against Payment of Consideration for Agreement..... | 30 |
| D. | [§804] Nonliability of City Officials and Employees | 30 |
| E. | [§805] Enforced Delay: Extension of Time of Performance..... | 31 |
| F. | [§806] Inspection of Books and Records..... | 31 |
| G. | [§807] Approvals and Time Extension..... | 31 |
| H. | [§808] Subdivision Map..... | 32 |
| I. | [§809] Intentionally Omitted..... | 32 |
| IX. | [§900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS | 32 |
| X. | [§1000] TIME FOR ACCEPTANCE OF AGREEMENT BY CITY..... | 32 |

ATTACHMENT NO. 1

Site Map

- i -

Ford Road DDA
T-8908.003/723910
Council Agenda: 3/29/11
Item No.: 4.3(b)

**DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov
for final document**

ATTACHMENT NO. 2

Legal Descriptions

Property

ALL THAT CERTAIN PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THE PARCEL DESCRIBED IN THE GRANT DEED RECORDED ON MAY 17, 1945 IN BOOK 1264, AT PAGES 64-65, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE MONUMENT LINES OF MAYLAND AVENUE AND FORD ROAD AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF TRACT NO. 6240 RECORDED ON MAY 11, 1978 IN BOOK 418 OF MAPS, AT PAGES 5-6, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG SAID CENTERLINE OF MAYLAND AVENUE N 60°42'37" W 41.28 FEET TO THE SOUTHEASTERLY BOUNDARY OF SAID TRACT NO. 6240; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY S 36°08'44" W 96.12 FEET TO AN ANGLE POINT ON SAID TRACT BOUNDARY AND THE POINT OF BEGINNING; THENCE ALONG A LINE PARALLEL WITH AND 40.00 FEET DISTANT, MEASURED AT A RIGHT ANGLE, FROM THE MONUMENT LINE OF FORD ROAD AS SHOWN ON THE PARCEL MAP RECORDED ON MARCH 20, 1989 IN BOOK 597 OF MAPS, AT PAGES 8-9, RECORDS OF SANTA CLARA COUNTY, S 36°42'00" W 502.24 FEET TO THE GENERAL NORTHEASTERLY LINE OF THE PARCEL CONVEYED TO PACIFIC REAL ESTATE INVESTMENT TRUST BY THE STATE OF CALIFORNIA DIRECTOR'S DEED RECORDED ON MARCH 22, 1989 AS DOCUMENT NO. 10047036, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG SAID GENERAL NORTHEASTERLY LINE, N 52°27'39" W 215.46 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 63°05'16", FOR AN ARC LENGTH OF 44.04 FEET; THENCE N 10°37'37" E 95.67 FEET TO AN ANGLE POINT; THENCE N 29°26'17" W 295.01 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 90°00'00", FOR AN ARC LENGTH OF 47.12 FEET; THENCE N 60°33'43" E 113.00 FEET TO THE GENREAL NORTHEASTERLY LINE OF SAID PARCEL (1264 O.R. 64-65) AND THE SOUTHWESTERLY BOUNDARY OF SAID TRACT NO. 6240; THENCE ALONG SAID TRACT BOUNDARY, S 29°26'17" E 310.01 FEET; THENCE CONTINUING ALONG SAID TRACT BOUNDARY ALONG A TANGENT CURVE, TO THE LEFT, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 50.00 FEET AND A ANGLE OF 70°15'04", FOR AN ARC LENGTH OF 61.31 FEET; THENCE CONTINUING ALONG SAID TRACT BOUNDARY N 80°18'39" E 205.97 FEET; THENCE CONTINUING ALONG SAID TRACT BOUNDARY ALONG A TANGENT CURVE TO THE LEFT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 200.00 FEET AND A CENTRAL ANGLE OF 30°46'22", FOR AN ARC LENGTH OF 107.42 FEET TO THE POINT OF BEGINNING.

APN: 678-53-004

- i -

Ford Road DDA
T-8908.003/723910
Council Agenda: 3/29/11
Item No.: 4.3(b)

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document

ATTACHMENT NO. 3
SCOPE OF DEVELOPMENT

I. GENERAL PROJECT DESCRIPTION - PHASES I AND II

IIII. GENERAL DESIGN REQUIREMENTS

The Developer agrees that the Site shall be developed in accordance with the Land Use Approvals specified in Section 307 of this Agreement. Developer further agrees that any proposed design changes and the Construction Documents to be approved by the City in accordance with Section 305 of this Agreement shall comply with the Land Use Approvals.

The Projects shall conform to the provisions, design criteria, and property development standards contained in the Construction Documents and this Scope of Development. The residential improvements on the Site shall be designed as rental housing. Finish materials shall be selected for quality and permanence, conveying an intended image of an urban character.

All improvements shall be of good architectural quality, the Site shall be well landscaped, and Site and improvements shall be effectively and aesthetically designed in accordance with the provisions of this Agreement. Particular attention shall be paid to the shape, scale of volume, exterior design and exterior finish of each building. The Developer's plans and specifications shall describe in detail the architectural character intended for the Developer's improvements. The City and the Developer will cooperate and direct their consultants, architects and engineers to cooperate so as to ensure the continuity and coordination necessary for the proper and timely completion of the development of the Projects.

IV. PUBLIC IMPROVEMENTS, UTILITIES AND SITE PREPARATION

The Developer shall provide, or cause to be provided, all public improvements, utilities and site preparation necessary or required for the development of the Site pursuant consistent with the Development Permits and any other requirements identified by the City's development process.

ATTACHMENT NO. 4
SCHEDULE OF PERFORMANCE

1. Construction Documents for Improvements. Developer shall submit Construction Documents for Improvements to the City and Building Department, and apply for the required Building Permit. Prior to City approval of DDA.

2. Recording of Memorandum of Agreement. Developer and City shall execute Memorandum and City shall record Memorandum. Within fifteen (15) days after Effective Date of DDA.

