



CITY COUNCIL AGENDA REPORT

November 5, 2013
Assistant City Manager

TITLE: APPROVAL OF PROPOSED PROJECT SITE PLAN, THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT WITH MIDPEN HOUSING CORPORATION AND A MEMORANDUM OF UNDERSTANDING WITH PLEASANTON GARDENS, INC CONCERNING A PROPOSED DEVELOPMENT FOR KOTTINGER PLACE AND PLEASANTON GARDENS

SUMMARY

In October 2012, the City Council approved the *Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report* establishing the parameters for a new senior housing development on the Kottinger Place (240 Kottinger Drive) and Pleasanton Gardens (251 Kottinger Drive) sites. Since that time, the City Council formed Kottinger Place Task Force (Task Force) has held numerous public meetings for the purpose of finalizing design and site plan elements with the goal of submitting a Planned Unit Development (PUD) application for the new development by the end of this year. The Task Force has approved the site plan and staff is forwarding it to the City Council seeking authorization to proceed with the PUD application. In addition to the above, in February 2012, the Council approved an Exclusive Negotiating Rights Agreement (ENRA) with MidPen Housing Corporation (MidPen) to conduct the planning/development process and that agreement anticipates that the City Council will consider entering into a Disposition, Development and Loan Agreement (DDA) to award MidPen with rights to develop the site. Finally, over the past few years, staff has had discussions with the Pleasanton Gardens Board of Directors (Board) regarding terms for transferring its site to the City to support the new development and the relocation of its current tenants to the new development. This report outlines these matters, and others, including naming the new development "Kottinger Gardens," potentially increasing the City's financial contribution to the new project and expressing support for demolishing the existing facilities to facilitate the new development.

RECOMMENDATION

1. Approve the preliminary site plan (Attachment 1) as recommended by the Task Force
2. Authorize the submittal of a Planned Unit Development (PUD) application to commence the formal City entitlement process
3. Approve the Disposition, Development and Loan Agreement included as (Attachment 2) and approve loan funding consistent with the DDA from the Lower Income Housing Fund (Fund 271900).

4. Adopt "Kottinger Gardens" as the official name of the proposed new development.
5. Approve the Memorandum of Understanding between the City of Pleasanton, The Housing Authority of the City of Pleasanton and Pleasanton Gardens, Inc. (Attachment 3).
6. Approve the Predevelopment Loan Note for \$2.8 million (Attachment 4) and increase the appropriation of Lower Income Housing Funds (271900) from \$8 million to \$10 million reflecting the City's potential total financial contribution to the development.
7. Authorize the Mayor's execution of a letter to HUD, on behalf of the City Council, expressing support for the disposition and demolition of the existing Kottinger Place development (Attachment 6)

FINANCIAL STATEMENT

Total cost for developing and construction the new development is estimated at \$61.6 million. Funding will come from a number of sources including 9% tax credit equity, a conventional permanent loan, HOME loan and a financial contribution from the City. The City Council previously approved an appropriation of \$8 million for the development; however, this amount may increase to \$10 million pending the outcome of financing. Also, HUD's decision regarding Kottinger Place disposition could also impact overall contributions.

BACKGROUND

On November 4, 2003, in response to an interest expressed by a group of residents, the Council authorized staff to begin studying the potential for the replacement, expansion and/or renovation of Kottinger Place, a 50-unit low income HUD Public Housing development owned by the Housing Authority of the City of Pleasanton, and Pleasanton Gardens which is a privately owned 40-unit affordable senior development located at 251 Kottinger Drive. To assist with this project, in February 2004, the Council approved the formation of a ten member Kottinger Place Task Force (Task Force). The Task Force membership was increased to fourteen members in February 2012 and since that time it has been focused on implementing the project goals and concepts included in the *Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report* adopted by the City Council on October 2012. Councilmember Cook-Kallio is currently the City Council appointed liaison on the Task Force.

As currently structured, the development would be constructed on property owned by the City and ground leased to a partnership controlled by MidPen Housing Corporation that would, through its property management group, operate the 185 unit development to provide rent restricted independent living rental housing for very low income seniors 62 years and older. Construction of the development would be phased with a portion of the Kottinger Place site being constructed first followed by the remainder of the Kottinger Place site and the Pleasanton Gardens site once its residents are relocated to the first phase.

DISCUSSION

Site Plan

Indicated below, and in more detail on Attachment 1 that includes some elevations, is the site plan approved by the Task Force at its October 23, 2013, meeting. The site plan was approved unanimously with the exception of one member (Craig Ristow) who expressed that, while he was overall pleased with the layout and design, in his opinion the inclusion of a three story building does not fully comply with Task Force's goal of having project massing that is "complimentary" to the neighborhood.

Task Force Approved Site Plan



As indicated in the plan the project would include the current Pleasanton Gardens, Kottinger Place, Regalia House and 4138 Vineyard Avenue parcels totaling

approximately 6.5 acres. No portion of the Kottinger Community Park will be used for the development, and the current parking capacity for the park will be retained.

The project is proposed to include a total of 185 units in a configuration of single story cottage units, and two and three story multi-story buildings. Also, included are significant open spaces, community rooms on the Kottinger Place and Pleasanton Gardens sites, parking, improved pedestrian access across Kottinger Drive and space for resident gardens. A summary of the unit mix is as follows:

Proposed Kottinger Gardens Unit Mix

Building Type	Unit Type	EXISTING DEVELOPMENTS			PROPOSED DEVELOPMENT		
		KP	PG	Total	KP	PG	Total
Cottage/ 1-Story:	Studio	32	20	52	0	0	0
	1BR	16	19	35	57	24	81
	2BR	2	1	3	0	0	0
	<i>Total:</i>	50	40	90	57	24	81
Multi- Story:	Studio	0	0	0	0	0	0
	1BR	0	0	0	69	26	95
	2BR	0	0	0	5	4	9
	<i>Total:</i>	0	0	0	74	30	104
TOTAL:		50	40	90	131	54	185

PUD Submittal

As the Council is aware, work since October 2012 has been geared toward development of a site plan and general architectural design that meets the needs of current Kottinger Place and Pleasanton Gardens residents, future residents and the neighborhood. Based on responses to date, the Task Force is of the opinion that this goal has been realized, and it endorses moving forward to the City’s PUD process. As indicated in the recommended DDA and previous City understandings with MidPen, staff anticipates a typical plan review process including staff review, Planning Commission and Housing Commission action and City Council review and approval. As such, some of the elements illustrated above and in Attachment A may be modified as the project works its way through the review process.

Pending City Council authorization, MidPen is intending to submit its PUD application in December with the goal of completing the process in May 2014.

In the event the City Council has concerns regarding the site plan or PUD plan submittal, staff requests direction so that it can work with the Task Force to address these matters.

Development Name

As part of the overall financing and plan review process, it will be beneficial to name the proposed development so that it can be referred to in various documents. The Task Force recommended and approved the name "Kottinger Gardens" as it retains the history of both developments. In view of this action, staff is recommending endorsement of the Task Force's naming of the development.

Disposition, Development and Loan Agreement (DDA)

Included as Attachment 2 is the recommended DDA with MidPen that memorializes its role as the project developer, future owner and operator of site improvements, and anticipated lessee of the site(s). It also sets forth conditions of performance and establishes the relationship between MidPen, the City and the Housing Authority of the City of Pleasanton (Housing Authority), and outlines conditions for a \$2.8 million predevelopment loan. The City has previously utilized DDA's for its Parkview, Ridge View Commons and Promenade properties as it represents the appropriate legal means for establishing a relationship between the parties until the ground lease, regulatory agreement and permanent financing are put into place. In addition, predevelopment loans have also been employed previously and reflect a non-profit's interest in securing funds to further the project during the entitlement and funding process, and the City's recognition of the costs involved with conducting this effort.

A summary of some of the most significant DDA terms are as follows:

MidPen is obligated to:

- Make a diligent effort to secure project financing
- Assist the Housing Authority with securing approval of HUD for the demolition and disposition of Kottinger Place and related HUD approvals
- Conduct environmental review and development-related studies required for the PUD
- Process the PUD and obtain all land use permits and approvals
- Prepare construction related documents
- Prepare a tenant relocation plan and coordinate tenant relocations as needed
- Construct the development consistent with approved plans and provide property management services after construction
- Maintain a development schedule and keep the City informed of project progress

The City (and/or its Housing Authority) is obligated to:

- Provide a loan of up to \$10 million to support the development (including approximately \$7.2 million for construction and development costs and a predevelopment loan of \$2.8 million covering predevelopment costs including architectural, engineering, studies, etc.)
- Endeavor to secure the Pleasanton Gardens site and transfer its HUD Section 8 rent subsidy contract to the new development
- Ground lease the site (including Pleasanton Gardens) for \$1 annually for a term of no less than 55 years (the terms of the ground lease will be developed consistent with PUD review)

- Process the development application including lot line adjustments and subdivision maps

General Provisions:

- A no-fault termination would occur if the City, through the PUD process, fails to approve the development or if CEQA approval is not obtained. If this should occur, the City and MidPen would meet to discuss amendments to the plans and project concept.
- If the DDA is terminated, MidPen is required to provide the City with all plans and studies related to the project
- The agreement expires consistent with approval of financing documents including a regulatory agreement setting forth affordable income rent levels and other critical operational matters and an executed ground lease
- Both parties recognize that HUD has sole authority to approve or deny the demolition of the existing Kottinger Place development

Funding and Predevelopment Loan Agreement

As indicated above, part of the City's financial contribution includes an anticipated \$2.8 million loan to cover predevelopment costs including professional services related to architecture, CEQA, traffic studies, engineering, general administration, funding related expenses and other processing fees. A summary of the anticipated costs include \$408,000 for predevelopment analysis work completed, \$1.3 million for Phase I entitlement through start of construction and \$1.1 million for Phase II costs through start of construction. A budget outlining the anticipated uses for the predevelopment loan is included as Exhibit C-2 to the DDA. Loan proceeds, which are a component of the City's overall financial contribution of up to \$10 million, will be paid upon invoicing from MidPen and verification of services rendered.

In accordance with the Predevelopment Promissory Note, (Attachment 4), the loan carries a 3% interest rate. However, it is anticipated that the City will not receive any loan payments during the project's development phase and terms of the total \$10 million contribution, which will also be in the form of loan, will be outlined later as part of development's overall financing plan. Typically, the City loan includes terms requiring payment based on available project cash flow with provisions that any outstanding loan payments would be forgiven at the end of the ground lease term. Regardless, there should be acceptance that the City may not ever receive principle or interest payments on the \$10 million. As indicated, the City has traditionally used predevelopment loans as a means of funding the work required to conduct project activity until receipt of funds for construction financing.

At the City Council meeting of October 16, 2012, the City Council accepted the *Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report* and approved an appropriation of \$8 million reflecting the anticipated City financial contribution to the project (this is in addition to making the site available at less than market value). The contribution represents the financial "gap" between the anticipated development/construction costs and potential funding from various sources including tax credit, private financing, a federal HOME loan, and a Federal Home Loan Bank loan.

Recently, MidPen met with staff and expressed that the \$8 million may be insufficient to meet project costs pending the outcome of a number of financing variables, including the equity paid by the tax credit investor, and as a result, it is possible that this gap could increase to \$10 million. As such, the DDA includes the \$10 million contribution and by its approval, the City is obligating itself to contribute this amount subject to project planning approvals. Note that the outcome of the HUD disposition process could also impact overall project financing.

Regarding the City's financial contribution, it is important to be clear that overall, obtaining project financing will require a highly competitive 9% tax credit award through the states' Tax Credit Allocation Committee (TCAC) and approval from HUD regarding demolition and disposition of Kottinger Place with terms that assure the project is financially feasible over the long term. As a result of these two conditions, not to mention typical ongoing matters that can impact project costs, the City is at risk for those portions of the predevelopment loan paid prior to a final decision from TCAC and HUD. Staff is confident that MidPen has the administrative capacity and expertise to present the best possible case for both of these processes but even with that, approval is not guaranteed and not receiving approval by HUD and/or TCAC is a possibility.

As a result of the above, should project financing, HUD approval and/or City PUD approval not materialize and its decided to terminate the development, the City's total maximum exposure is \$2.8 million with the understanding that the City retains all material prepared in connection with the development. The remaining \$7.2 million will be paid during the construction phase of the development after financing has occurred and therefore at this time, it is not at risk. However, as noted above, the final loan documents will contain provisions assuring that project financial stability has a higher priority than repayment of the City loan, and therefore, it is not assumed that the City will receive payments on the loan.

It is also important to note that while the City's \$10 million contribution covers the entire project, the project financing and construction will occur in two phases to help mitigate the need for off-site resident relocation. As stated earlier, a portion of the Kottinger Place site will constitute the first phase, and the remainder of the Kottinger Place site and the entire Pleasanton Gardens site will make up the second phase. Although the two phases will operate as one cohesive development once they are complete, there will be an additional tax credit/financing process that will need to occur after the first phase of the project is funded.

