



HOUSING DEVELOPMENT FINANCE AGENCY OF THE CITY OF DALY CITY

City Hall Council Chambers – 2nd Floor
333 – 90th Street, Daly City, CA 94015

MONDAY, MAY 12, 2014 - 7:00 P.M.

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

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

CALL TO ORDER:

ROLL CALL:

APPROVAL OF MINUTES: Minutes of the April 14, 2014 Meeting

Joint Session with City Council:

PUBLIC HEARING:

- 10. Disposition and Development Agreement for 6824-6834 Mission Street and 331-325 Miriam Street, Preliminary Commitment of HOME Funds and CHDO Predevelopment Loan**

End of Joint Session

PUBLIC APPEARANCES - ORAL COMMUNICATIONS:

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

ADJOURNMENT:

AVAILABILITY OF PUBLIC RECORDS:

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

DALY CITY HOUSING DEVELOPMENT FINANCE AGENCY
MINUTES
April 14, 2014

The meeting was called to order by Chairperson Canepa at 7:34 P.M.

ROLL CALL: Commissioners Present:

David J. Canepa, Chairperson
Carol L. Klatt Vice- Chairperson
Ray Buenaventura
Michael P. Guingona
Sal Torres

Staff Present:

Manuel Martinez, Acting Executive Secretary/Director
Rose Zimmerman, General Counsel
K. Annette Hipona, Assistant Secretary

APPROVAL OF MINUTES:

Regular Meeting of January 14, 2014

It was moved by Commissioner Buenaventura, seconded by Commissioner Torres, and carried to approve the meeting minutes of January 14, 2014.

RESOLUTIONS:

Set Time and Place for Public Hearing on Disposition and Development Agreement for Property Located at 6823 – 6834 Mission Street and 325 - 331 Miriam Street

It was moved by Commissioner Torres, seconded by Commissioner Guingona and carried by unanimous roll call vote to adopt the following resolution:

HFA-36 Setting Time and Place of Joint Public Hearing of the Board of Directors of the Daly City Housing Development Finance Agency and the City Council of the City of Daly City RE: Consideration of Proposed Disposition and Development Agreement with Mid-Peninsula The Farm, Inc.

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ADJOURNMENT:

It was moved by Commissioner Guingona, seconded by Commissioner Klatt, and carried to adjourn the meeting of the Daly City Housing Development Finance Agency at 7:35 P.M.

Assistant Secretary

Approved this 12th day
of May, 2014

Chairperson



Meeting Date: May 12, 2014

Subject: DISPOSITION AND DEVELOPMENT AGREEMENT FOR 6824-6834 MISSION STREET AND 331-325 MIRIAM STREET, PRELIMINARY COMMITMENT OF HOME FUNDS AND CHDO PREDEVELOPMENT LOAN

Recommended Actions

Conduct a joint public hearing of the City Council and Daly City Housing Development Finance Agency Board on the Disposition and Development Agreement (DDA) with Mid-Peninsula, The Farm, Inc. for the development of a fifty-two unit affordable housing development on Agency-owned property located at 6824 through 6834 Mission Street and 331 through 325 Miriam Street.

Approve and authorize execution of a Disposition and Development Agreement (DDA) with Mid-Peninsula, The Farm, Inc. for the development of a 52 unit affordable housing development, currently referred to as 6800 Mission Street project, located at the southwest corner of the intersection of Mission Street and Westlake Avenue.

Background

Mid-Peninsula, The Farm, Inc, an experienced local Community Housing Development Organization (CHDO), is proposing to construct affordable rental units for lower income households on property owned by the Daly City Housing Development Finance Agency (DCHDFA). As envisioned, the DCHDFA would transfer ownership of Agency-owned parcels to Mid-Peninsula, The Farm, Inc. These five parcels would be assembled with the two adjacent parcels to the north which Mid-Peninsula, The Farm, Inc. acquired from a private owner in March 2014. Together these parcels constitute the approximately .77-acre site on which Mid-Peninsula, The Farm, Inc. proposes to construct 52 apartments in a single four-story building over an at-grade podium garage. The development will have 87 parking spaces for residents and approximately 2,200 square feet of ground-floor commercial space along Mission Street. It will target households with incomes at 30%-60% area median income and consist of one-, two- and three-bedroom units.

The Farm intends to finance the project using a variety of funding sources. These include low-income housing tax credit equity, as well as Federal and local funding from San Mateo County and the City of Daly City. When the development is completed, The Farm will also receive Section 8 project-based voucher contracts for 26 of the units.

On April 28, 2014, the Daly City Council approved an application for a Use Permit and Design Review to construct a mixed-use project consisting of 2,200 square feet of commercial development, 51 affordable apartments and one manager's unit on the subject property.