3. Construction Documents for Improvements. City shall approve or make written requests for changes to Construction Documents for Improvements. Within twenty (20) days after Effective Date of DDA.

4. Evidence of Financing & Budget. Developer shall submit to the City the budgets and evidence of financing described in Section 213(a). City shall review and if applicable, approve or reject evidence of financing within fifteen (15) days of submittal. Evidence shall be submitted at least twenty (20) days prior to the close of escrow.

5. Delivery of Documents to Escrow. City and Developer shall deliver to the Escrow Agents all documents and funds required for the close of escrow. Prior to the close of escrow.

- | | |
|--|--|
| 6. <u>Close of Escrow.</u> The escrow for the conveyance of the City property shall close. | Within thirty (30) days after ____. |
| 7. <u>Commencement and completion of Construction of</u> construction of Phase I consistent with approved Construction Documents and approved Building Permit.. | No later than January 31, 2012 with completion no later than December 31, 2012. |
| 8. Commencement and <u>Completion of</u> Phase II consistent with approved Construction Documents and approved Building Permit. | As requested by Developer and approved by City. |
| 9. <u>Submittal of Final Construction Documents for Phase I and Evidence of Financing for Phase I.</u> Developer shall submit to the City and City Final Construction Documents for Phase I of the Project, apply for the required Building Permit; and submit to City a Project Budget and Evidence of Financing for Phase I. | By December 31, 2012. |
| 10. <u>City Comments on Construction Documents.</u> City shall review and comment on submitted Final Construction Documents for Phase I. | Within fifteen (15) business days of receipt of submittal. |
| 11. <u>Commencement of Phase I Construction.</u> Developer shall commence the foundation work for Phase I and submit a Phase I Construction Schedule. | Within _____ months of the close of escrow, unless the Compliance Period has been extended pursuant to Section 709, in which case, deadline is within ____months of the close of escrow. |

ATTACHMENT NO. 5

FORM OF GROUNDLEASE AND FORM OF MEMORANDUM OF GROUNDLEASE

ATTACHMENT NO. 6

Loan Documents

ATTACHMENT NO. 7

METHOD OF FINANCING

Phase I - Special Needs Housing

Project Description and Use: 20 units consisting of 18 HUD units operated for special needs tenants affordable at 30% of AMI and subsidized under a Project Rental Assistance Contract ("PRAC") operating subsidy provided by HUD; one unit for a tenant at rents affordable at 50% of AMI; and one manager's unit without income. Proforma rents, subsidy, income, expenses and cash flow is as shown in the project proforma.

Ground Lease terms:

- Term: 75 years
- Ground lease payment: \$1 / year payment in advance at closing
- Residual receipts payment: 4% of the value of the property paid from a proportionate share in relation to investment with other soft lenders from 50% of surplus cash flow starting upon full repayment of the City loan; to be waived in the event that a FHLB AHP grant is awarded to the project. All distributions of residual receipts subject to approval by HUD.
- Affordability restriction recorded on leasehold: 30% of AMI for 18 units, 50 % AMI for one unit and one unrestricted manager's unit, unsubordinated to other liens, unless required by HUD.

Construction Loan:

- Loan Amount:
 - a) \$3,000,000 NSP loan (Neighborhood Stabilization Program – HUD funds plus potential Section 811 Funding of \$2,972,000.00)
 - b) \$690,000 loan 20% tax-increment funds for Phase II infrastructure costs incurred in Phase I. Note that this loan is for Phase II funded in Phase I.
 - c) \$500,000 conditional loan 20% tax-increment funds provided as a back-stop loan in case HUD does not approve HTSCC's (Housing Trust of Santa Clara County) proposed \$500,000 construction / permanent secondary financing as a "public agency" lender or waives the public agency lender requirement
 - d) \$190,000 conditional loan 20% tax-increment funds provided as a back-stop loan in the event that a FHLB AHP award is not obtained in time to meet HUD's financing deadlines.
- Term: 12 months
- Interest rate: 0%

- Debt service: None
- Security: Second mortgage lien subordinate to HUD lien

Permanent Loan:

- Loan Amount:
 - a) \$3,000,000 NSP loan (Neighborhood Stabilization Program – HUD Funds (plus carryover of Section 811 Funding of \$2,972,000, if any)
 - b) \$500,000 conditional loan 20% tax-increment funds provided as a back-stop loan in the event that HTSCC (Housing Trust of Santa Clara County) proposed \$500,000 construction / permanent financing is not allowed by HUD on the basis that it is not public agency secondary financing or that HUD does not waive its public agency secondary financing only requirement.
 - c) \$190,000 conditional loan 20% tax-increment funds provided as a back-stop loan in the event that a FHLB AHP award is not obtained
- Term: 55 years
- Interest rate: 0%
- Debt service: Proportionate share in relation to investment with other lenders in 50% of cash flow from residual receipts as approved for distribution by HUD
- Security: Second mortgage lien subordinate to HUD first lien

Phase II – Family Housing

Project Description and Use: 75 one-, two-, and three-bedroom family units affordable to families at 20%, 25%, 30%, 45% and 50% of AMI. Proforma rents, subsidy, income, expenses and cash flow is as shown in the project proforma.

Ground Lease terms:

- Term: 75 years
- Ground lease payment: \$1 / year payment in advance at closing
- Residual receipts payment: 4% of the value of the property paid from a proportionate share in relation to investment with other lenders in 50% of cash flow; to be waived in the event that a FHLB AHP grant is awarded to the project
- Affordability restrictions on leasehold. : 50% of AMI, for 55 Years. After year 55, units restricted to 80% of AMI. Restrictions to be unsubordinated to other liens, if acceptable to senior lenders.