Pleasanton Gardens MOU

Included as Attachment 3, is the recommended Memorandum of Understanding between the City of Pleasanton, The Housing Authority of the City of Pleasanton and Pleasanton Gardens, Inc. that establishes terms of cooperation between the City and Pleasanton Gardens. As the City Council may recall, Pleasanton Gardens is a privately owned non-profit entity that has been operating Pleasanton Gardens since its construction in 1969. Like the City, the Pleasanton Gardens Board of Directors has been concerned about the long term viability of its project since it does not have current amenities or code requirements found in more modern senior only affordable housing

developments and that significant renovation will most likely be required in the near future to address its aging facility. In addition, the Pleasanton Gardens Board of Directors has long focused on opportunities for increasing the amount of affordable senior housing in Pleasanton. As an extension of these matters, both the City and Pleasanton Gardens have determined that it may be advisable to work cooperatively toward the realization of the Kottinger Gardens development. A summary of the primary elements of the MOU are as follows:

Both the City and Pleasanton Gardens are agreeing to the following:

1. The parties will work cooperatively toward the new development as outlined in the MOU and more specifically, the Task Force approved site plan and DDA
2. Recognition that the development is subject to the City's standard PUD review
3. Pleasanton Gardens is not financially responsible for predevelopment costs
4. Within 30-days after approval of a PUD, the City and Pleasanton Gardens will enter into an agreement to transfer ownership of its site and improvements, to the City at a cost of \$1 dollar to facilitate the new development
5. The Board will continue to manage Pleasanton Gardens until such time as project funding has been approved for its site
6. Pleasanton Gardens will transfer any then existing financial reserves to the City to offset project costs
7. Households residing in Pleasanton Gardens who qualify to live in the new development will be given preference to a ground floor unit
8. The Board will cooperate regarding transferring its HUD HAP contract to the new development to allow it to take advantage of Pleasanton Gardens thirty-one Section 8 units
9. The Pleasanton Gardens and Kottinger Place waitlists will be transitioned to the new development
10. Recognition that the City intends to make the new development smoke free
11. All parties shall meet in good faith to explore alternative options in the event project financing or PUD approval is not forthcoming

Key to the above is the agreement that if the City approves the PUD, then Pleasanton Gardens will enter into an agreement to transfer ownership of its property to the City. As indicated previously, to assure minimal relocation of existing residents, the current tenant relocation concept calls for the new development to be constructed first on the Kottinger Place site at which time Pleasanton Gardens residents be relocated to the new development. Following this, MidPen will commence construction on the Pleasanton Gardens site. Also, note that pending unit vacancies, after financing is approved for the Kottinger phase of construction, some Kottinger Place residents may be relocated to Pleasanton Gardens as a means of facilitating construction. In addition, some Kottinger Place residents may be temporarily relocated off-site prior to or during development construction. Following construction, they would be relocated to the new development. Developing a plan for tenant relocation is part of the DDA and staff anticipates working closely with MidPen to exercise this phase of the project.

Letter of Approval

Over the next few months, MidPen and staff will be focused on commencing the process for HUD demolition approval through HUD's standard Section 18 Demolition and Disposition process. Staff and MidPen met previously with HUD to discuss this matter and staff, MidPen, and members of the Task Force, including Councilmember Cook-Kallio, met recently with Congressman Swalwell to keep him abreast of the process.

As part of the approval process, HUD requires the Housing Authority to receive input from the municipality's governing agency in which the project resides expressing its support or lack thereof, of the proposed demolition application. In response to that requirement, staff has prepared the draft letter (Attachment 5) expressing project support and it is recommending the City Council authorize the Mayor to sign the letter on its behalf.

Submitted by:

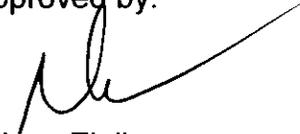


Steven Bocian
Assistant City Manager



Emily Wagner
Director of Finance

Approved by:

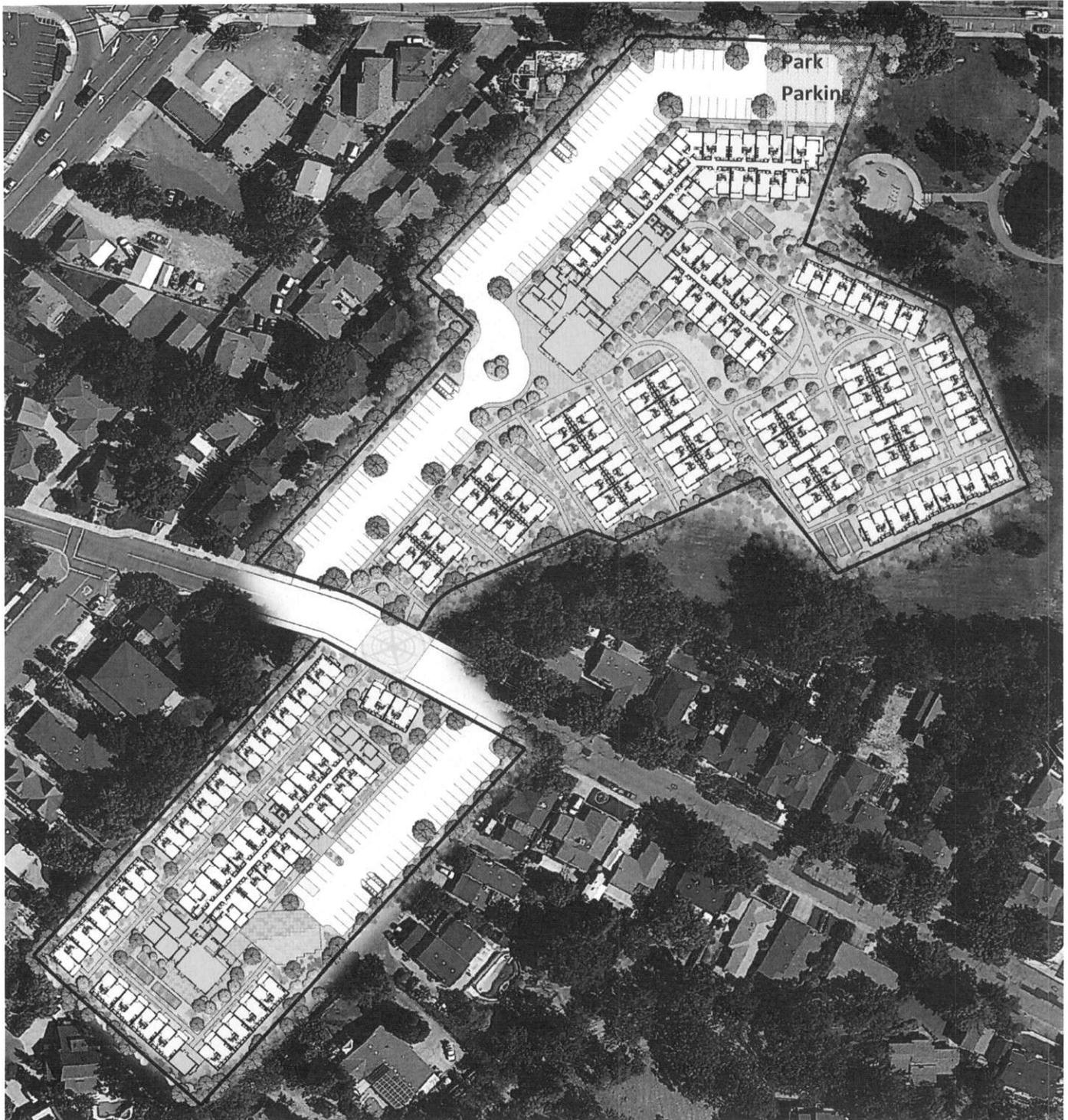


Nelson Fialho
City Manager

Attachments:

1. Proposed site plan and preliminary building elevations
2. Disposition, Development and Loan Agreement
3. Memorandum of Understanding between the City of Pleasanton, the Housing Authority of the City of Pleasanton and Pleasanton Gardens, Inc.
4. Predevelopment Loan Note
5. Draft letter to HUD
6. Anticipated project timeline

Kottinger Gardens Proposed Site Plan



LEGEND

-  Single-Story
-  Two-Story
-  Three-Story
-  Common Areas

SITE DATA

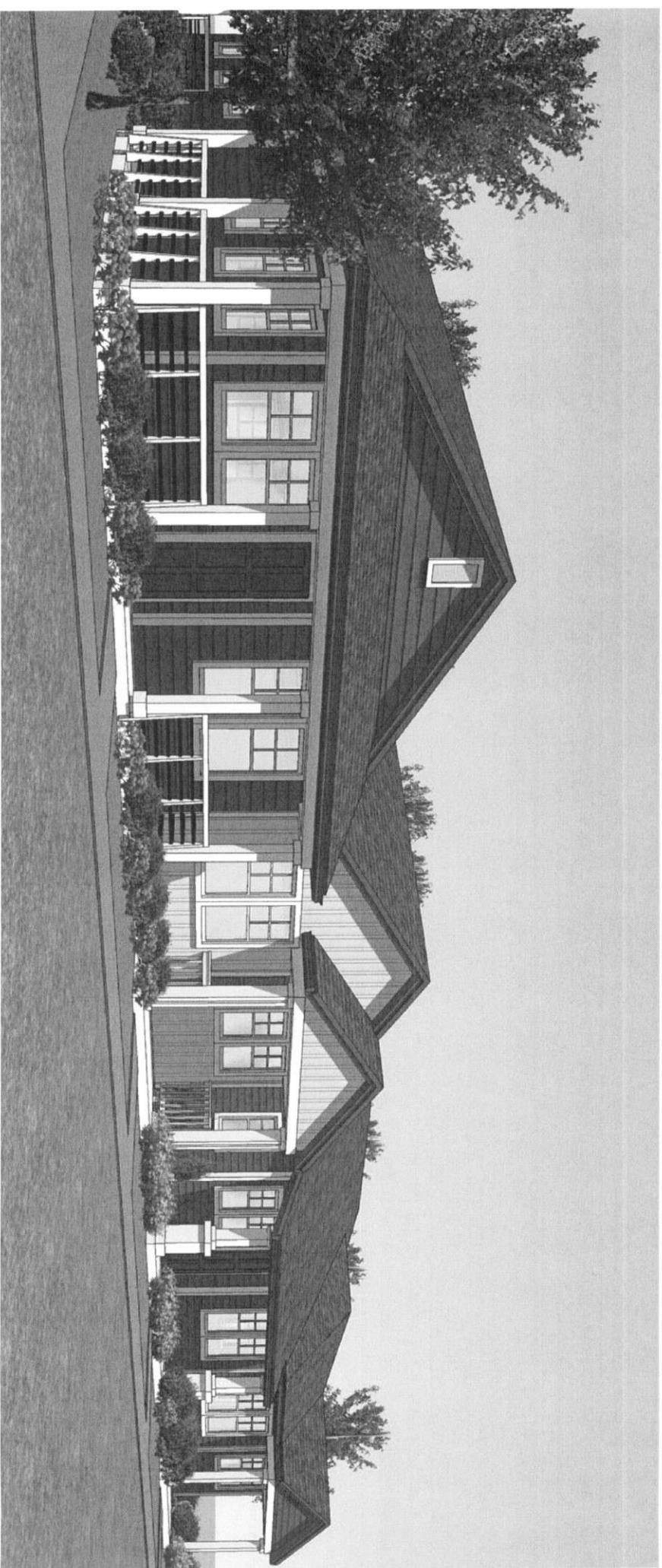
185 Units

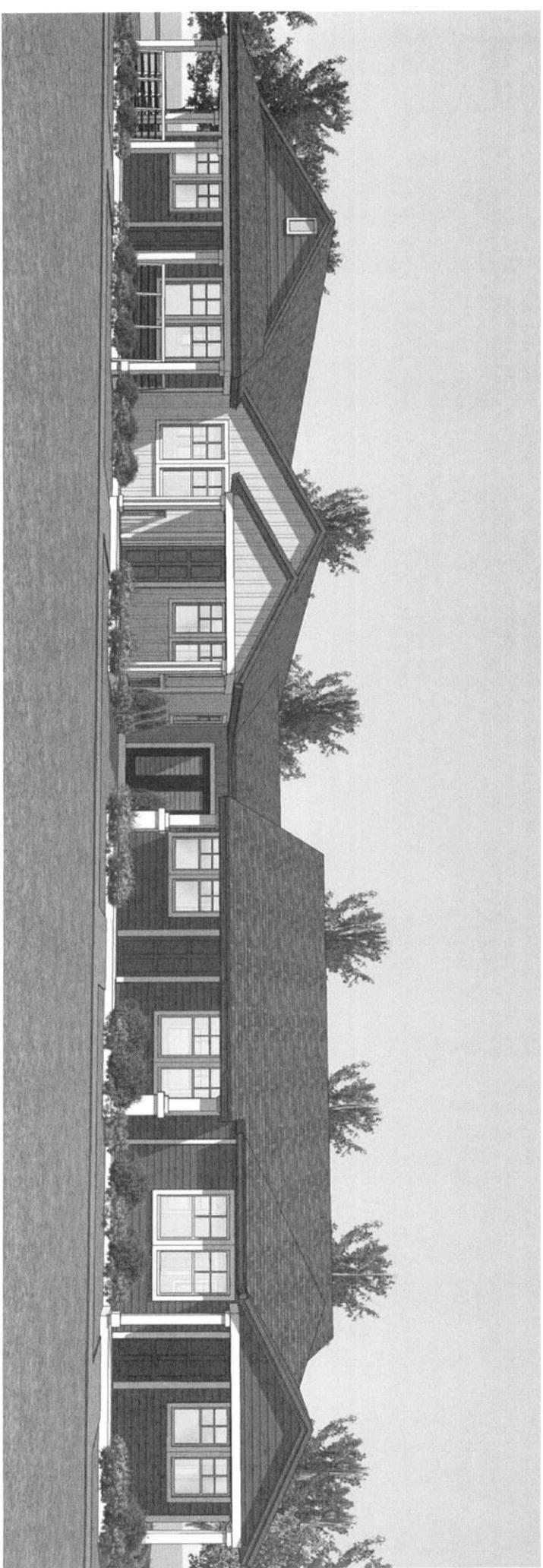
131 units north of Kottinger Drive (74 multi-story, 57 single-story)
54 units south of Kottinger Drive (30 multi-story, 24 single-story)

.8:1 Parking Ratio (161 residential parking spaces)

12 parking spaces dedicated to Kottinger Village Park









DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT
FOR KOTTINGER PLACE HOUSING DEVELOPMENT

This Disposition, Development and Loan Agreement (this "Agreement") is entered into as of this ___ day of _____, 2013 (the "Effective Date"), by and among the City of Pleasanton, a municipal corporation (the "City"), the Housing Authority of the City of Pleasanton, a public body corporate and politic organized under the laws of California (the "Housing Authority") and MidPen Housing Corporation, a nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

ARTICLE 1.
PURPOSE OF AGREEMENT

A. The purpose of this Agreement is to effectuate the disposition and development of certain real property located in the City, as more particularly described in Section 2.2 below (the "Site"), by assisting in the development of the Site for a senior affordable rental housing development, anticipated to consist of between one hundred seventy-two (172) and one hundred eighty-nine (189) residential dwelling units, related interior and exterior improvements, including, but not limited to, a rental office and a community center (the "Improvements"). The Site and the Improvements are referred to as the "Development".