Disposition and Development Agreement - Business deal points for the proposed Agreement include the following:

- The developer is Mid-Peninsula The Farm, Inc. (The Farm) , a California nonprofit public benefit corporation and City-certified Community Housing Development Organization.
- The DCHDFA will sell to Mid-Pen The Farm the five Agency-owned parcels for a price of \$2,420,000, the appraised value as of April 25, 2014.
- The Farm will develop a 52-unit residential project on the five parcels transferred by DCHDFA and two sites acquired by The Farm in March, 2014. The residential units will be operated as affordable

housing for residents with incomes that do not exceed 60 percent of the area median income. The development will include a total of 87 off-street parking spaces. The units will remain affordable for a minimum of 55 years.

- The Farm will use its best efforts to procure tax credit investor equity to finance the project
- The City intends to provide up to \$1,157,997 in HOME funds as a development subsidy to the project. This amount includes the \$777,784 in HOME funds already conditionally committed or reserved to the Farm, and an additional \$380,213 from the City's 2013-14 and 2014-15 allocation.
- The other standard provisions of a DDA will apply.

Summary/Conclusion

Notice of the joint Agency Board/ City Council hearing has been published twice in the Examiner and a Summary of the proposed Disposition and Development Agreement and the Agreement itself have been available for public inspection.

Staff is available to provide any additional information desired by the Chair and/or Board Members.

Respectfully submitted,



Betsy ZoBell
Housing and Community
Development Supervisor



Tatum Mothershead
Economic and Community Development
Director

Attachment A – Draft Development and Disposition Agreement

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT
(6800 Mission Street)

This Disposition, Development, and Loan Agreement (the "Agreement") is entered into as of _____, 2014 (the "Effective Date"), by and between the Daly City Housing Development Finance Agency (the "Agency"), and Mid-Peninsula The Farm, Inc. (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. As of the Effective Date, the Agency is the owner of the Property. In accordance with California Health & Safety Code Section 34172, the Former Agency was dissolved as of February 1, 2012. The Agency is the successor to the "housing assets" (as defined in California Health & Safety Section 34176(e)) of the Former Agency. The California Department of Finance approved the Property as a "housing asset" on August 30, 2012. The Agency is authorized to enter into this Agreement pursuant to California Health & Safety Code Section 34176(a)(1).

C. The Agency and the Developer desire for the Developer to develop the Improvements on the Property and the Additional Properties. To effectuate this purpose, the Agency will convey the Property to the Developer, subject to the terms and conditions of this Agreement. In addition, the Agency shall provide the Agency Loan pursuant to the terms and conditions set forth in this Agreement.

D. The Agency has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the improvement of the Agency by improving the supply of affordable housing.

E. Prior to the Effective Date, the Agency and the Developer entered into the ENRA. The ENRA will terminate on the Effective Date and be superseded by this Agreement.

THEREFORE, the Agency and the Developer agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Additional Properties" means the two (2) parcels of land located at 6800 and 6818 Mission St.

- (b) "Agency" means the Daly City Housing Development Finance Agency.
- (c) "Agency Deed of Trust" means the deed of trust that will encumber the Developer's fee interest in the Site to secure repayment of the Agency Note, and to be recorded against the Site at the Closing, in a form to be provided by the Agency consistent with the terms of this Agreement.
- (d) "Agency Documents" means, collectively, this Agreement, the Agency Note, the Agency Deed of Trust, the Agency Regulatory Agreement, and all other documents required to be executed by the Developer in connection with the transaction contemplated by this Agreement.
- (e) "Agency Event of Default" has the meaning set forth in Section 7.2
- (f) "Agency Grant Deed" means the grant deed by which the Agency shall convey the Property to the Developer.
- (g) "Agency Loan" means the seller carry-back loan in the total amount of Purchase Price, evidenced by the Agency Note.
- (h) "Agency Note" means the promissory note that will evidence the Developer's obligation to repay the Agency Loan in a form to be provided by the Agency consistent with the terms of this Agreement.
- (i) "Agency Prorata Percentage" has the meaning set forth in Section 4.4(b).
- (j) "Agency Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants to be executed by the Parties, and recorded against the Site at the Closing, in a form to be provided by the Agency consistent with the terms of this Agreement.
- (k) "Agreement" means this Disposition, Development, and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.
- (l) "Approved Commercial Uses" has the meaning set forth in Section 6.3(b).
- (m) "City" means the City of Daly City.
- (n) "City HOME Loan" has the meaning set forth in Section 4.2.
- (o) "City Manager" means the City Manager of the City.
- (p) "Closing" means the date mutually acceptable to the Parties within thirty (30) days following the date on which all conditions precedent to conveyance set forth herein have been satisfied, but in no event later than the date set forth in the Schedule of Performance, or such other date that the Parties agree upon in writing.