Predevelopment and Construction Loan:

- Loan Amount: \$740,000 loan 20% tax-increment funds for Phase II infrastructure costs incurred in Phase I, rolled over from Phase I loan.
- Term: 60 months or until permanent conversion (term to start at Phase I construction closing, and continue to Phase II completion)

- Interest rate: 0%
- Debt service: None
- Security: Second mortgage lien subordinate to senior lender lien, or subordinate to other soft lenders with larger loan amounts, if necessary
- Affordability Restrictions on loan. 50% of AMI for 55 years. After year 55, units restricted to 80% of AMI. Restrictions are unsubordinated to other liens if acceptable to senior lenders..

Permanent Loan:

- Loan Amount: \$740,000 loan 20% tax-increment funds for Phase II infrastructure costs incurred in Phase I, rolled over from Phase I loan as a loan to Phase II.
- Term: 55 years
- Interest rate: 0%
- Debt service: Proportionate share in relation to investment with other lenders in 50% of cash flow from residual receipts
- Security: Second mortgage lien subordinate to senior lender lien, or subordinate to other soft lenders with larger loan amounts, if necessary.
- Affordability Restrictions on Loan. 50% of AMI for 55 years. After year 55, units are restricted to 80% of AMI. Restrictions are unsubordinated to other liens, if acceptable to senior lenders.
-
-
- .