B. In April, 2010, the City issued a Request for Proposals (the "RFP") to select a developer to provide and coordinate all aspects of the predevelopment and development of the Development. Through a competitive process, the Developer was selected to provide services for the Development outlined in the RFP.

C. The City and the Developer entered into an Exclusive Negotiating Rights Agreement (the "ENRA") dated as of February 7, 2012 under which the Developer conducted a predevelopment process to identify the steps required to proceed with the Development in conjunction with the City and the Kottinger Place Redevelopment Task Force (the "Task Force").

D. Under the ENRA, the Developer prepared the Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report (the "Predevelopment Report"), which was approved by the Task Force, the Housing Commission of the City of Pleasanton (the "Housing Commission"), and the City.

E. The City Council approved the recommendation of the Predevelopment Report to develop the Development on several parcels comprising the Site: (i) the property owned by the Housing Authority on which the existing Kottinger Place development is located (the "Kottinger Parcel"), (ii) the property owned by the City located at 4133 Regalia Avenue which is adjacent to the Kottinger Village Park (the "Regalia Parcel"); (iii) the property owned by the City located at 4138 Vineyard Avenue (the "Vineyard Parcels"), and (iv) the property currently owned by Pleasanton Gardens, Inc., on which the existing Pleasanton Gardens development is located, and

which will be donated to the City (the "Pleasanton Gardens Parcel"). This Agreement sets forth the requirement for the City to use best efforts to acquire the Kottinger Parcel and the Pleasanton Gardens Parcel as further described in this Agreement.

F. Pursuant to the Predevelopment Report approved by the City and the Housing Commission, the Developer, or an affiliate, may develop the Development in two or more phases (the "Phases"). It is anticipated that if the Development is phased, the first phase may consist of the construction of a sixty-one (61) to seventy-one (71) unit multi-story building on the northern portion of the Kottinger Parcel, the Regalia Parcel, and the Vineyard Parcel, and subsequently, the new construction of thirty (30) single-story homes on the Site's eastern side ("Phase I"). Phase I may in turn be divided into subphases with the first part of Phase I consisting of construction of the multi-story building, and second part consisting of the single-story homes. The second phase will consist of the new construction of twenty-eight (28) single-story homes on the western portion of the Kottinger Parcel, twenty-four (24) single-story homes on the Pleasanton Gardens Parcel, and twenty-eight (28) homes in a multi-story building on the Pleasanton Gardens Parcel ("Phase II"). The plan to phase the Development is depicted on the "Construction Phasing Plan" attached as Exhibit A-2.

G. It is anticipated that construction of the Development will result in the temporary relocation of the Kottinger Place and Pleasanton Gardens residents. The Developer intends to structure the Phases to minimize the relocation of the residents. Under the current Construction Phasing Plan, construction of the multistory building for Phase I first will minimize relocation, requiring approximately fourteen (14) units to be vacated and tenants moved off-site during construction, and providing sufficient units for all Kottinger Place and Pleasanton Gardens residents upon completion.

H. The City will lease the Site to the Developer to develop the Development either pursuant to one ground lease or two or more ground leases reflecting the Phases, and will make the City Predevelopment Loan and the City Construction Loan to the Developer (collectively, the "City Loan"), subject to the terms and conditions of this Agreement.

I. The development of the Site and the occupancy of the affordable rental housing project as developed for households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Development will be undertaken.

J. The Developer intends to finance the costs of development with sources that may include but are not limited to the City Loan, low income housing tax credits, a HOME Loan from the County of Alameda (the "County HOME Loan"), an Affordable Housing Program Loan from a Federal Home Loan Bank member institution (the "AHP Loan"), and private lender construction and permanent financing.

K. The City Council authorized the City Manager to negotiate and execute this Agreement on October 16, 2012.

THEREFORE, the City, the Housing Authority, and the Developer agree as follows:

ARTICLE 2.
DEFINITIONS AND EXHIBITS

Section 2.1 Recitals. The Recitals referenced above are hereby incorporated by reference into this Agreement and adopted by the parties to this Agreement as true and correct.

Section 2.2 The Site. The "Site" is comprised of four contiguous parcels of land in the City: the Kottinger Parcel, the Regalia Parcel, the Vineyard Parcel, and the Pleasanton Gardens Parcel, as more particularly described in the attached Exhibit A-1.

Section 2.3 Termination of this Agreement. This Agreement shall terminate with respect to each of the Phases of the Development upon execution of the corresponding City Ground Lease(s), as defined in Section 8.1 below.

Section 2.4 Parties to the Agreement.

(a) The City. The City is a municipal corporation. The principal office of the City is located at 123 Main Street, Pleasanton, CA 94566, or such other address as City shall hereafter designate in writing to Developer. "City" as used in this Agreement, includes the City of Pleasanton and any and all assignees of or successors to its rights, powers and responsibilities.

(b) The Housing Authority. The Housing Authority is a public body corporate and politic organized under the laws of California, pursuant to Health and Safety Code section 34200, et seq. The principal office of the Housing Authority is located at 123 Main Street, Pleasanton, CA 94566, or such other address as the Housing Authority shall hereafter designate in writing to Developer. "Housing Authority" as used in this Agreement, includes the Housing Authority of the City of Pleasanton and any and all assignees of or successors to its rights, powers and responsibilities. Further, as set forth in Chapter 2.36 of the Pleasanton Municipal Code, the City Council shall act as the Board of Directors of the Housing Authority and therefore the City, City Council and Housing Authority Board of Directors may be used interchangeably.

(c) The Developer. The Developer is MidPen Housing Corporation, a California nonprofit public benefit corporation. The principal office and mailing address of the Developer for purposes of this Agreement is 303 Vintage Park Drive, Suite 250, Foster City, CA 94404. Whenever the term "Developer" is used in this Agreement, such term shall include any and all assignees or successors in interest as herein provided.

Section 2.5 Definitions.

(a) "Area Median Income" shall mean the median gross yearly income, adjusted for actual household size, in the County of Alameda, California, as published from time to time by HUD. Area Median Income is applicable to the City's Lower Income Housing Fund which is the source of funds for the City Loan.

(b) "Agreement" shall mean this Disposition, Development and Loan Agreement.

(c) "AHP Loan" shall mean an Affordable Housing Program Loan from a Federal Home Loan Bank member institution.

(d) "Board of Directors" shall have the meaning ascribed in Section 2.4, subsection (b).

(e) "CEQA" shall mean the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, as amended.

(f) "City" shall mean the City of Pleasanton, a municipal corporation, located at 123 Main Street, Pleasanton, CA 94566.

(g) "City Construction Loan" shall mean the loan by City to Developer from the City's Lower Income Housing Fund as further described in Section 6.2, to assist Developer with construction of the Site.

(h) "City Deed of Trust" shall mean that certain Deed of Trust with Assignment of Rents to secure the City Note.

(i) "City Loan" shall mean the loan by City to Developer from the City's Lower Income Housing Fund as further described in Sections 5.2 and 6.3, to assist Developer with predevelopment and construction costs of the Development, the amount of which is the sum of the City Predevelopment Loan and the City Construction Loan. The City Loan shall also be a permanent funding source for the Development.

(j) "City Predevelopment Loan" shall mean the loan by City to Developer from the City's Lower Income Housing Fund as further described in Section 6.1, to assist Developer with predevelopment costs of the Site.

(k) "City Predevelopment Note" shall mean that certain promissory note, a form of which will be mutually negotiated by the Parties, in favor of City, evidencing the City Predevelopment Loan.

(l) "City Note" shall mean that certain promissory note, a form of which will be mutually negotiated by the Parties, evidencing the City Loan.

(m) "City Ground Lease(s)" shall have the meaning ascribed in Section 8.1.

(n) "Closing" shall have the meaning ascribed in Section 8.4.

(o) "Closing Date" shall have the meaning ascribed in Section 8.4.

(p) "Community Development Department" shall mean the City of Pleasanton Community Development Department.

(q) "Construction Documents" shall mean the Construction plans, budgets, schedules and a construction contract prepared by the Developer.

(r) "Construction Phasing Plan" shall mean the plan to construct the Phases of the Development, attached to this Agreement as Exhibit A-2.

(s) "Construction Plans" shall mean all construction documentation upon which Developer and Developer's contractors shall rely in constructing the applicable Phases (including landscaping, parking, common and public areas) and shall include, without limitation, final architectural drawings, the site development plan, landscaping plans and specifications, final elevations, and building plans and specifications.

(t) "County" shall mean the County of Alameda, a political subdivision of the State of California, having its offices at 1221 Oak Street, Oakland, CA 94612.

(u) "County HOME Loan" shall mean a HOME Loan from the County of Alameda.

(v) "Council" shall mean the City Council of the City of Pleasanton.

(w) "Days" shall mean calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified.

(x) "Developer" shall mean MidPen Housing Corporation, a nonprofit public benefit corporation and its successors and assigns.

(y) "Development" shall have the meaning ascribed in paragraph A of Article 1.

(z) "Effective Date" shall mean the date first set forth above.

(aa) "ENRA" shall have the meaning ascribed in paragraph C of Article 1.

(bb) "Escrow" shall have the meaning ascribed in Section 8.3.

(cc) "Escrow Agent" shall have the meaning ascribed in Section 8.3.

(dd) "Financing Plan" shall have the meaning ascribed in Section 5.1.

(ee) "HACA" shall mean the Housing Authority of Alameda County, a public body corporate and politic organized under the laws of California, having its offices at 22941 Atherton Street Hayward, CA 94541.

(ff) "Hazardous Materials" shall mean: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes,"

"hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(gg) "Hazardous Materials Law" shall mean any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(hh) "Housing Authority" shall mean the Housing Authority of the City of Pleasanton.

(ii) "Housing Commission" shall mean the Housing Commission of the City of Pleasanton.

(jj) "HUD" shall mean the United States Department of Housing and Urban Development.

(kk) "Improvements" shall have the meaning ascribed in paragraph A of Article 1.

(ll) "Kottinger Parcel" shall mean the property owned by the Housing Authority on which the existing Kottinger Place development is located.

(mm) "Management Agent" shall mean MidPen Property Management Corporation, as pre-approved by the City, the Housing Commission, and the Task Force.

(nn) "Management Plan" shall have the meaning ascribed in Section 10.3.

(oo) "Management Unit(s)" shall mean the two (2) units in the Development (one in each Phase) that may be occupied by on-site management and staff.

(pp) "Memoranda of Ground Lease" shall mean memorandum of City Ground Lease(s) in form and substance acceptable to City and Developer deposited and delivered to the Title Company by the City on or before the Closing.

(qq) "Phases" shall have the meaning ascribed in paragraph F of Article 1.

(rr) "Phase I" shall have the meaning ascribed in paragraph F of Article 1.

(ss) "Phase II" shall have the meaning ascribed in paragraph F of Article 1.

(tt) "Plans" shall mean all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Development on the Site.

(uu) "Pleasanton Gardens Parcel" shall mean the property currently owned by Pleasanton Gardens, Inc., on which the existing Pleasanton Gardens development is located.

(vv) "Predisposition Requirements" shall have the meaning ascribed in Article 7.

(ww) "Project Budget" shall mean that certain budget referred to in Section 5.8 of this Agreement and attached hereto as Attachment C which is incorporated herein by this reference, which budget may be changed with the approval of the City, which approval shall not be unreasonably withheld.

(xx) "Project Pro Forma" shall have the meaning ascribed in Section 5.7.

(yy) "Predevelopment Fee" shall have the meaning ascribed in Section 14.2.

(zz) "Predevelopment Report" shall mean the Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report prepared by the Developer which was approved by the Task Force, the Housing Commission, and the City, and which recommended the Development on several parcels comprising the Site.

(aaa) "Qualified Tax Credit Investor" shall mean a person or entity that is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits issued by the State of California or the United States federal government that intends to obtain a limited partnership interest in a limited partnership created by the Developer in return for an interest in the owner of the Development and the right to receive Tax Credits.

(bbb) "Regalia Parcel" shall mean the property currently owned by the City located at 4133 Regalia Avenue and adjacent to the Kottinger Village Park;

(ccc) "Relocation Laws" shall have the meaning ascribed in Section 9.6.

(ddd) "Resident Services" shall be ascribed the meaning in Section 10.4.

(eee) "Resident Services Agent" shall be ascribed the meaning in Section 10.4.

(fff) "Resident Services Plan" shall be ascribed the meaning in Section 10.4.

(ggg) "RFP" shall have the meaning ascribed in paragraph B of Article 1.

(hhh) "Schedule of Performance" shall mean that certain Schedule attached hereto and incorporated herein as Exhibit B.

(iii) "Section 8 Operating Subsidy" shall mean project-based Section 8 Voucher funds used to fund the Development.

(jjj) "Security Financing Interest" shall mean mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan.

(kkk) "Site" shall have the meaning ascribed in Section 2.2.

(lll) "Take-Out Lender" shall mean the lending institution that makes the Take-Out Loan. The Take-Out Lender may or may not also be the Construction Lender.

(mmm) "Take-Out Loan" shall mean the long-term loan made by the Take-Out Lender to Developer in order to repay the Construction Loan.

(nnn) "Task Force" shall mean the Kottinger Place Redevelopment Task Force formed, and from time to time amended, modified or reformed, by the City Council to assist in the development of the Development.

(ooo) "Tax Credits" shall refer to the low income housing tax credits granted by TCAC for the Development pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code, Sections 17057.5, 17058, 23610.4, 23610.5 and California Health and Safety Code Section 50199, *et seq.*

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

(qqq) "Term" shall have the meaning ascribed in Section 6.3(a).

(rrr) "Title Company" shall mean Old Republic Title Company.

(sss) "Transfer" shall have the meaning ascribed in Article 11.

(ttt) "Unit" and "Units" shall have the meaning ascribed in Article 1.

(uuu) "Vineyard Parcel" shall mean the property owned by the City located at 4138 Vineyard Avenue.

Section 2.6 Exhibits.

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

- Exhibit A-1: Site Plan
- Exhibit A-2: Construction Phasing Plan
- Exhibit B: Schedule of Performance
- Exhibit C: Project Budget
- Exhibit D: Ground Lease Term Sheet

ARTICLE 3.
GENERAL DUTIES OF PARTIES

Section 3.1 Developer's Obligations. In addition to any obligations stated elsewhere in this Agreement, the Developer shall have the following duties and responsibilities:

(a) Requirements. Developer shall diligently and in good faith seek to develop and construct the Development in accordance with the requirements of this Agreement.

(b) Development Schedule. Developer shall use diligent efforts to complete all tasks shown on the Schedule of Performance by the date shown on the Schedule of Performance.

(c) Financing. Developer shall make diligent efforts to seek binding commitments for all construction and permanent financing, including any public funding, needed for the Development as shown in the approved Financing Plan and shall prepare or negotiate appropriate documentation to close such financing or obtain such funding. All financing placed on the Site shall be subject to the review and approval of the City which review and approval shall not be unreasonably withheld, delayed or denied. The City's response shall be given within fifteen (15) days of Developer's submission of any proposed financing. The Developer will be responsible for maximizing use of leveraged financing sources from the Low Income Housing Tax Credit program, and other housing, and community economic development funding sources, as available.

(d) Approvals. Developer shall, on an ongoing and timely basis, advise the City as to the status of the processing of all applications necessary to obtain all governmental approvals required in accordance with this Agreement and all applicable federal, State and local laws, rules and regulations. Developer shall advise the City of any hearings regarding matters described in this Agreement with ten (10) days' notice, or if Developer receives less notice than that, a reasonable amount of advance notice to enable the City to elect to attend such hearings.

(e) Task Force. Developer shall meet with the Task Force, as directed by the City, on matters related to the design and financing of the Development, the relocation of the residents of Kottinger Place and Pleasanton Gardens, the provision of Resident Services and the schedule outlined in the Schedule of Performance. Meetings shall take until the Developer obtains land use approvals unless otherwise extended by the City. The Developer shall provide quarterly written updates once land use approvals are obtained, until completion of construction of Phase II.

(f) Indemnification. Developer shall indemnify, defend and hold harmless the City and its Council, officers, employees and agents from and against any and all losses, costs, damages, claims, causes of action, demands, suits, liabilities, obligations, judgments and expenses (including any attorney fees and other costs of litigation) arising out of or relating to any injury, disease or death of persons or damage to or loss of property resulting from or in connection with any breach by Developer or its respective agents or employees of any provision of this Agreement, or arising out of any performance of activities under this Agreement, except

to the extent such claims arise from the gross negligence or willful misconduct of the City, its Council, officers, employees, agents, successors, and assigns.

Section 3.2 City and Housing Authority Obligations. In addition to any obligations stated elsewhere in this Agreement, the City and the Housing Authority, as applicable, shall have the following duties and responsibilities.

(a) Approvals. The City shall review any matter submitted by Developer, and advise Developer of approval or of why approval is being withheld or denied. The City's approval, where called for in this Agreement, shall in all instances be evidenced by a writing explicitly granting such approval and signed by the City Manager, or his or her designee, except in those instances where items are deemed approved pursuant to this Agreement.

(b) Access to Site. So long as the City or the Housing Authority retains title to or control of the Site, the City and the Housing Authority, as applicable, shall provide Developer and its employees, contractors, and agents such access to the Site (including the existing buildings) as may be reasonably necessary to perform Developer's obligations under this Agreement.

(c) City Loan. The City shall ensure that it has available the funds for the City Loan committed in this Agreement and shall expend such funds only in accordance with this Agreement and any approved budgets and schedules therein contained, as the same may be amended from time to time.

(d) HUD Approvals. The parties hereto acknowledge that certain aspects of the transactions contemplated by this Agreement are subject to HUD approval. The Housing Authority shall endeavor, with Developer's assistance, and with the City, to secure the approval of HUD for all activities contemplated herein over which HUD has authority, including without limitation, the disposition of the Kottinger Parcel. The Housing Authority shall endeavor to secure such approvals from HUD in a timely manner so as not to hinder Developer's ability to complete its obligations within the time frame contemplated in the Schedule of Performance. Nothing herein shall be understood to authorize or obligate the Housing Authority or Developer to act in the absence of required HUD approvals. If the required HUD approvals are not obtained, the Developer shall develop a list of alternative courses of action within one hundred fifty (150) days of the denial for City and Housing Authority consideration. Developer shall also prepare adjustments to the Schedule of Performance to reflect the alternatives.

(e) Acquisition of Kottinger Parcel and Pleasanton Gardens Parcel. It is anticipated that the City will acquire the Kottinger Parcel from the Housing Authority and the Pleasanton Gardens Parcel from Pleasanton Gardens, Inc., for development of the Development, and the operation and management of such housing. The City shall endeavor to secure the acquisition of the Kottinger Parcel and Pleasanton Gardens Parcel within the time frame contemplated in the Schedule of Performance.

(f) Subdivision Processes.

(1) The City shall process an application for a lot line adjustment or other applicable subdivision process necessary to create the Regalia Parcel. The City shall process an

application for a lot line adjustment, merger, or other applicable subdivision process necessary to combine the Kottinger Parcel, the Regalia Parcel, and the Vineyard Parcel into one parcel suitable for the development of the Development.

(2) The City shall endeavor to complete such processes in a timely manner so as not to hinder Developer's ability to complete its obligations within the time frame contemplated in the Schedule of Performance. However, nothing shall prohibit the City from exercising its judgment in requiring further public, staff, Task Force, Community Development Department, other City advisory body, or City Council review if deemed necessary to complete the project provided Developer receives notice from the City detailing the anticipated length of the extension.

(g) Additional Funding. The City will make diligent efforts to assist and support Developer's applications for additional public funding for the Development. In addition, the City shall cooperate in good faith with Developer to accommodate the reasonable security needs of private lenders necessary to finance the construction of the Development. If so required by these additional private lenders, City shall reasonably subordinate its interest in the Development.

(h) Transfer of Pleasanton Gardens HAP Contract. The City with assistance from the Developer will make best efforts to have the existing Project Based Section 8 Housing Assistance (HAP) Contract from Pleasanton Gardens transferred to the Development and renewed for a twenty (20) year term.

ARTICLE 4. PREDEVELOPMENT OBLIGATIONS

Section 4.1 HUD Demolition/Disposition Approval. The Housing Authority shall diligently pursue such HUD approval as may be required pursuant to Section 18 of the United States Housing Act of 1937 and 24 CFR Part 970 as may be required to obtain HUD approval to dispose of the Kottinger Parcel in accordance with this Agreement. The City and the Developer shall provide reasonable assistance in preparing submissions and obtaining approval, as requested by the Housing Authority, in order to ensure HUD's approval of the demolition and/or disposition as applicable within the time frame contemplated in the Schedule of Performance. The Housing Authority shall endeavor to secure such approvals from HUD in a timely manner so as not to hinder Developer's ability to complete its obligations within the time frame contemplated in the Schedule of Performance. Notwithstanding the foregoing, Developer recognizes that approval to dispose of the Kottinger Parcel is at the sole discretion of HUD which may approve or deny any approval request from the Housing Authority.

Section 4.2 Developer Predevelopment Obligations. Prior to the Closing the Developer shall conduct the Developer predevelopment obligations as described in Section 3.1 and shall use diligent efforts to do so, in accordance with the Schedule of Performance. Developer will ensure that work which it conducts is conducted in conformance with all applicable laws and will obtain all necessary permits and approvals of third parties. Developer's

completion of the predevelopment obligations shall be a condition to the City's performance at Closing.

Section 4.3 Environmental Review. Prior to submitting an application for land use approvals Developer shall perform any additional environmental studies required by the City and the Housing Authority in connection with their environmental review of the Development in accordance with CEQA and shall make diligent efforts to perform any additional studies in accordance with CEQA. Developer acknowledges that the environmental review process under CEQA may involve preparation and consideration of additional information, as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Development following completion of the environmental review process is within the sole, complete, unfettered, and absolute discretion of the City and the Housing Authority without limitation by or consideration of the terms of this Agreement; and that the City and the Housing Authority make no representation regarding the ability or willingness of the City and the Housing Authority to approve the Development at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be granted. The parties recognize that, as a result of the environmental review process, the City and the Housing Authority have the absolute discretion and right to terminate this Agreement, and no cost shall be incurred by the City and the Housing Authority as a result of such. In addition, Developer acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the City and the Housing Authority shall not bind any other local, state or federal agency to approve the Development or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the City and the Housing Authority pursuant to the City and the Housing Authority's environmental review. Developer has the right to terminate this Agreement if the City or the Housing Authority disproves of the Development following completion of the environmental review process; or, Developer determines that implementation of any required environmental mitigation measures would cause the Development to become economically infeasible. Upon such termination the City Loan shall be forgiven pursuant to Section 14.5 below.

Section 4.4 Land Use Approvals and Permits. Within the times specified in the Schedule of Performance, Developer shall obtain all permits and approvals necessary to construct the Development, including a Planned Unit Development permit and demolition and building permits. All applications for such permits and approvals shall be consistent with the approved Construction Plans. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required or additional permits, applications, or allocations, if any, and in no way limits the discretion of the City in the permit allocation and approval process.

ARTICLE 5. FINANCING ARRANGEMENTS

Section 5.1 Developer's Financing Plan. Developer contemplates financing the Development with a combination of funds from the proceeds of the following: (i) the City Loan; (ii) Tax Credits; (iii) the County HOME Loan; (iv) the AHP Loan; (v) project-based Section 8

Voucher funds (the "Section 8 Operating Subsidy"); and (vii) such other financing sources as may be obtained by Developer in accordance with the terms and conditions of this Agreement (all of the foregoing collectively referred to as the "Financing Plan"). The Developer shall submit the Financing Plan to the City and the Housing Authority for approval within the timeframe set forth in the Schedule of Performance. Developer shall utilize all of such funding exclusively for development of the Development on the Site, and not for any other purpose. Notwithstanding anything herein to the contrary, City and Developer acknowledge that Developer shall continue to pursue alternate funding options, and that as a result the Financing Plan and Project Budget may require subsequent amendment. The City shall approve any such amendments provided any such alternate funding options are reasonable, involve reliable and reputable sources and do not increase the amount of the City loan as stated in Section 5.2.

Section 5.2 City Loan. City will provide Developer with financial assistance from its Lower Income Housing Fund, in an amount of approximately Ten Million Dollars (\$10,000,000), for predevelopment, development, and construction costs (the "City Loan"). The City Loan includes the City Predevelopment Loan and City Construction Loan described in more detail in Sections 6.1 and 6.2 below. In addition, the City will lease the Site to the Developer for a nominal amount (e.g., \$1 per year).

Section 5.3 Section 8 Operating Subsidy. In addition to the transfer and renewal of the HAP Contract from Pleasanton Gardens, the Developer will seek a commitment of Section 8 project based rental assistance from HACA.

Section 5.4 Tax Credits. Developer agrees to prepare an application to TCAC for the Tax Credits in accordance with the deadline set forth in the Schedule of Performance.

Section 5.5 The AHP Loan. Developer agrees to prepare an application to the Federal Home Loan Bank Affordable Housing Program funds in accordance with the deadline set forth in the Schedule of Performance.

Section 5.6 County HOME Loan. Developer shall prepare an application to the County for the HOME Funds in accordance with the deadline set forth in the Schedule of Performance.

Section 5.7 Project Budget; Project Pro Forma. The anticipated sources and uses of funds for the development of the Development are set forth in the Project Budget. The financial projections for the Development are set forth in the Project Pro Forma. The Project Budget and Project Pro Forma may be changed with the approval of City, which approval shall not be unreasonably withheld.

Section 5.8 Developer Submittals. Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Financing Plan, Developer shall submit to the City copies of all of the correspondence and other documentation received in connection with the same. Developer shall submit a financing plan and evidence of financing for both Phase I and Phase II of the Development within the time frame contemplated in the Schedule of Performance.

ARTICLE 6.
CITY LOAN PROVISIONS

Section 6.1 City Predevelopment Loan. The City will provide a predevelopment loan in the maximum principal amount of \$2,800,000 (the "City Predevelopment Loan") for predevelopment costs including architecture and design costs, legal and specialty consultant fees and other preconstruction related costs. The City Predevelopment Loan will be evidenced by the City Predevelopment Note between Developer and City and is part of the City's total financial contribution as identified above in Article 5. The City Predevelopment Loan shall be used solely for preconstruction costs in accordance with the Project Budget to be approved by the City.

Conditions to Funding. The City shall fund the Predevelopment Loan for predevelopment generally in the amounts and for the preconstruction cost items set forth in Exhibit C. City disbursements shall be made within thirty (30) days after a written request from the Developer setting forth the use of funds and the amount of funds needed with an attached a copy of the bill or invoice covering the costs incurred. Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to disburse any portion of the City Predevelopment Loan to the Developer following: (i) termination of this Agreement; or (ii) notification by the City to the Developer of Developer default under the terms of this Agreement; provided, however, that the City shall become obligated again to disburse City Predevelopment Loan funds to the Developer pursuant to the terms of this Agreement if the Developer cures the default within the applicable cure period.

Section 6.2 City Construction Loan. In addition to the foregoing financial commitments described in Section 6.1. above, the City may make one or more additional financial contributions to the Development, including construction of Phase I or Phase II of the Development. The City will provide a construction loan in the maximum principal amount of \$7,200,000 (the "City Construction Loan") for costs to develop the Development in accordance with the Project Budget to be approved by the City. The City Construction Loan will be disbursed following the necessary land use and permit approvals and the approval of the final Financial Plan.

Section 6.3 City Loan. The City Loan includes the City Predevelopment Loan and the City Construction Loan and shall be used for predevelopment, construction, and permanent financing for the Development. At Closing, the City Predevelopment Loan shall be a deemed disbursement of the City Loan.

Simple interest at three percent (3%) per annum shall accrue on the principal amount of the City Loan. The City Loan shall be repaid as follows:

(a) The City Loan shall have a term that expires on the date fifty-five (55) years from conversion of the permanent financing (the "Term").

(b) Payment in Full. All principal and interest, if any, on the City Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in Article 11 below; (ii) the occurrence of an Event of Default for which the City exercises its right to cause the City Loan indebtedness

to become immediately due and payable; or (iii) the expiration of the Term specified in (a) above.

(c) Prepayment. The Developer shall have the right to prepay the City Loan at any time. However, this Agreement shall remain in effect for the Term, regardless of any prepayment or timely payment of the City Loan.