ATTACHMENT NO. 7-A
PROFORMA FINANCING SUMMARY

Ford & Monterey Phase 2-- 4% New Construction with MHP
SOURCES AND USES OF FUNDS

| SOURCES of FUNDS | TOTAL | Acq./Predev. | Construction | Permanent | % of Total | Per Unit | Assumptions | TERMS |
|---|----------------------|---------------------|----------------------|---------------------|----------------------|-------------------|---------------|-------------------------------|
| Predevelopment Loan: City of San Jose | \$ - | \$ - | \$ - | \$ - | 42400000.00% | | 3.00% | 20 |
| Predevelopment Loan: Sobrato Foundation | \$ 350,000 | \$ (350,000) | \$ - | \$ - | 0.00% | | 0.00% | 36 |
| Other Predevelopment Loan | \$ 213,573 | \$ (213,573) | \$ - | \$ - | 0.00% | | 4.00% | Eden LOC (~8) |
| City of San Jose Land Loan/Credit | \$ 4,240,000 | \$ - | \$ 4,240,000 | \$ - | 12.06% | \$ 56,533 | | Ground Lease |
| City of San Jose RDA Loan | \$ 1,430,000 | \$ 740,000 | \$ - | \$ - | 4.07% | \$ 19,067 | | Loan - 55 yr de |
| Santa Clara County Funds | \$ 3,375,000 | \$ - | \$ 3,375,000 | \$ - | 9.80% | \$ 45,000 | \$125,000 | per ELL unit |
| MHSA Capital Funds | \$ 500,000 | \$ - | \$ - | \$ 500,000 | 1.42% | \$ 6,667 | \$100,000 | Assumes \$100, Held by CalHF/ |
| MHSA Capitalized Operating Subsidy | \$ 500,000 | \$ - | \$ - | \$ 500,000 | 1.42% | \$ 6,667 | | |
| HUD B11 Capital Grant | \$ - | \$ - | \$ - | \$ - | 0.00% | \$ - | | |
| Tax-Exempt Construction Loan | \$ - | \$ - | \$ 21,981,705 | \$ (21,981,705) | 0.00% | \$ - | | |
| FHLB - AHP | \$ 740,000 | \$ - | \$ 740,000 | \$ - | 2.10% | \$ 10,000 | | 4.50% int |
| LIH Tax Credit-LP Capital | \$ 11,589,867 | \$ - | \$ 1,738,480 | \$ 9,851,387 | 32.95% | \$ 154,532 | .98 cents | Construction Lc Loan @ 0% |
| LIH Tax Credit-GP Capital | \$ 200,000 | \$ - | \$ - | \$ 200,000 | 0.57% | \$ 2,867 | | |
| Tax-Exempt Permanent Financing | \$ 2,504,002 | \$ - | \$ - | \$ 2,504,002 | 7.12% | \$ 33,387 | | |
| Permanent Financing - 2nd Mortgage | \$ 2,367,274 | \$ - | \$ - | \$ 2,367,274 | 6.73% | \$ 31,564 | | N/A |
| Deferred Developer Fee | \$ 127,500 | \$ - | \$ - | \$ 127,500 | 0.38% | \$ 1,700 | | |
| Prop 1C MHP | \$ 7,597,878 | \$ - | \$ - | \$ 7,597,878 | 21.60% | \$ 101,305 | | |
| TOTAL SOURCES | \$ 35,171,621 | \$ 1,203,573 | \$ 31,461,612 | \$ 2,406,336 | 424000100.00% | \$ 469,067 | | |
| Surplus/(Deficit) | | 13,858 | 0 | 0 | | 39,856 | | |
| USES of FUNDS | TOTAL | Acq./Predev. | Construction | Permanent | Basis Eligible | Cost/Unit | Cost/SqFt | Assumptions |
| LAND & IMPROVEMENTS: | | | | | | | | |
| Land Cost | \$ 4,240,000 | \$ - | \$ 4,240,000 | \$ - | \$ - | \$ 56,533 | \$ 43 | |
| Permanent Relocation | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Demolition | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Environmental Remediation | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Site Maintenance (i.e. Security, Clean-Up) | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Site Value Beyond Cost | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Title & Escrow - Land Acquisition | \$ 10,000 | \$ - | \$ 10,000 | \$ - | \$ - | \$ 133 | \$ 0 | |
| Legal - Land Acquisition | \$ 15,000 | \$ - | \$ 15,000 | \$ - | \$ - | \$ 200 | \$ 0 | |
| Total Land & Improvements | \$ 4,265,000 | \$ - | \$ 4,265,000 | \$ - | \$ - | \$ 56,867 | \$ 43 | |
| DESIGN & CONSULTING: | | | | | | | | |
| Architect | \$ 1,075,567 | \$ 806,675 | \$ 268,892 | \$ - | \$ 1,075,567 | \$ 14,341 | \$ 11 | |
| Civil Engineering/Joint Trench Utility Design | \$ 80,450 | \$ 80,450 | \$ - | \$ - | \$ 80,450 | \$ 1,073 | \$ 1 | |
| Construction Estimating/Management Services | \$ 80,000 | \$ 20,000 | \$ 60,000 | \$ - | \$ 80,000 | \$ 1,067 | \$ 1 | |
| Engineering Reports (i.e. Topo, Noise, Soils, Traffic, Biology) | \$ 57,500 | \$ 57,500 | \$ - | \$ - | \$ 57,500 | \$ 768 | \$ 1 | |
| Environmental | \$ 21,960 | \$ 21,960 | \$ - | \$ - | \$ 21,960 | \$ 293 | \$ 0 | |
| Testing & Inspection | \$ 80,000 | \$ - | \$ 80,000 | \$ - | \$ 80,000 | \$ 1,067 | \$ 1 | |
| Total Design & Consulting | \$ 1,395,577 | \$ 986,685 | \$ 408,892 | \$ - | \$ 1,395,577 | \$ 18,608 | \$ 14 | |
| CONSTRUCTION: | | | | | | | | |
| Off-Site Improvements | \$ 350,000 | \$ - | \$ 350,000 | \$ - | \$ 350,000 | \$ 4,667 | \$ 4 | |
| On-Site Improvements | \$ 1,127,377 | \$ - | \$ 1,127,377 | \$ - | \$ 1,127,377 | \$ 15,032 | \$ 11 | \$469,000 |
| Unit Construction | \$ 13,744,907 | \$ - | \$ 13,744,907 | \$ - | \$ 13,744,907 | \$ 183,265 | \$ 139 | \$139 |
| Podium/Garage | \$ 1,914,500 | \$ - | \$ 1,914,500 | \$ - | \$ 1,914,500 | \$ 25,527 | \$ 70 | \$27,350 |
| General Requirements | \$ 1,370,943 | \$ - | \$ 1,370,943 | \$ - | \$ 1,370,943 | \$ 18,279 | \$ 14 | 8% |
| GC Contingency | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | 0% |
| Contractor Overhead & Profit | \$ 925,386 | \$ - | \$ 925,386 | \$ - | \$ 925,386 | \$ 12,338 | \$ 9 | 5% |
| Contractors Bond & Insurance | \$ 388,662 | \$ - | \$ 388,662 | \$ - | \$ 388,662 | \$ 5,182 | \$ 4 | 2.0% |
| Pricing Escalation/Design Contingency | \$ 1,029,269 | \$ - | \$ 1,029,269 | \$ - | \$ 1,029,269 | \$ 13,724 | \$ 10 | 5.0% |
| Furniture, Fixtures & Equipment (common area) | \$ 75,000 | \$ - | \$ 75,000 | \$ - | \$ 75,000 | \$ 1,000 | \$ 1 | |
| Construction Contingency | \$ 1,046,302 | \$ - | \$ 1,046,302 | \$ - | \$ 1,046,302 | \$ 13,951 | \$ 11 | 5.00% |
| Total Construction | \$ 21,972,346 | \$ - | \$ 21,972,346 | \$ - | \$ 21,972,346 | \$ 292,965 | \$ 223 | 214.64 |
| INDIRECT COSTS: | | | | | | | | |
| Permits & Fees | \$ 2,250,000 | \$ 155,700 | \$ 2,094,301 | \$ - | \$ 2,250,000 | \$ 30,000 | \$ 23 | 30,000 |
| Legal Fees - Constr. Loan Closing | \$ 25,000 | \$ - | \$ 25,000 | \$ - | \$ 25,000 | \$ 333 | \$ 0 | |
| Legal Fees - Perm. Loan Closing | \$ 20,000 | \$ - | \$ - | \$ 20,000 | \$ - | \$ 267 | \$ 0 | |
| Legal Fees - Organization | \$ 8,000 | \$ (20,000) | \$ - | \$ - | \$ - | \$ 80 | \$ 0 | |
| Audit Fees | \$ 20,000 | \$ - | \$ - | \$ 20,000 | \$ - | \$ 267 | \$ 0 | |
| Sponsor Administration | \$ 1,400,000 | \$ 50,000 | \$ 150,000 | \$ 1,200,000 | \$ 1,400,000 | \$ 18,667 | \$ 14 | |
| Appraisal | \$ 10,000 | \$ 10,000 | \$ - | \$ - | \$ - | \$ 133 | \$ 0 | |
| Market Study | \$ 10,000 | \$ 10,000 | \$ - | \$ - | \$ 10,000 | \$ 133 | \$ 0 | |
| Rent/Up Marketing | \$ 70,000 | \$ - | \$ 70,000 | \$ - | \$ 70,000 | \$ 933 | \$ 1 | 80c |
| Printing | \$ 5,000 | \$ - | \$ 5,000 | \$ - | \$ 5,000 | \$ 67 | \$ 0 | |
| Reserves: | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Marketing & Bond Reserves | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Initial Services Reserve | \$ 100,000 | \$ - | \$ 100,000 | \$ - | \$ - | \$ 1,333 | \$ 1 | |
| Operating Reserve | \$ 454,732 | \$ - | \$ - | \$ 454,732 | \$ - | \$ 6,063 | \$ 5 | 8 Months |
| Partnership Management | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Investor Services Fee Reserve | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Section 9 Transition Reserve (For MHP) | \$ 158,891 | \$ - | \$ - | \$ 158,891 | \$ - | \$ 2,119 | \$ 2 | |
| HUD MCI | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | N/A |
| MHSA Capitalized Operating Subsidy | \$ 500,000 | \$ - | \$ - | \$ 500,000 | \$ - | \$ 6,667 | \$ 5 | |