Section 6.4 Non-Recourse. Following transfer of the leasehold interest in the Site to Developer and recordation of the City Deed of Trust, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loan or the performance of the covenants of the Developer under the City Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the City Note and defaults by the Developer in the performance of its covenants under the City Deed of Trust shall be to the property described in the City Deed of Trust.

ARTICLE 7. PREDISPOSITION REQUIREMENTS

Section 7.1 Conditions Precedent to City Performance at Closing.

(a) The following are conditions precedent to City's obligation to enter into the City Ground Lease for Phase I and Phase II and close escrow:

(1) Predevelopment Obligations. The Developer shall have completed all its predevelopment obligations described in Article 3.

(2) Construction Documents. The Developer will have prepared, or will have seen to the preparation of, Construction Plans, budgets, schedules and a construction contract (the "Construction Documents").

(3) Permits and Approvals. The Developer shall have obtained (in its own name, where appropriate and with the approval of the City, in the name of the City) all building and construction permits, licenses, easements, zoning and approvals necessary for the commencement of construction of the Site, including commitments to provide the utilities necessary for the Development.

(4) Qualified Tax Credit Investor. The Developer shall have obtained a commitment from a Qualified Tax Credit Investor to make equity contributions to a limited partnership formed by Developer in exchange for the Tax Credits within the timeframe set forth in the Schedule of Performance.

(5) No Developer Default. No Event of Default on the part of Developer exists and is continuing under this Agreement.

(b) The conditions set forth in this Section 7.1 shall have been satisfied as of the Closing, unless the City waives them in writing. If there is no waiver or satisfaction by the Closing, the City may terminate this Agreement upon written notice to Developer without further

liability, except for such liability as may be provided for under any predevelopment loans or separate contracts entered pursuant to this Agreement and except for continuing indemnities provided elsewhere in this Agreement.

Section 7.2 Conditions Precedent to Developer's Performance at Closing.

(a) Conditions Precedent in General. The following are conditions precedent to the Developer's obligation to lease the Site from the City and close escrow:

(1) Site Condition. There shall have been no material adverse change in the condition of the Site, or discovery of a physical condition that would materially adversely interfere with the development of the Development.

(2) Construction Documents. The City shall have approved the Construction Documents required to be approved up to the time of Closing.

(3) Title Insurance. The Title Company is prepared to issue to the Developer/Owner(s) all title insurance required by Section 8.4 to be delivered to Developer.

(4) Section 8. Developer shall have received a commitment of project-based Section 8 assistance from HACA in an amount consistent with the Financing Plan.

(5) Government Approvals. The Developer shall have received (in its own name, when appropriate and with the approval of the City, in the name of the City) all necessary governmental approvals and permits, including without limitation HUD's approval of the Demolition/Disposition, all building and construction permits, licenses, easements, zoning and approvals necessary for the commencement of construction of the Site.

(6) Execution of Ground Lease. The City shall be prepared to execute the City Ground Lease for the applicable Phase of the Site.

(7) No Litigation. No litigation or claim with any governmental entity shall have been filed and be pending which may have a material, adverse impact on the Development or the Site.

(8) No City Default. No Event of Default on the part of the City exists and is continuing under this Agreement.

(b) The conditions set forth in this Section 7.2 shall be satisfied as of the Closing, unless the Developer waives them in writing. If there is no waiver or satisfaction by the Closing, the Developer may terminate this Agreement upon written notice to the City without further liability, except for such liability as may be provided for under any predevelopment loans or separate contracts entered pursuant to this Agreement and except for continuing indemnities provided elsewhere in this Agreement.

ARTICLE 8.
LEASE OF SITE

Section 8.1 City's Obligation to Ground Lease. Provided the pre-disposition requirements set forth in Article 7 and the additional closing conditions set forth in Article 8 have been satisfied, City shall lease to Developer the Site pursuant to one or more ground leases (the "City Ground Lease(s)") generally consistent with the terms, covenants, and conditions of the Agreement and the Ground Lease Term Sheet attached as Exhibit D.

Section 8.2 Steps for Closing. The Closing shall be completed as follows:

(a) On or before the Closing, the Housing Authority shall obtain written approval from HUD for the demolition of the existing buildings on the Site (as applicable) and the disposition of leasehold interests in the Site, as provided herein.

(b) On or before the Closing, the City shall execute, acknowledge, deposit and deliver to the Title Company, as necessary and appropriate, the City Ground Lease(s), a memorandum of each of the Ground Leases in form and substance acceptable to City and Developer, collectively, ("Memoranda of Ground Leases"), and the fully executed City Deed of Trust.

(c) The City and the Developer shall instruct the Title Company to consummate the escrow and upon Closing, the Title Company shall record in the Official Records, Memoranda of Ground Leases and any other documents required to be recorded under the terms of this Agreement.

(d) The Title Company shall issue title policies to the Developer and the City, as required below.

Section 8.3 Escrow Instructions.

(a) City and Developer agree to open an escrow (the "Escrow") with ORTC (the "Escrow Agent"), by the time established therefor in the Schedule of Performance. Upon the opening of the Escrow, a duplicate original of this Agreement shall be delivered to the Escrow Agent. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Section 8.3, in writing, delivered to the City and the Developer, shall carry out its duties as Escrow Agent hereunder. In the event of any conflict or inconsistency between the additional escrow instructions required by the Escrow Agent and the provisions of this Agreement, the provisions of this Agreement shall supersede and control. Any amendment of the escrow instructions set forth or described herein shall be in writing and signed by both City and Developer. At the time of any authorized amendment to the escrow instructions, the Escrow Agent shall agree, by signing below an appropriate statement on such an amendment, to carry out its duties as Escrow Agent under such an amendment. All communications from the Escrow Agent to City or Developer shall be in writing and directed to the addresses and in the manner established in Section 2.4 of this Agreement for notices, demands, and communications between City and Developer.

(b) The Developer and/or the City, as applicable, shall deposit into Escrow funds to pay for such fees, charges and costs as the Escrow Agent has notified the City and Developer are necessary to close Escrow (which costs are anticipated to be paid for through the City Loan).

(c) Escrow Agent Obligations.

(1) The Escrow Agent shall notify the City and Developer when all outstanding documents, including the City Deed of Trust have been executed and submitted to Escrow by the applicable party.

(2) Upon confirmation by the Escrow Agent that all of the City's Predisposition Requirements set forth in Section 7.1 have been satisfied, or waived by the City, the Escrow Agent shall record the City Deed of Trust. Escrow Officer shall ensure that the City Deed of Trust is recorded as a lien against the Site subordinate only to the liens for current real property taxes and assessments not yet due and payable, applicable City Ground Lease and liens for such other Development financing approved by the City.

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

(4) The liability of the Escrow Agent in the capacity of escrow holder with respect to the City is limited to performance of the obligations imposed under it under Section 8.3 of this Agreement.

Section 8.4 Closing.

(a) The Closing Date shall occur within thirty (30) days following the date on which all conditions precedent to conveyance set forth in Article 7 have been satisfied, but in no event later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 7 have been satisfied or waived by the City. In addition to the conditions precedent to execution of the City Ground Lease as set forth in Section 2 (including but not limited to the closing of the financing set forth in the approved Financing Plan), the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the City Ground Lease:

(b) The Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 10.5.

(c) The Developer shall have executed and delivered to the City, the City Ground Lease(s), the Memoranda of Ground Lease, the City Note, the City Deed of Trust and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City.

(d) The Memoranda of Ground Lease and the City Deed of Trust shall have been recorded against the Developer's interest in the Site as a lien subject only to the exceptions authorized by the City.

(e) The Developer shall have obtained issuance of a building permit for construction of the Development by paying the required building permit fees.

(f) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA 2006 LP-10 Lender's Policy of insurance insuring the lien priority of the City Deed of Trust in the amount of the City Loan subject only to such liens approved by the City in the Financing Plan as prior to the lien of the City Deed of Trust and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require.

(g) There shall exist no condition, event or act which would constitute a breach or default under this Agreement.

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

Section 8.5 Condition of Title. On the Closing Date, the Developer shall have insurable leasehold interest to the Site which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except as approved by Developer. If on or before the Closing, a title defect not caused by Developer, its agents or Affiliates and which would materially and adversely affect the Development arises and which the City does not elect to cure, (which election shall be at City's sole discretion, excepted as provided below), the Developer may by written notice to the City either (i) terminate this Agreement, or (ii) accept the Site under the Ground Lease(s). The City shall be obligated, at City's expense, to cure any title defect which is curable by the payment of money or the posting of a bond if such title defect arises after the date of this Agreement and on or before the Closing, and is caused solely by the City, its agents or employees.

Section 8.6 Condition of Site. If during the performance of the predevelopment obligations, Hazardous Materials are discovered on the Site, the Developer at its option may terminate this Agreement if in the Developer's reasonable determination such Hazardous Materials are not able to be remediated to the level necessary for the construction of the Development. Upon such termination the City Loan shall be forgiven pursuant to Section 14.5.

Section 8.7 Failure of Conditions Precedent; Termination. In the event that each of the conditions set forth in Section 7.1 is not fulfilled, or waived by City pursuant to Section 7.1(b), City may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event that each of the conditions set forth in Section 7.2 is not fulfilled, or waived by Developer pursuant to Section 7.2 (b), Developer may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by Developer to City or Escrow Agent shall be returned immediately to Developer and all documents and funds delivered by City to Developer or Escrow Agent shall be returned immediately to City. Nothing in this Section 8.7 shall be construed as releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder.

ARTICLE 9.
CONSTRUCTION

Section 9.1 Construction Pursuant to Plans. The Improvements shall be constructed substantially in accordance with the Construction Plans and the terms and conditions of the land use permits and approvals and building permits, including any variances granted.

Section 9.2 Commencement of Improvements. The Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 9.3 Completion of the Improvements. The Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 9.4 Equal Opportunity. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 9.5 Compliance with Applicable Law. The Developer shall cause all construction to be performed in compliance with:

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

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

Section 9.6 Relocation. Prior to the relocation of residential tenants at the Site, Developer shall comply with California Relocation Assistance Law (Government Code Section 7620 *et seq.*), all state and local regulations implementing such law, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 *et seq.*) and implementing regulations at 49 CFR 24 *et seq.*, and all other applicable local, state and federal laws and regulations relating to the displacement and relocation of eligible persons as defined in such laws (collectively "Relocation Laws") with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits. Developer shall submit a Resident Relocation Plan to the City and the Task Force for their review and approval within the time set forth in the Schedule of Performance. Such plan shall include a preliminary timeline for relocation of the residential tenants of the Site. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Site shall be paid by Developer. Developer shall indemnify, defend and hold harmless the City and the Housing Authority from and against any and all claims arising in connection with the breach of Developer's obligations set forth whether or not any insurance policies shall have

been determined to be applicable to any such claims. Developer's indemnification obligations set forth in this Section shall not apply to claims arising from gross negligence or willful misconduct of the City or the Housing Authority.

Section 9.7 Progress Report. Until such time as the Developer has completed construction of the Improvements, as evidenced by issuance of final Certificates of Occupancy by the City for all buildings in the Development, the Developer shall provide the City with quarterly progress reports, or more frequent updates if City reasonably requires, regarding the status of the preconstruction and construction of the Development.

Section 9.8 Construction Responsibilities.

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

(b) The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

Section 9.9 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Site or the Improvements or a stop notice affecting the City Loan is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

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

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Site and/or Improvements.

Section 9.10 Inspections. The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City

and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement.

Section 9.11 Information. The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 9.12 Records.

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

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

Section 9.13 Financial Accounting and Post-Completion Audits.

(a) No later than ninety (90) days following issuance of the Certificate of Occupancy, the Developer shall provide to City an unaudited financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) days following completion of construction of the Development, the Developer shall submit to the City a copy of the Development's cost certification report prepared by the Developer's accountant and submitted to TCAC showing the sources and uses of all funds utilized for the Development.

(b) The Developer shall make available for examination at reasonable intervals and during normal business hours to City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developer. The City, in its reasonable discretion, may make audits of any records related to the development or operation of the Development or the Developer's compliance with this Agreement. The City shall give the Developer notice of three (3) business days to make such audits.

Section 9.14 Revisions to Project Budget and Financing Plan. As required under Section 5.8 as needed thereafter, the Developer shall submit any required amendments to the Financing Plan and/or the Project Budget including but not limited to any amendments or modifications to the development budget, Qualified Tax Credit Investor commitment letter, or the commitment letter from any other lender, to the City for approval within fifteen (15) days of the date the Developer receives information indicating that actual costs of the Development vary

or will vary significantly from the line item costs shown on the Financing Plan or the Project Budget.

ARTICLE 10.
USE AND OPERATION

Section 10.1 Affordable Senior Housing. Developer hereby covenants and agrees, for itself and its successors and assigns, to maintain the Site during the term of the Ground Lease only as rental housing to which 49% of all units other than the two (2) Management Unit are restricted to seniors earning between 30% and 60% of Area Median Income in Alameda County, all as more fully described in the Ground Lease. For the existing residents who will receive rental assistance through the Project-Based Vouchers, rents will continue to be 30% of their household income.

Section 10.2 Management Agent. The Development shall at all times be managed by MidPen Property Management Corporation, subject to City's approval as required by the City Ground Lease.

Section 10.3 Approval of Management Plan Modifications. The Developer shall submit the written Management Plan for the Development to the City for its review and approval no later than six (6) months after commencement of construction of the Development pursuant to the Schedule of Performance. Each year thereafter, within sixty (60) days of the end of the Developer's Fiscal Year, the Developer shall submit to the City any proposed changes to the Management Plan. The City shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) calendar days following the City's receipt of the request to amend the Management Plan, which approval shall not be unreasonably denied. If the change to the Management Plan is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Agreement. The City's approval of the amendments to the Management Plan shall not be unreasonably withheld.

Section 10.4 Resident Services Agent.

(a) Resident Services Agent. The Development shall at all times deliver comprehensive resident services provided by MidPen Resident Services Corporation, as was pre-approved by the City (the "Resident Services"). The Developer shall submit a Resident Services Plan to the City for review within the time set forth in the Schedule of Performance. The Resident Services Plan shall include services specifically targeted to seniors and shall describe how coordination with other services in the vicinity and other service providers will be handled.

(b) Identifying Service Delivery Gaps in the City. The Resident Services Agent shall conduct a thorough community assessment to ensure the services provided on-site are complimentary to those already offered in the City

(c) Comprehensive Service Provision. The Resident Services Agent shall conduct mobility and mental health assessments to determine independent living ability. These assessments will inform the type and frequency of programming offered. The Resident Services Agent will also be responsible for planning social events and quality of life programming to promote community interaction and prevent social isolation.

Section 10.5 Insurance Requirements.

(a) Required Coverage. The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(1) To the extent required by law, Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.

(2) "All risk" builder's risk insurance, including coverage for vandalism and malicious mischief and covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

(3) Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(4) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required and both parties to this Agreement shall initial this provision signifying same.

(5) Upon acquisition of the leasehold interest in the Site, property insurance covering the Development covering all risks of loss, including flood, if the Site is located in a flood zone, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interest may appear. Any dispute that is within the jurisdiction of a probate or small claims court will take place in such venues.

(b) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Development under direct contract with the Developer to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(1), (a)(2), (a)(3) and (a)(4) above, and shall require that such insurance shall meet all of the general requirements of subsection (c) below. Subcontractors working on the Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(1), (a)(2), (a)(3) and (a)(4) above; provided that the amount of Commercial General Liability insurance for each subcontractor shall have a limit of not less than One Million

Dollars (\$1,000,000). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City, the Council, officers, agents, and employees.

(c) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above. Upon the execution of the City Ground Lease, in the event of any conflict between this Agreement and the City Ground Lease regarding insurance, the provisions of the City Ground Lease shall control.

Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insureds the City and Council members, officers, agents, and employees.

All policies and bonds shall be endorsed to provide thirty (30) days' prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City pursuant to Section 2.4.

(d) Certificates of Insurance. Upon the City's request at any time during the term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City.

Section 10.6 Audits. The Developer shall make available for examination at reasonable intervals and during normal business hours to the City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the City to audit, examine, and make excerpts or transcripts from such records.

ARTICLE 11. ASSIGNMENT AND TRANSFERS

Section 11.1 Definitions. As used in this Article, the term "Transfer" means:

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

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Developer; or

(d) The leasing of part or all of the Site or the Improvements thereon; provided, however, that leasing of the Units included within the Improvements to tenant occupants in accordance with the City Ground Lease shall not be deemed a "Transfer" for purposes of this Article.

Section 11.2 Permitted Transfers. Notwithstanding the provisions of Section 11.1, the following Transfers shall be permitted and are hereby approved by the City.

(a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan; and

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) The leasing of residential units within the Development in accordance with the City Ground Lease.

(d) The granting of easements or permits to facilitate the development of the Site.

(e) The assignment of this Agreement to an affiliate of Developer or to a limited partnership in which Developer or its affiliate is a general partner.

Section 11.3 Effectuation of Certain Permitted Transfers. No Transfer of this Agreement permitted pursuant to Section 11.2 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest or shall have been derived immediately from any holder thereof shall not be required to give to City such written assumption.

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

Section 11.4 Other Transfers with City Consent. The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the City for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within sixty (60) days of receipt by the City of Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations

of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer.

ARTICLE 12.

NON-DISCRIMINATION AND OTHER FEDERAL AND STATE REQUIREMENTS

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

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

ARTICLE 13.

REPRESENTATIONS AND WARRANTIES

Section 13.1 Representations by the Developer. Developer hereby represents and warrants to the City, to the best of its actual knowledge, as follows:

(a) The Developer is duly established and in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(b) The Developer does not have any contingent obligations or contractual agreements which will prevent the ability of the Developer to carry out its obligations hereunder.

(c) There are no pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party to or to which it or any of its property including, without limitation, the Site, is or may become subject, which have not been fully disclosed in the material submitted to the City, which will prevent the ability of the Developer to carry out its obligations hereunder.

(d) The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, material breach, or violation of any other agreement, instrument, or arrangement by which Developer is bound.

(e) The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Developer.

(f) No representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to City pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

(g) Each of the foregoing items, inclusive, shall be deemed to be an ongoing representation and warranty. The Developer shall advise the City in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items, inclusive.

Section 13.2 Representations by the City. The City represents and warrants to Developer as follows:

(a) City is a municipal corporation. The execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) City does not, as far as is known to City, have any contingent obligations or contractual agreements which will adversely affect the ability of City to carry out its obligations hereunder.

(c) There are no pending or, so far as is known to City, threatened, legal proceedings to which City is or may be made a party or to which it or any of its property is or may become subject, which will adversely affect the ability of City to carry out its obligations hereunder.

(d) There is no action or proceeding pending or, to City's knowledge, threatened, looking toward the dissolution or liquidation of City and there is no action or proceeding pending or, to City's knowledge, threatened by or against City which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of City to carry out its obligations hereunder.

(e) To City's knowledge, the Site is not currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation.

(f) To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which City is bound.

(g) To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to City.

ARTICLE 14. DEFAULTS AND REMEDIES

Section 14.1 Defaults – General. Subject to the extensions of time set forth in Section 15.4 failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the non-defaulting party shall be entitled to pursue whatever remedies to which such party is entitled under this Agreement.

Section 14.2 Predevelopment Fee. If the City is in default under this Agreement and the Developer elects to terminate this Agreement pursuant to Section 14.1 (a "Termination Event"), City agrees to reimburse reasonable predevelopment expenses incurred by Developer. In addition, if any Termination Event occurs the City shall pay the Developer a Predevelopment Fee of \$4800 for each month this Agreement is in effect for the performance of the predevelopment activities.

Section 14.3 Legal Actions.

(a) Specific Performance. The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement.

(b) Institution of Legal Actions; Attorney's Fees. Any legal actions must be instituted in the State of California, or in the Federal District Court in the Northern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

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

(d) Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(e) Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 14.4 Termination by the City. The City may terminate this Agreement in the event that prior to Closing:

(a) The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Article 11 hereof.

Section 14.5 Termination by the Developer. In the event that despite making best efforts, Developer is unable to obtain financing in the timeframe set forth in the Schedule of Performance or otherwise determines in its reasonable discretion, prior to closing on the Construction Loan, that development of the Project is not feasible, or if the City is in default hereunder, then, at the option of the Developer, upon such written notice thereof to the City, this Agreement shall be terminated, the City Loan will be forgiven, and thereafter neither party shall have any further rights or liability against the other under this Agreement.

Section 14.6 No Fault Termination. The following events constitute a basis for a no fault termination of this Agreement:

(a) CEQA approval is not obtained pursuant to Section 4.4; or

(b) The City in its role as the City's Community Development Department fails to approve any land use permits or entitlements necessary for the development of the Project.

Upon the happening of either of the above-described events, the City and the Developer shall meet in good faith to determine whether a mutually acceptable amendment to this Agreement and/or modification to the scope of development for the Project is feasible. If the City and the Developer are unable to agree on a mutually satisfactory modification, the parties may agree to terminate this Agreement, the City Loan will be forgiven, and thereafter neither party shall have any further rights or liability against the other under this Agreement.

Section 14.7 City's Option to Acquire Plans. If this Agreement is terminated by the City prior to Closing, at the option of the City, which may be exercised in the City's sole and absolute discretion, the Developer shall deliver to the City an executed assignment in a form reasonably acceptable to the City of the Developer's right to use all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Development on the Site (the "Plans"), together with copies of all of the Plans, as have been prepared for the development of the Site to date of the termination. Notwithstanding the foregoing, however, Developer does not covenant to convey to the City the copyright or other ownership rights of third parties. City's acquisition or use of the Plans or any of them shall be without any representation or warranty by Developer as to the accuracy or completeness of any such Plans, and City shall assume all risks in the use of the Plans.

ARTICLE 15. GENERAL PROVISIONS

Section 15.1 Delivery of the Plans. The Developer shall periodically deliver to the City in a form reasonably acceptable to the City the Plans, together with copies of all of the Plans, as such is prepared.

Section 15.2 Notices, Demands and Communications Among Parties.

(a) Written notices, demands and communications among the Housing Authority, the City and the Developer shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City, the Housing Authority, and the Developer at the addresses specified in Article 2. 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 15.2.

(b) Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

Section 15.3 Conflicts of Interest. No member, officer, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any 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.

Section 15.4 Enforced Delay; Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war;

insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor; subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City, or any other public or governmental City or entity (except that the acts or failures to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the default of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

Section 15.5 Non-Liability of Officials and Employees of the City. 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 its successors, or on any obligations under the terms of this Agreement.

Section 15.6 Interpretation; Entire Agreement, Waivers; Attachments.

(a) The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

(c) All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the City and the Developer. Except as otherwise expressly provided, in any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

(d) The exhibits and attachments to this Agreement are incorporated herein and made a part hereof.

Section 15.7 Time of Essence. Time is of the essence in the performance of this Agreement.

Section 15.8 Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Site and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Site.

Section 15.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 15.10 Counterparts. This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by all the parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Section 15.11 Amendments to this Agreement. The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the parties hereto, the Qualified Tax Credit Investor or a lender, provided such requests would not substantially alter the basic business terms included herein. The _____ shall have the authority to approve, on behalf of the City, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the cost or risk of this Agreement to the City. The _____ shall have the authority, on behalf of the City, to approve extensions of time in Developer's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, for a cumulative period of up to three (3) years.

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

CITY:

CITY OF PLEASANTON, a municipal corporation

By: _____

Name: _____

Its: _____

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF PLEASANTON, a public body, corporate and politic

By: _____

Name: _____

Its: _____

DEVELOPER:

MIDPEN HOUSING CORPORATION, a nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

EXHIBIT A-1

SITE PLAN

Exhibit A-1
Site Plan

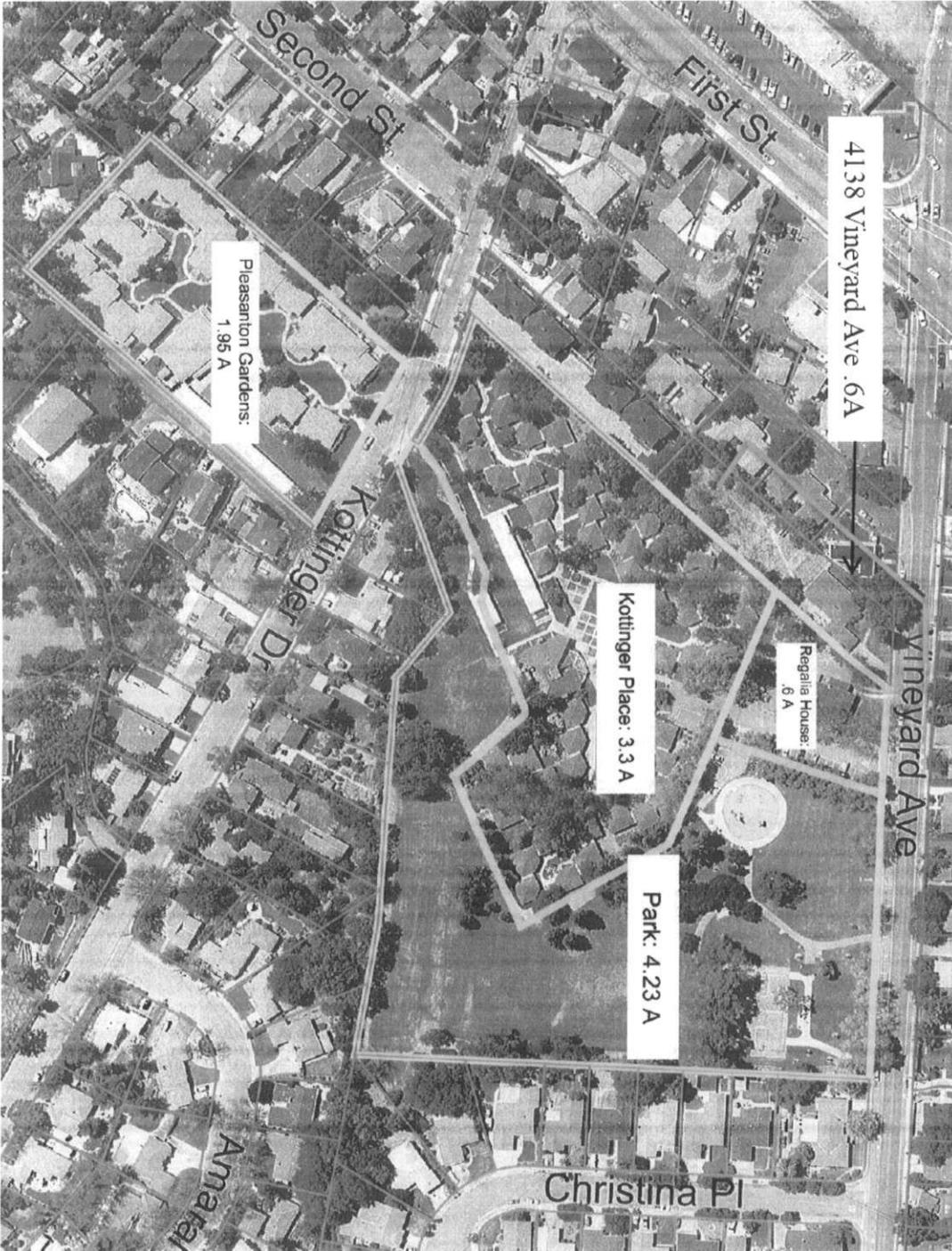


EXHIBIT A-2

CONSTRUCTION PHASING PLAN

EXHIBIT A-2 PRELIMINARY CONSTRUCTION PHASING PLAN



LEGEND

-  Phase 1a
-  Phase 1b
-  Phase II
-  Single-Story
-  Two-Story
-  Three-Story
-  Common Amenities