Ford & Monterey Phase 2-- 4% New Construction with MHP
PROJECT INCOME CALCULATION

LIHTC Residential Income Calculation

| Bedrooms Baths | Rent as % of Median Income | Gross Rent | Less Utility Allowance | Net Rent 4240000 | Number of Units | Total Monthly Income | Total Annual Income | |
|-------------------|----------------------------------|------------|---------------------------|---------------------|--------------------|-------------------------|------------------------|----------------|
| 1 / 1 | | | | | | | | |
| | 15% | \$ 291 | \$ 41 | \$ 250 | - | \$ - | \$ - | |
| | 20% | \$ 388 | \$ 41 | \$ 347 | 5 | \$ 1,735 | \$ 20,820 | |
| | 25% | \$ 485 | \$ 41 | \$ 444 | 2 | \$ 888 | \$ 10,656 | |
| | 30% | \$ 582 | \$ 41 | \$ 541 | 2 | \$ 1,082 | \$ 12,984 | |
| | 35% | \$ 679 | \$ 41 | \$ 638 | 1 | \$ 638 | \$ 7,656 | |
| | 40% | \$ 776 | \$ 41 | \$ 735 | - | \$ - | \$ - | |
| | 45% | \$ 873 | \$ 41 | \$ 832 | 1 | \$ 832 | \$ 9,984 | |
| | 50% | \$ 970 | \$ 41 | \$ 929 | 1 | \$ 929 | \$ 11,148 | |
| | 55% | \$ 1,067 | \$ 41 | \$ 1,026 | - | \$ - | \$ - | |
| | 60% | \$ 1,164 | \$ 41 | \$ 1,123 | - | \$ - | \$ - | |
| | Market | \$ 1,940 | \$ 41 | \$ 1,899 | - | \$ - | \$ - | |
| 2 / 1 | | | | | | | | |
| | 15% | \$ 349 | \$ 53 | \$ 296 | - | \$ - | \$ - | |
| | 20% | \$ 466 | \$ 53 | \$ 413 | - | \$ - | \$ - | |
| | 25% | \$ 582 | \$ 53 | \$ 529 | 4 | \$ 2,116 | \$ 25,392 | |
| | 30% | \$ 699 | \$ 53 | \$ 646 | 7 | \$ 4,522 | \$ 54,264 | |
| | 35% | \$ 815 | \$ 53 | \$ 762 | 4 | \$ 3,048 | \$ 36,576 | |
| | 40% | \$ 932 | \$ 53 | \$ 879 | - | \$ - | \$ - | |
| | 45% | \$ 1,048 | \$ 53 | \$ 995 | 14 | \$ 13,930 | \$ 167,160 | |
| | 50% | \$ 1,165 | \$ 53 | \$ 1,112 | 10 | \$ 11,120 | \$ 133,440 | |
| | 55% | \$ 1,281 | \$ 53 | \$ 1,228 | - | \$ - | \$ - | |
| | 60% | \$ 1,398 | \$ 53 | \$ 1,345 | - | \$ - | \$ - | |
| | Market | \$ 2,330 | \$ 53 | \$ 2,277 | 1 | \$ - | \$ - | |
| 3 / 2 | | | | | | | | |
| | 15% | \$ 403 | \$ 64 | \$ 339 | - | \$ - | \$ - | |
| | 20% | \$ 538 | \$ 64 | \$ 474 | - | \$ - | \$ - | |
| | 25% | \$ 672 | \$ 64 | \$ 608 | 4 | \$ 2,432 | \$ 29,184 | |
| | 30% | \$ 807 | \$ 64 | \$ 743 | 3 | \$ 2,229 | \$ 26,748 | |
| | 35% | \$ 941 | \$ 64 | \$ 877 | 4 | \$ 3,508 | \$ 42,096 | |
| | 40% | \$ 1,076 | \$ 64 | \$ 1,012 | - | \$ - | \$ - | |
| | 45% | \$ 1,210 | \$ 64 | \$ 1,146 | 1 | \$ 1,146 | \$ 13,752 | |
| | 50% | \$ 1,345 | \$ 64 | \$ 1,281 | 11 | \$ 14,091 | \$ 169,092 | |
| | 55% | \$ 1,479 | \$ 64 | \$ 1,415 | - | \$ - | \$ - | |
| | 60% | \$ 1,614 | \$ 64 | \$ 1,550 | - | \$ - | \$ - | |
| | Market | \$ 2,690 | \$ 64 | \$ 2,626 | - | \$ - | \$ - | |
| | 35% | \$ 1,050 | \$ 84 | \$ 966 | - | \$ - | \$ - | |
| | 40% | \$ 1,200 | \$ 84 | \$ 1,116 | - | \$ - | \$ - | |
| | 45% | \$ 1,350 | \$ 84 | \$ 1,266 | - | \$ - | \$ - | |
| | 60% | \$ 1,801 | \$ 84 | \$ 1,717 | - | \$ - | \$ - | |
| | Market | \$ 3,002 | \$ 84 | \$ 2,918 | - | \$ - | \$ - | |
| TOTAL | | | | | | 75 | 64,246 | 770,952 |