EXHIBIT B

SCHEDULE OF PERFORMANCE

EXHIBIT B – SCHEDULE OF PERFORMANCE

MILESTONE	PERFORMANCE DEADLINE
A. General	
<p>1. <u>HUD Demolition and Disposition Application</u> With Developer's and City's assistance, the Housing Authority shall submit an application pursuant to Section 18 of the Act and 24 CFR Part 970 for approval from HUD for demolition and disposition of the Kottinger Parcel.</p>	<p>No later than ninety (90) days following execution of this Agreement.</p>
<p>1. <u>Financing Plan</u> Submit Financing Plan to City and Housing Authority</p>	<p>Within one-hundred (120) days following execution of this Agreement for Phase I & Phase II. Within twenty-two (22) months submit an update following execution of this Agreement for Phase II.</p>
<p>2. <u>Initial Resident Relocation Plan</u> Developer shall submit Resident Relocation Plan to City and Task Force. Such plan shall address relocation requirements and include a preliminary timeline for relocation.</p>	<p>Within sixty (60) days following execution of this Agreement.</p>
<p>3. <u>Initial Resident Services Plan</u> Developer shall submit Resident Services Plan to City and Task Force. The Services Plan shall include services specifically targeted to seniors. The Services Plan shall also describe how coordination with other services in the vicinity and other service providers will be handled.</p>	<p>Within one-hundred twenty (120) days following execution of this Agreement.</p>
<p>4. <u>Planning Approval</u> The Developer shall obtain Planning Approval from the City.</p>	<p>No later than September 30, 2014, provided that such date may be extended as reasonably necessary to accommodate delays due to appeal during the City's planning approvals and/or HUD's approval of the Housing Authority's Demolition Disposition Application.</p>
<p>5. <u>Task Force</u> Developer shall meet with the Task Force to review design, resident relocation plan, resident services plan, Development schedule, and financing plan and progress.</p>	<p>Hold monthly meetings until Planning Approval obtained. Provide quarterly written or verbal updates, as requested by the City, once Planning Approval is obtained until construction completion of Phase II.</p>
B. Phase I	
<p>1. <u>Acquisition of Kottinger Place Parcel</u> The City shall acquire the Kottinger</p>	<p>No later than Sixty (60) days following HUD Demolition and Disposition Approval.</p>

EXHIBIT B – SCHEDULE OF PERFORMANCE

<p>Place Parcel from the Housing Authority for the development of the Development, and the operation and management of such housing.</p>	
<p>2. <u>Subdivision</u> The City shall perform a lot line adjustment or other applicable subdivision process necessary to create the Regalia Parcel and shall coordinate such process with the Parks Department. The City shall perform a lot line adjustment, merger, or other applicable subdivision process necessary to combine the Kottinger Parcel, the Regalia Parcel, and the Vineyard Parcel into one parcel suitable for the development of the Development.</p>	<p>No later than Sixty (60) days following HUD Demolition and Disposition Approval.</p>
<p>1. <u>Tax Credits</u> Developer shall prepare an application to TCAC for the Tax Credits</p>	<p>In the first application cycle after all public financing is committed, Acquisition of Kottinger Parcel, and Subdivision have occurred.</p> <p>If unsuccessful in first application, Developer shall submit twice annually until Tax Credit award is secured.</p>
<p>2. <u>Construction Plans</u> Developer shall submit its Construction Plans to the City for the City’s review and approval.</p>	<p>Twenty-two (22) months after the date of Planning Approval, provided that such date may be extended if HUD’s approval of the Housing Authority’s Demolition Disposition Application has not been received.</p>
<p>2. <u>Evidence of Financing</u> Developer shall submit evidence of equity capital and mortgage financing necessary for development of Phase I.</p>	<p>No later than two (2) years after Planning Approval by the City with the ability to extend for an additional two (2) years provided Developer is not in default under this Agreement.</p>
<p>3. <u>Permits</u> Developer shall obtain all permits and approvals to construct the Development, including a Planned Unit Development Permit and demolition building permits.</p>	<p>Within one (1) year after submission of Evidence of Financing for Phase I.</p>
<p>4. <u>Opening of Escrow</u> The City/and or Developer shall open escrow for the conveyance Phase I to Developer (or its assignee)</p>	<p>No later than six (6) months following an award of Tax Credits.</p>
<p>5. <u>Close of Escrow</u> The City shall convey leasehold title to the Phase I site to</p>	<p>No later than six (6) months following the Opening of Escrow.</p>

EXHIBIT B – SCHEDULE OF PERFORMANCE

Developer, and Developer shall accept such conveyance.	
6. <u>Commencement of Construction</u> Developer shall commence construction of the Improvements no later than this date	Within six months following submission of Evidence of Financing.
7. <u>Completion of Construction</u> Developer shall complete the construction of the Improvements no later than this date	Within thirty (30) months following Commencement of Construction.
8. <u>Management Plan</u> City is to review and approve the written Management Plan for the Development	No later than six (6) months before Completion of Construction.
<i>C. Phase II</i>	
1. <u>City's Acquisition of Pleasanton Gardens Parcel</u>	No later than sixty (60) days following Completion of Construction of Phase I.
2. <u>Construction Plans</u> Developer shall submit its Construction Plans to the City for the City's review and approval.	No later than sixteen (16) months following Completion of Construction of Phase I.
1. <u>Tax Credits</u> Developer shall prepare an application to TCAC for the Tax Credits	In the first application cycle after all public financing is committed and Acquisition of Pleasanton Gardens Parcel has occurred. If unsuccessful in first application, Developer shall submit twice annually until Tax Credit award is secured.
1. <u>Evidence of Financing</u> Developer shall submit evidence of equity capital and mortgage financing necessary for development of Phase I.	Within four (4) years after Planning Approval by the City with the ability to extend for an additional two (2) years provided Developer is not in default under this Agreement.
2. <u>Permits</u> Developer shall obtain all permits and approvals to construct the Development, including a Planned Unit Development Permit and demolition building permits.	Within one (1) year following submission of Financial Proforma for Phase II.
3. <u>Opening of Escrow</u> The City/and or Developer shall open escrow for the conveyance of Phase II to Developer (or its assignee)	No later than six (6) months following an award of Tax Credits.
4. <u>Close of Escrow</u> The City shall convey leasehold title to the Phase II site to Developer, and Developer shall accept such conveyance.	No later than six (6) months following the Opening of Escrow.
5. <u>Commencement of Construction</u> Developer shall commence	Within six months following submission of Evidence of Financing.

EXHIBIT B – SCHEDULE OF PERFORMANCE

<p>construction of the Improvements no later than this date</p>	
<p>6. <u>Completion of Construction</u> Developer shall complete the construction of the Improvements no later than this date</p>	<p>Within eighteen (18) months following Commencement of Construction of Phase II.</p>
<p>7. <u>Management Plan</u> City is to review and approve the written Management Plan for the Development no later than six (6) months after commencement of construction of the Development.</p>	<p>No later than six (6) months before Completion of Construction.</p>

EXHIBIT C
PROJECT BUDGET

EXHIBIT C-2 PROJECT PREDEVELOPMENT BUDGET



Kottinger Gardens

Predevelopment Budget

Land Cost	
Title and Escrow-Acquisition	
Legal Costs-Acquisition	\$ 25,000.00
HUD Consultant	\$ 15,000.00

City Permits and Fees-Non-Impact	\$ 384,964.00
Appraisal Costs	\$ 20,000.00
Market Study	\$ 15,000.00
Utility Bills, Other Misc Basis Costs	
Printing Costs (MidPen)	\$ 2,000.00

Architectural Contract	\$ 999,040.00
Architectural Reimbursables	\$ 40,000.00
Architectural: Landscape	\$ 10,555.00
Engineering-Civil	\$ 244,900.00
Engineering-Geotech./Soils	\$ 7,675.00
Engineering-Envirn Consults	\$ 61,210.00
Engineering-Joint Trench	\$ 94,000.00
Engineering-Pre-Construction Mgmt	\$ 64,000.00
Engineering-Value Engineering	\$ 95,000.00
Engineering-Waterproof Consult	\$ 10,000.00

Legal Costs-Organization	\$ 10,000.00
Syndication-Consultant	\$ 70,000.00
Tax Credit Fees	\$ 202,179.00

Relocation Expenses	\$ 310,000.00
Other Expenses	\$ 1,000.00
Audit Fee	\$ 3,000.00

<i>SOFT COST CONTINGENCY</i>	\$ 115,477.00
------------------------------	---------------

TOTAL	\$ 2,800,000.00
--------------	------------------------

EXHIBIT D

GROUND LEASE TERM SHEET

- | | | |
|-----|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Property | [depends on Phasing]

Title in improvements to vest in Lessee during term of Lease |
| 2. | Term | 55 years or such longer term as required by lenders and investor |
| 3. | Transfer of possession | Lessee shall take possession upon close of construction financing |
| 4. | Rent | Nominal yearly ground lease payment of \$1 |
| 5. | Use | Property may be used for rental housing to which 49% of all units other than two Management Units are restricted to seniors earning between 30% and 60% of Area Median Income |
| 6. | Taxes | All taxes paid by Lessee. Lessor will cooperate as necessary to allow Lessee to obtain property tax exemption |
| 7. | Insurance | Customary and reasonable insurance to be maintained by Lessee |
| 8. | Utilities | Lessee responsible for all utility expenses. Lessor shall provide utility connections to Property |
| 9. | Encumbrances | Leasehold interest may be encumbered with project financing without prior consent of Lessor |
| 10. | Default provisions | Lessee shall have 120 days to cure defaults, or additional time if unable to cure in that time period and cure has commenced |

- | | | |
|-----|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11. | Mortgagee protections | Lenders and investor shall have cure rights and other standard protections in event of Lessee default [Language to be provided on request] |
| 12. | Maintenance and repair | Obligation on Lessor to maintain property until after possession is transferred |
| 13. | Risk of loss | Risk of loss transfers upon change in possession |
| 14. | Indemnification | <p>The parties shall hold each other harmless for all losses caused by gross negligence or willful misconduct of the other party</p> <p>Lessor shall indemnify Lessee for all environmental claims prior to transfer of possession</p> |
| 15. | Sublease/Assignment | Lessee shall not have right to assign or sublease without prior consent, but transfers to affiliates, post-rehab leases to tenants, encumbrances for project financing, investor limited partner requires transfers are pre-approved |
| 16. | Consents | Lessor agrees not to unreasonably withhold its consent. If Lessor does not respond in 30 days, matter shall be deemed approved |
| 17. | Estoppel certificates | Lessor shall provide estoppel certificates reasonably requested by lenders or investor |

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PLEASANTON,
THE HOUSING AUTHORITY OF THE CITY OF PLEASANTON
AND PLEASANTON GARDENS, INC.**

November __, 2013

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is effective as of this 5th day of November, 2013 by and between Pleasanton Gardens, Inc., a nonprofit corporation ("Pleasanton Gardens"), the Housing Authority of the City of Pleasanton, a public body corporate and politic organized under the laws of California (the "Housing Authority"), and the City of Pleasanton, a municipal corporation (the "City").

WHEREAS, Pleasanton Gardens, governed by the Pleasanton Gardens Board of Directors (the "Board"), is the owner of a 1.99 acre parcel located at 251 Kottinger Drive (the "Pleasanton Gardens Parcel") that is improved with a forty (40) unit senior housing development previously assisted by the United States Department of Housing and Urban Development ("HUD") under Section 236 of the National Housing Act of 1934, as amended, (the "Pleasanton Gardens Development"); and

WHEREAS, the Pleasanton Gardens Development includes nineteen (19) one-bedroom units, twenty (20) studio units and one (1) two-bedroom unit reserved for the resident manager; all units, excepting the resident manager unit, are income restricted to households with an annual household income less than eighty percent (80%) of the Area Median Income ("AMI") and age restricted to elderly households where at least one household member is 62 years or older; residents are required to be capable of independent living; and

WHEREAS, Pleasanton Gardens participates in the HUD Section 8 Loan Management Set Aside ("LMSA") Program and is currently party to a HUD Section 8 Housing Assistance Payments Contract (the "HAP Contract"). The HAP Contract, which covers thirty-one (31) units in the Pleasanton Gardens Development, is scheduled to expire on September 1, 2014, subject to renewal. These 31 units are income restricted to households with an annual income not greater than 50% of AMI and rents are based on 30% of a household's adjusted annual income in accordance with HUD guidelines; and

WHEREAS, the Housing Authority, governed by the Housing Authority Board of Directors (the "Housing Authority Board"), is the owner of a 3.3 acre parcel located at 240 Kottinger Drive (the "Kottinger Place Parcel") that is improved with a fifty (50) unit HUD Public Housing Project (the "Kottinger Place Development"), operated in accordance with a contract known as an Annual Contributions Contract CA-081; and

WHEREAS, the Kottinger Place Development includes eighteen (18) one-bedroom units, thirty (30) studio units and two (2) two-bedroom units of which one is reserved for the resident manager. All units, excepting the resident manager unit, are income restricted to households with an annual household income less than 50% of the AMI and age restricted at 62 years and older. Residents are required to be capable of independent living. The Kottinger Place Development has a minimum monthly rent of Fifty Dollars (\$50) and rents are based on thirty percent (30%) of a household's annual income in accordance with HUD guidelines; and

WHEREAS, the Kottinger Place Development receives an annual HUD Public Housing Operating Subsidy and an Annual Capital Fund grant to assist with project operations and capital needs; and

WHEREAS, the City is the owner of the .5 acre property located at 4133 Regalia Avenue (the "Regalia Parcel") which is part of Kottinger Village Park maintained by the Pleasanton Parks and Community Services Department and of the .5 acre property at 4138 Vineyard Avenue (the "Vineyard Parcel", together with the Pleasanton Gardens Parcel, the Kottinger Parcel and the Regalia Parcel, the "Site"); and

WHEREAS, in November 2003, the Pleasanton City Council (the "City Council") authorized a study regarding the potential replacement, expansion or renovation of the Kottinger Place Development and the Pleasanton Gardens Development (the "Study"). In February 2004, the City formed a ten-member Kottinger Place Redevelopment Task Force (the "Task Force") including two representatives from the Board and two members from the City of Pleasanton Housing Commission (the "Housing Commission") to coordinate and provide input on the Study; and

WHEREAS, as part of the Study, on February 7, 2012, the City entered into an Exclusive Negotiating Rights Agreement with MidPen Housing Corporation (the "Developer") pursuant to which the Developer conducted a predevelopment process to identify the steps required to proceed with a senior affordable rental housing development to be developed on the Site, anticipated to consist of between one-hundred seventy-two (172) and one-hundred eighty-nine (189) residential dwelling units that would be age restricted to residents 62 years of age or older with incomes less than sixty percent (60%) of the AMI, related interior and exterior improvements, including, but not limited to, a rental office and a community center (the "New Development"); and