750,132

Additional Income Calculation

| Laundry | | | | | | | |
|---|--------------------|-------------------|------------------|------------------------------------|--|----------------------------|---------------------------|
| Laundry | Per Unit Per Month | Per Unit Per Year | Total Per Year | | | | |
| | \$ 12 | \$ 144 | \$ 9,936 | | | | |
| | \$ 7 | \$ 84 | \$ 420 | | | | |
| Retail/Childcare Lease Payments | | | | | | | |
| | Rent/SF | Monthly Income | Annual Income | | | | |
| Lease - Retail/Commercial | 1.50 | \$ - | \$ 0 | | | | |
| Lease - Childcare | #VALUE! | \$ - | \$ 0 | | | | |
| CAM Charges | 750 | \$ - | \$ 0 | | | | |
| Project Based Section 8 (non-MHSA units) | | | | | | | |
| Unit Type | Number | TCAC Income Tier | Sec 8 FMR (2009) | Net Base Rent per unit (w/o Sec 8) | Incremental Rent per unit (from Sec 8) | Monthly Incrmtl Sec 8 Rent | Annual Incrmtl Sec 8 Rent |
| 1 / 1 | - | 50% | 1,196 | \$ 929 | \$ 267 | \$ - | \$ - |
| 1 / 1 | - | 45% | 1,196 | \$ 832 | \$ 364 | \$ - | \$ - |
| 1 / 1 | - | 30% | 1,196 | \$ 541 | \$ 655 | \$ - | \$ - |
| 1 / 1 | 1 | 25% | 1,196 | \$ 444 | \$ 752 | \$ 752 | \$ 9,024 |
| 2 / 1 | - | 50% | 1,438 | \$ 1,112 | \$ 326 | \$ - | \$ - |
| 2 / 1 | - | 45% | 1,438 | \$ 995 | \$ 443 | \$ - | \$ - |
| 2 / 1 | 7 | 30% | 1,438 | \$ 646 | \$ 792 | \$ 5,544 | \$ 66,528 |
| 2 / 1 | 4 | 25% | 1,438 | \$ 529 | \$ 909 | \$ 3,636 | \$ 43,632 |
| 3 / 2 | - | 50% | 2,068 | \$ 1,281 | \$ 787 | \$ - | \$ - |
| 3 / 2 | - | 45% | 2,068 | \$ 1,146 | \$ 922 | \$ - | \$ - |
| 3 / 2 | 3 | 30% | 2,068 | \$ 743 | \$ 1,325 | \$ 3,975 | \$ 47,700 |
| 3 / 2 | 3 | 25% | 2,068 | \$ 608 | \$ 1,460 | \$ 4,380 | \$ 52,560 |

Construction with MHP

1/28/11

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
|----|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 |
| | 750,132 | 768,885 | 788,107 | 807,810 | 828,005 | 848,706 | 869,923 | 891,671 | 913,963 | 936,812 | 960,232 | 984,238 | 1,008,844 | 1,034,065 | 1,059,917 |
| | 12,750 | 13,059 | 13,395 | 13,730 | 14,074 | 14,425 | 14,786 | 15,156 | 15,535 | 15,923 | 16,321 | 16,729 | 17,147 | 17,576 | 18,015 |
| | 10,356 | 10,460 | 10,554 | 10,670 | 10,776 | 10,884 | 10,993 | 11,103 | 11,214 | 11,326 | 11,439 | 11,554 | 11,669 | 11,786 | 11,904 |
| | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 27,837 | 28,621 | 29,477 | 30,367 | 31,291 | 32,400 | 33,396 | 34,430 | 35,504 | 36,618 | 37,083 | 38,285 | 39,532 | 40,826 | 42,170 |
| | 219,444 | 221,638 | 223,855 | 226,093 | 228,354 | 230,638 | 232,944 | 235,274 | 237,626 | 240,003 | 242,403 | 244,827 | 247,275 | 249,748 | 252,245 |
| | 1,020,519 | 1,042,673 | 1,065,399 | 1,088,671 | 1,112,500 | 1,137,053 | 1,162,042 | 1,187,634 | 1,213,842 | 1,240,682 | 1,267,479 | 1,295,632 | 1,324,468 | 1,354,001 | 1,384,252 |
| | (48,997) | (50,049) | (51,126) | (52,229) | (53,357) | (54,511) | (55,693) | (56,902) | (58,140) | (59,407) | (60,704) | (62,031) | (63,389) | (64,780) | (66,203) |
| | (1,275) | (1,307) | (1,340) | (1,373) | (1,407) | (1,443) | (1,479) | (1,516) | (1,553) | (1,592) | (1,632) | (1,673) | (1,715) | (1,758) | (1,802) |
| | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 970,247 | 991,317 | 1,012,933 | 1,035,069 | 1,057,738 | 1,081,099 | 1,104,871 | 1,129,216 | 1,154,148 | 1,179,683 | 1,205,143 | 1,231,929 | 1,259,363 | 1,287,484 | 1,316,247 |
| | (402,500) | (416,588) | (431,168) | (446,259) | (461,878) | (478,044) | (494,775) | (512,092) | (530,016) | (548,566) | (567,766) | (587,638) | (608,205) | (629,492) | (651,525) |
| | (28,750) | (29,756) | (30,799) | (31,876) | (32,991) | (34,146) | (35,341) | (36,578) | (37,858) | (39,183) | (40,555) | (41,974) | (43,443) | (44,964) | (46,537) |
| | (21,000) | (21,735) | (22,496) | (23,283) | (24,098) | (24,941) | (25,814) | (26,719) | (27,653) | (28,621) | (29,623) | (30,659) | (31,732) | (32,843) | (33,993) |
| | (3,000) | (3,105) | (3,214) | (3,328) | (3,443) | (3,563) | (3,688) | (3,817) | (3,950) | (4,089) | (4,232) | (4,380) | (4,533) | (4,692) | (4,856) |
| | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) | (4,000) |
| | (45,000) | (45,450) | (45,905) | (46,364) | (46,827) | (47,295) | (47,768) | (48,246) | (48,729) | (49,218) | (49,708) | (50,205) | (50,707) | (51,214) | (51,726) |
| | 465,997 | 470,683 | 475,354 | 479,962 | 484,499 | 489,105 | 493,484 | 497,784 | 501,942 | 506,008 | 509,280 | 513,072 | 516,742 | 520,259 | 523,610 |
| | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) | (189,924) |
| | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) | (181,280) |
| | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) | (31,911) |
| | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) | (2,100) |
| | 60,782 | 65,468 | 70,139 | 74,747 | 79,284 | 83,895 | 88,269 | 92,650 | 96,727 | 100,793 | 104,045 | 107,857 | 111,527 | 115,044 | 118,395 |
| | 1.15 | 1.16 | 1.17 | 1.18 | 1.20 | 1.21 | 1.22 | 1.23 | 1.24 | 1.25 | 1.26 | 1.27 | 1.28 | 1.28 | 1.29 |
| | (5,000) | (5,175) | (5,356) | (5,544) | (5,738) | (5,938) | (6,146) | (6,361) | (6,584) | (6,814) | (7,053) | (7,300) | (7,555) | (7,820) | (8,093) |
| \$ | (55,782) | (60,293) | (64,825) | (69,379) | (73,954) | (78,550) | (83,167) | (87,805) | (92,464) | (97,144) | (101,845) | (106,567) | (111,310) | (116,074) | (120,859) |
| | 0 | 0 | (53,358) | (46,642) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) |
| | 0 | 0 | 0 | 22,561 | 48,547 | 52,956 | 57,123 | 61,168 | 65,143 | 68,979 | 71,992 | 75,558 | 78,972 | 82,224 | 85,301 |
| | 0 | 0 | 0 | (3,731) | (8,028) | (8,758) | (9,447) | (10,119) | (10,773) | (11,407) | (11,995) | (12,495) | (13,060) | (13,598) | (14,107) |
| | 0 | 0 | 0 | (5,000) | (10,758) | (11,735) | (12,659) | (13,560) | (14,439) | (15,286) | (16,144) | (16,944) | (17,501) | (18,221) | (18,903) |
| | 0 | 0 | 0 | (2,221) | (4,779) | (5,213) | (5,623) | (6,023) | (6,413) | (6,790) | (7,087) | (7,438) | (7,774) | (8,094) | (8,397) |
| | 0 | 0 | 0 | (329) | (708) | (772) | (833) | (892) | (950) | (1,006) | (1,050) | (1,102) | (1,152) | (1,199) | (1,244) |
| | 0 | 0 | 0 | (11,281) | (24,273) | (26,478) | (28,561) | (30,594) | (32,572) | (34,489) | (35,996) | (37,779) | (39,466) | (41,112) | (42,651) |
| | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

SJ Ford Monterey_Phase 2_MHP_County_012811 AP_AO.xls 1/28/2011

Ford Road DDA
 T-8908.003/723910
 Council Agenda: 3/29/11
 Item No.: 4.3(b)

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document

| 2 Bed | 3 Bed | 4 Bed | Total |
|---------|---------|---------|-------|
| 0 | 0 | 0 | 0 |
| 0 | 0 | 0 | 5 |
| 4 | 4 | 0 | 10 |
| 7 | 3 | 0 | 12 |
| 4 | 4 | 0 | 9 |
| 0 | 0 | 0 | - |
| 14 | 1 | 0 | 16 |
| 10 | 11 | 0 | 22 |
| 0 | 0 | 0 | - |
| 0 | 0 | 0 | - |
| 1 | - | - | 1 |
| 40 | 23 | - | 75 |
| 53% | 31% | 0% | |
| 40% | 40% | | |
| #VALUE! | #VALUE! | #VALUE! | |

| 2 Bed | 3 Bed | 4 Bed |
|-------|-------|-------|
| 296 | 339 | 366 |
| 413 | 474 | 516 |
| 529 | 608 | 666 |
| 646 | 743 | 816 |
| 762 | 877 | 956 |
| 879 | 1,012 | 1,116 |
| 995 | 1,148 | 1,266 |
| 1,112 | 1,281 | 1,417 |
| 1,228 | 1,415 | 1,567 |
| 1,345 | 1,550 | 1,717 |
| 2,277 | 2,526 | 2,916 |
| 1,112 | | |

| 2 Bed | 3 Bed | 4 Bed |
|-------|-------|-------|
| 349 | 403 | 450 |
| 466 | 538 | 600 |
| 582 | 672 | 750 |
| 699 | 807 | 900 |
| 815 | 941 | 1,050 |
| 932 | 1,076 | 1,200 |
| 1,231 | 1,479 | 1,651 |
| 1,398 | 1,614 | 1,801 |
| 2,330 | 2,690 | 3,002 |
| 53 | 64 | 84 |

| 3 Persons | 4 Persons | 5 Persons | 6 Persons | 7 Persons |
|-----------|-----------|-----------|-----------|-----------|
| 13,990 | \$ 15,625 | \$ 16,770 | \$ 18,015 | \$ 19,260 |
| 18,640 | \$ 20,700 | \$ 22,360 | \$ 24,020 | \$ 25,680 |
| 23,300 | \$ 25,875 | \$ 27,950 | \$ 30,026 | \$ 32,100 |
| 27,960 | \$ 31,050 | \$ 33,640 | \$ 35,030 | \$ 36,520 |
| 32,620 | \$ 36,225 | \$ 39,130 | \$ 42,035 | \$ 44,940 |
| 37,280 | \$ 41,400 | \$ 44,720 | \$ 48,040 | \$ 51,360 |
| 41,940 | \$ 46,575 | \$ 50,310 | \$ 54,045 | \$ 57,780 |
| 46,600 | \$ 51,750 | \$ 55,900 | \$ 60,050 | \$ 64,200 |
| 51,260 | \$ 56,925 | \$ 61,490 | \$ 66,055 | \$ 70,620 |
| 55,920 | \$ 62,100 | \$ 67,080 | \$ 72,060 | \$ 77,040 |
| 60,580 | \$ 67,275 | \$ 72,670 | \$ 78,065 | \$ 83,460 |

| 2 Bed | 3 Bed | 4 Bed |
|-------|-------|-------|
| 8 | 10 | 13 |
| 19 | 23 | 29 |
| 13 | 16 | 22 |
| 17 | 22 | 26 |
| 18 | 22 | 28 |
| 13 | 15 | 20 |
| 17 | 24 | 31 |
| 20 | 20 | 20 |
| 0 | 0 | 0 |
| 28 | 55 | 55 |
| 53 | 64 | 84 |