WHEREAS, at the Board meeting on July 31, 2012, the Board expressed support for its participation in the redevelopment of the Kottinger Place Development and Pleasanton Gardens Development, and encouraged the City Council to support a report providing various renovations and development options for the Kottinger Place Development and the Pleasanton Gardens Development in furtherance of the Study (the "Predevelopment Report"), and expressed its willingness to contribute the Pleasanton Gardens Parcel and its available cash reserves, estimated at Three Hundred Thousand Dollars at that time (\$300,000), to the City and to assign the HAP Contract to the Developer for the purpose of pursuing the New Development; and

WHEREAS, on October 16, 2012, the City Council accepted the Predevelopment Report, otherwise known as the Kottinger Place and Pleasanton Gardens Predevelopment Analysis Report, authorized the drafting of a Disposition, Development and Loan Agreement (the "DDA") with the Developer for the demolition of the Kottinger Place Development and Pleasanton Gardens Development and for the development of the New Development, and appropriated Eight Million Dollars (\$8,000,000) from the City's Lower Income Housing Fund as financial support for the New Development; and

WHEREAS, pursuant to the Predevelopment Report, as approved by the City and the Housing Commission, the Developer or an affiliate will process the New Development with a single Planned Unit Development ("PUD") application. Pending PUD approval, construction of the New Development may be phased. The first phase may consist of the construction of a sixty-one (61) to seventy-one (71) unit multi-story building on the northern portion of the Kottinger Parcel, the Regalia Parcel, and the Vineyard Parcel, and subsequently, the new construction of thirty (30) single-story homes on the Site's eastern side ("Phase I"). Phase I may in turn be divided into subphases with the first part of Phase I consisting of construction of the multi-story building, and second part consisting of the single-story homes. The second phase will consist of the new construction of twenty-eight (28) single-story homes on the western portion of the Kottinger Parcel, twenty-four (24) single-story homes on the Pleasanton Gardens Parcel, and twenty-eight (28) homes in a multi-story building on the Pleasanton Gardens Parcel ("Phase II"); and

WHEREAS, it is anticipated that construction of the New Development will result in the temporary relocation of the residents of the Kottinger Place Development and of the Pleasanton Gardens Development (the "Current Residents"). The Developer intends to structure the Phases to minimize the relocation of the Current Residents. Under the current Construction Phasing Plan, construction of the multi-story building for Phase I first will minimize relocation, requiring approximately fourteen (14) units of Kottinger Place to be vacated and tenants moved off-site during construction, and providing sufficient units for the Current Residents upon completion;

NOW, THEREFORE, the Board, the City, and the Housing Authority agree as follows:

1. The Board shall continue working cooperatively with the Task Force, the Housing Authority and the City towards development of the New Development.
2. The City, the Housing Authority, and the Task Force shall continue to work cooperatively with the Board toward development of the New Development.
3. Approval of the New Development will be subject to the City's standard PUD review process utilizing a single development application, including public hearings before the City's Planning Commission, the Housing Commission, and the City Council. Nothing provided herein guarantees approval of the New Development.
4. The City will coordinate administration of the DDA including funding a predevelopment loan, development entitlement processing, project financing, HUD Disposition and Demolition processing, including the uses of the HAP Contract, construction phasing planning, tenant relocation and architectural design.
5. Pleasanton Gardens is not financially responsible for any costs associated with the DDA or processing the New Development.
6. Within thirty (30) days after approval of the New Development's PUD, Pleasanton Gardens and the City shall enter an option agreement or purchase and sale agreement whereby the Board will agree to transfer the Pleasanton Gardens Parcel to the City under certain conditions (the "Transfer Agreement"). The Transfer Agreement shall provide for valuable consideration of One Dollar (\$1), that the transfer shall include all of the project-based financial

reserves of the Pleasanton Gardens Development, and that the transfer of the Pleasanton Gardens Parcel and the reserves shall occur upon the relocation of Pleasanton Gardens residents to the New Development. The Board reserves its option to preserve dedicated, non-project generated funds to cover costs of ceasing business. Also within thirty (30) days after approval of the New Development's PUD, Pleasanton Gardens shall assign the HAP contract to the Developer and work diligently to secure any necessary approvals by HUD.

7. The Board shall continue to manage the Pleasanton Gardens Development until the transfer and assignment described in Number 6 and the financing outlined in Number 11 occur or until some alternative time approved by the City, the Board and the Developer.

8. It is anticipated that the Site will be ground leased from the City to a California limited partnership of which a limited liability company controlled by the Developer will serve as its general partner, for a period of at least fifty-five (55) years (the "Limited Partnership") for the purpose of operating the New Development in accordance with a regulatory agreement with the City (the "Regulatory Agreement") and the ground lease. The Regulatory Agreement and ground lease will set forth regulations requiring the New Development remain affordable to households with incomes at no more than sixty percent (60%) of the AMI and meet project age requirements.

9. The Board will provide for the assignment of the HAP Contract to the Developer or to the Limited Partnership, at no cost to the Developer or to the Limited Partnership, to be used initially for the existing thirty-one (31) households in the Pleasanton Gardens Development. As tenancies for those households expire, the Section 8 units will be made available to other or new households in the New Development.

10. The City agrees to utilize the financial reserves transferred from Pleasanton Gardens exclusively for the purpose of meeting costs related to the construction of the New Development and/or the New Development's ongoing operations. The City shall make the reserves available to the Developer for the costs of construction of the New Development.

11. The City anticipates the New Development will be financed utilizing, in part, Tax Credits, City Lower Income Housing Funds, HOME/CDBG Funds, Federal Home Loan Bank's Affordable Housing Program, and HUD Project-Based Section 8.

12. Households then currently living at Pleasanton Gardens Development at the time the New Development is ready to be occupied, and who qualify to live at the New Development, will be given preference for a ground floor unit in the New Development once Phase II is complete, as provided by the Developer's relocation plan. The relocation of Current Residents will comply with California Relocation Assistance Law (Government Code Section 7620 et seq.) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.) and implementing regulations at 49 CFR 24 et seq. For tenants relocated from the Pleasanton Gardens Development to the New Development who receive rental assistance through the HAP Contract, rents will continue to be thirty percent (30%) of their annual household income calculated in accordance with HUD/Section 8 guidelines. Residents will receive a utility allowance as determined by the Housing Authority of Alameda County.

The tenant's rent will be reduced by the amount of this allowance and the tenant will be responsible for paying their unit's electricity/gas bill, telephone bill and internet service. Water, sewer, and garbage will be covered by the New Development's owner. Tenant responsibilities for cable television services will be addressed at the time an agreement is reached with the local cable operator.

13. Waitlists for the Kottinger Place Development and the Pleasanton Gardens Development that exist prior to the completion of the New Development will be merged into one waitlist. This will occur following the relocation of the households currently living in Kottinger Place Development and Pleasanton Gardens Development to the New Development. The order of the combined waitlist will be determined by date and time on which each household submitted its tenancy information for the Kottinger Place Development or the Pleasanton Gardens Development, respectively.

14. The City is considering and intends to make the new development a smoke-free facility.

15. It is anticipated that the New Development will be owned by the Limited Partnership formed by the Developer in accordance with state and federal tax credit requirements and that it will operate under a ground lease and the Regulatory Agreement with the City.

16. The Board, the City, and the Housing Authority will keep all of its respective residents informed regarding the New Development throughout the development process.

15. In anticipation of the New Development, the Board, the City, and the Developer will meet to discuss the potential roles and responsibilities of any existing employees of Kottinger Place Development and Pleasanton Gardens Development at the New Development.

16. In the event that despite making best efforts, the Developer, the Housing Authority or the City is unable to perform all tasks anticipated in this MOU including City approval of the New Development's PUD and HUD approval of the demolition and disposition of the Kottinger Place Development as authorized by the Housing Act of 1937, as amended, or if the necessary entitlements or environmental approvals under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") are not obtained, then, the Board, the Housing Authority, and the City shall meet in good faith to determine whether a mutually acceptable amendment to this MOU and/or modification to the scope of development for the New Development is feasible. If the Board, the Housing Authority, and the City are unable to agree on a mutually satisfactory modification, either the Board, the Housing Authority, and the City may agree to terminate the MOU and thereafter no party shall have any further rights or liability against the others under the MOU.

17. The term of this MOU will commence on the 5th day of November, 2013, and terminate upon the execution of the Transfer Agreement.

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

CITY:

CITY OF PLEASANTON, a municipal corporation

By: _____

Name: _____

Its: _____

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF PLEASANTON, a public body, corporate and politic

By: _____

Name: _____

Its: _____

PLEASANTON GARDENS, INC.:

PLEASANTON GARDENS, INC., a nonprofit corporation

By: _____

Name: _____

Its: _____

PREDEVELOPMENT PROMISSORY NOTE
(Kottinger Gardens)

\$2,800,000

Pleasanton, California
_____, 201__

FOR VALUED RECEIVED, MidPen Housing Corporation, a nonprofit public benefit corporation (the "Borrower"), promises to pay to the City of Pleasanton (the "City"), or order, the principal sum of Two Million Eight Hundred Thousand Dollars (\$2,800,000), or so much thereof as is advanced to Borrower pursuant to Section 6.1 of the DDLA (as defined below), as provided below.

1. DDLA. This promissory note (the "Note") is made pursuant to the terms of that certain Disposition, Development and Loan Agreement, entered into between the Borrower, the City, and the Housing Authority of the City of Pleasanton, a public body corporate and politic organized under the laws of California (the "DDLA") concurrently herewith. All capitalized terms used but not defined in this Note shall have the meanings set forth in the DDLA.
2. Repayment Terms; Interest. The indebtedness evidenced by this Note shall be due and payable at the times and in the manner set forth in Section 6.3 of the DDLA. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum.
3. Acceleration Pursuant to Default. Upon the occurrence of a Borrower default under the DDLA, after the expiration of all applicable cure periods, the City shall have the right to declare all of the principal immediately due and payable, which amount shall bear interest at the lesser of ten percent (10%) per annum, or the maximum amount permitted by law, from the expiration of the applicable cure period for the default to the date of repayment in full of the disbursed principal amount of the City Predevelopment Loan and any interest due thereon. All payments received shall be applied first to the accrued interest and second to the principal outstanding. Neither acceptance by the City of the payments provided for herein nor any failure by the City to pursue its legal and equitable remedies upon default shall constitute a waiver of the City's right to require prompt payments when due of all disbursed principal and interest owing or to declare a default and exercise all of its rights under this Note and the DDLA.
4. No Offset. The Borrower hereby waives any rights of offset it now has or may hereafter have against the City, its successors and assigns, and agrees to make the payment called for herein in accordance with the terms of this Note.
5. Waiver; Attorney's Fees. The Borrower, for itself, its heirs, legal representatives, successors and assigns, waives diligent presentment, protest and demand, and notice of protest, dishonor and non-payment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any

security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees. If an action is instituted on this Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

6. Manner and Place of Payment. All payments of principal and interest shall be payable in lawful money of the United States of America at the office of the City or at such other address as the City may provide to the Borrower by notice in accordance with Section 15.2 of the DDLA.

7. Non-Recourse Provisions.

(a) Prior to transfer of the leasehold interest in the Site and recordation of the City Deed of Trust, and subject to Sections 14.5 and 14.6, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Predevelopment Loan, this Note shall be fully recourse against the Borrower and any judgement or execution thereof entered in any action, legal or equitable, on this Note may be enforced personally against the Borrower.

(b) Following transfer of the leasehold interest in the Site and recordation of the City Deed of Trust, and except as provided below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Predevelopment Loan, and the sole recourse of the City with respect to the principal of, or interest on, the Note shall be to the property described in the City Deed of Trust.

8. Conflict. If any term or provision of this Note conflicts with any term or provision of the DDLA, the term of provision of the DDLA shall control to the extent of such conflict.

MIDPEN HOUSING CORPORATION, a
California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

<Date>

Special Applications Center
U.S. Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2401
Chicago, IL 60604

RE: Letter of Support for the Demolition and Disposition of Kottinger Place

Dear Sir or Madame,

It is with great pleasure that I write to express the City of Pleasanton's support for the City of Pleasanton Housing Authority's Demolition and Disposition Application to the United States Department of Housing and Urban Development (HUD) for Kottinger Place. Approval of this application will help facilitate the proposed construction of approximately 185 new affordable homes for seniors, more than doubling the affordable homes currently available.

In 2004, the City Council formed the Kottinger Place Redevelopment Task Force (Task Force) to assist the Housing Authority with studying the potential for redevelopment of the site to accommodate additional affordable homes for seniors that would meet the needs of the existing residents and the City's growing demand for affordable senior housing. The Task Force is made up of representatives from key stakeholder groups, including a Kottinger Place resident, Kottinger Place neighbors, and representatives from the City's Housing Commission, Parks and Recreation Commission, and City Council, and has played an important role in creating a comprehensive and inclusive planning process. Since 2004, the Task Force has continued to work collaboratively with the Housing Authority, and has determined that the existing Kottinger Place units are obsolete, making them no longer suitable for housing and making new construction a more cost-effective option than rehabilitation.

In addition to the outreach conducted through the Task Force process, I have been informed of the Housing Authority's extensive outreach to the Kottinger Place residents. I am proud of its efforts to ensure the residents understand the proposed Demolition and Disposition action and redevelopment plan. Housing Authority staff have met with the Kottinger Place residents individually and in four group meetings since April, 2012, and have thoughtfully incorporated resident feedback in the planning process.

In October 2012, the City Council approved the Task Force's recommendation to redevelop Kottinger Place and its neighboring site. Since then, the Task Force has continued their planning work with residents and neighbors, and Housing Authority Staff have continued to keep the City Council informed of its progress, most recently at its November 5, 2013, City Council Meeting.

On behalf of the City Council, I fully support the Housing Authority's Application to HUD under Section 18 of the Housing Act of 1937, as amended. This is an important next step in realizing the Task Force's and City's vision for more homes affordable to the City's senior residents.

Sincerely,

Schedule

October 23, 2013: Task Force Site Plan Endorsement

December, 2013: PUD and HUD Applications submitted

Spring 2014: Housing Commission, Planning Commission, City Council Hearings

July 1, 2014: 9% Tax Credit Application due

March, 2015: Begin construction on Phase I