Units for HUD (2) Units 2
 (1) 1
 (1) 1

Financing

| CONSTRUCTION LOAN (Tax-Exempt) | | Comments |
|--------------------------------|---------------|---|
| Loan Amount | \$ 21,981,705 | |
| Construction Term | 18 | |
| Tax Credit Lease-up | 0 | Account for 5 month tax credit lease up for MHP debts |
| HUD Lease-up | 0 | Account for 3 month HUD lease-up for mixed finance deals |
| Interest Rate | 4.50% | Per Alice. Better to go higher for MHP underwriting. |
| Drawdown | 0.50 | formula is 50% during construction, 100% for closing term |
| Bond Fees | 0.75% | Origination |
| Expenses | \$ 44,480 | Construction Inspection, Legal, Appraisal, Envtl Review |
| Prevailing Wage Monitor | \$ - | NA - City SJ Contract Compliance |

| FIRST MORTGAGE (Tax-Exempt) | | |
|-----------------------------|--------------|-------------------|
| Loan Amount | \$ 2,504,002 | |
| Term - Years | 30 | |
| Interest Rate | 6.50% | |
| Annual Debt Service | \$ 189,024 | |
| Minimum DCR | 1.15 | |
| Loan-to-Value | 7% | |
| Loan Fees | 0.00% | Origination |
| Loan Expenses | \$ 10,000 | Legal + Appraisal |

| TAX CREDITS | | |
|------------------------------|-----------------|------------------------|
| TCAC Monitoring Fee (/ unit) | \$410 | |
| Federal Tax Credit Yield | 0.98 | 1/13/2011 Date Checked |
| Applicable Tax Credit %age | 3.29% | 1/13/2011 Date Checked |
| Unit Mix Points | | |
| 10% of Units at 30% or less? | Yes | |
| TCAC Rents | updated 5/14/10 | 1/13/2011 Date Checked |
| Utility Allowances | updated 10/1/09 | 1/13/2011 Date Checked |
| Rural Census Tract | No | |
| DDA/QCT | No | 1/13/2011 |
| Commercial/Childcare % | 0.00% | |

| OPERATING EXPENSES | | |
|---------------------------------|----------|---------------------------------------|
| Replacement Reserves (Unit) | \$ 600 | 600 required by UMRs |
| Operating Expenses (Unit) | \$ 5,750 | |
| Operating Expenses (MHSA units) | \$ 5,750 | |
| Resident Services (Unit) | \$ 300 | |
| Resident Services (MHSA units) | \$ 600 | |
| Partnership Management Fee | \$ 7,000 | look at comment |
| Asset Management Fee | \$ 5,000 | |
| Expense Inflation Factor | 3.50% | |
| Residential Vacancy Rate | 5.00% | |
| Commercial Vacancy Rate | 50.00% | 50% on Comm/Retail & 10% on Childcare |
| Laundry Income (PUPM) | \$ 12 | |

| COSTS OF BOND ISSUANCE | | |
|--|------------|---|
| Bond Counsel | \$ 40,000 | |
| Bank Counsel | \$ 40,000 | |
| Issuer Fee | \$ 291,258 | 1.3250% on construction bond (CMFA = 0.10% 10bps/year (2 yrs) |
| Issuer Monitoring Fee during construct | \$ 43,953 | |
| Issuer Legal | \$ 10,000 | |
| CDLAC Application Fee | \$ 2,000 | |
| CDLAC Allocation Fee | \$ 12,080 | 0.55% fee on construction bond |
| CDLAC Fee | \$ 4,000 | 2 basis points or \$4000 |
| Title | \$ 10,000 | |
| Financial Consultant | \$ 10,000 | |
| Attorney | \$ 10,000 | |
| Misc. | \$ 5,000 | |
| TOTAL | \$ 478,311 | 2.18% = percent of TE loan |

| MHP Points for Family Units | | Max = 35 |
|-----------------------------|-------|---|
| Points for % 2BR | 10.67 | .2 points for each % |
| Points for % 3BR | 21.47 | .7 points for each % |
| Points for % Special Needs | 12.00 | 1 pt for every 1% set aside for Special Needs |
| Project Points | 35 | Mgr Unit must be included in Total Units |

| MHP Leveraging Points | | Max = 20 |
|-------------------------|------|--|
| Leverage Percentage (%) | 300% | Maximum is 300% |
| Leverage Points | 20 | Points awarded at .5 point per 5% over 100% leverage |

| MHP Points for Lowest Incls. Units | | Max = 35 |
|------------------------------------|------|--|
| Level A | 12.2 | |
| Level B | 13.5 | |
| Level C | 10.1 | |
| Level C | 0.0 | After 1st 10%, level C units get fewer points. |
| Total Points | 35.0 | Mgr Unit not included in Total Units unless restricted |

| MHP Scoring Summary | | Max = 150 |
|--------------------------------|------|-------------------------------|
| Maximum MHP Score | 150 | |
| Lost Points | 0 | |
| Maximum Project Score Possible | 150 | |
| Threshold Minimum Score | | Per new proposed reqs |
| Meets Minimum? | Y 08 | Meets Min. Funded Score? Y 08 |

| \$/sq ft per unit/units | Effective Date: | 01/2007 San Jose |
|-------------------------|-----------------|----------------------|
| Studio | \$ 133,212 | |
| 1 BD | \$ 192,704 | (\$216,406) |
| 2 BD | \$ 185,688 | 5185,688 (\$116,720) |

Ford Road DDA
 T-8908.003/723910
 Council Agenda: 3/29/11
 Item No.: 4.3(b)

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document