- (q) "Commercial Space" means the approximately 2,200 square feet of ground floor space more particularly described in the Scope of Development attached as Exhibit C.
- (r) "Commissioners" means the Commissioners of the Agency.
- (s) "Developer" means Mid-Peninsula The Farm, Inc., a California nonprofit public benefit corporation and its permitted successors and assigns as set forth herein.
- (t) "Developer Event of Default" has the meaning set forth in Section 7.3.
- (u) "Development" means the Site and the Improvements.
- (v) "Due Diligence Period" has the meaning set forth in Section 2.6.
- (w) "ENRA" means that certain Exclusive Negotiating Rights Agreement dated as of May 21, 2013, by and between the Agency and the Developer, as amended on October 28, 2013.
- (x) "Escrow" means the escrow established with the Title Company for the purpose of conveying the Property from the Agency to the Developer.
- (a) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the TCAC Sources and Uses Certification of Costs and Eligible Basis Form.
- (y) "Financing Plan" means the Developer's Financing Plan for financing the acquisition of the Site and the construction of the Development, in the initial form approved by Agency, and which shall be revised from time to time with the approval of the Agency pursuant to this Agreement.
- (z) "Former Agency" means the Redevelopment Agency of the City of Daly City, which was dissolved pursuant to California Health & Safety Code Section 34172.
- (aa) "Hazardous Materials" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances" under applicable Hazardous Materials Laws, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of constructing, developing, operating, or occupying a mixed-use project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.
- (bb) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.
- (cc) "HOME funds" has the meaning set forth in Section 4.2.

(dd) "Improvements" means: (i) the up to fifty-two (52) units of affordable housing for income-eligible households, including one (1) manager's unit, to be constructed in accordance with this Agreement, (ii) the Commercial Space, and (iii) related parking and other improvements located or to be located on the Property, all as more particularly set forth in the Scope of Development attached as Exhibit C.

(ee) "Investor" has the meaning set forth in Section 6.9(c).

(ff) "Net Commercial Revenue" has the meaning set forth in Section 6.3(b).

(gg) "Net Proceeds of Permanent Financing" means the amount by which permanent financing for the Development as shown the Financing Plan exceeds Final Development Costs.

(hh) "Parties" means the Agency and the Developer. "Party" means either the Agency or the Developer.

(ii) "Partnership" means the California limited partnership which Developer intends to form to own, construct, and operate the Development, in which an affiliate of Developer will be the general partner, to be joined by the Investor upon syndication of the low income housing tax credits for the Development.

(jj) "Partnership Agreement" means the partnership agreement of the Partnership.

(kk) "Property" means the real property to be transferred by the Agency to the Developer and redeveloped by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(ll) "Purchase Price" means Two Million Four Hundred Twenty Thousand Dollars (\$2,420,000).

(mm)"Redevelopment Law" means California Health and Safety Code Section 33000 et seq., as amended by Health and Safety Code Section 34176.1.

(nn) "Residual Receipts" means the excess of annual Operating Revenues over annual Operating Expenses for the Development. "Operating Revenues" means all income derived from the Development, and includes: (1) rents; (2) rent subsidy payments received on behalf of tenants; and (3) receipts from laundry, parking, vending, or other services in which a fee is charged. "Operating Expenses" means all direct costs and expenses necessary to operate the Development including: (1) debt service on any loans secured by the Site, provided that such loans have been used to acquire the Site or develop or improve the Development (or to refinance loans used for Development acquisition, development or improvement); (2) resident service program and property management fees and costs; (3) property taxes; (4) insurance premiums; (5) maintenance and repair; (6) reasonable payments to reserves for operating contingencies, replacement of capital items, and other reserve uses; (7) deferred developer fee to the Developer or its affiliate for development services for the Development; (8) credit adjuster payments, limited partner loans, and developer loans all as set forth in the Partnership

Agreement; and (8) payments for partnership management fee, asset management fees, and other fees payable to a partner of the Partnership pursuant to the Partnership Agreement.

(oo) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit B.

(pp) "Security Financing Interest" has the meaning set forth in Section 8.1.

(qq) "Site" means the Property and the Additional Properties.

(rr) "TCAC" means the California Tax Credit Allocation Committee.

(ss) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until the fifty-fifth (55th) anniversary of the date of issuance of a final certificate of occupancy for the Development, unless sooner terminated.

(tt) "Title Company" means Old Republic Company, 555 12th Street, Suite 2000, Oakland CA 94607.

(uu) "Title Report" means the preliminary title report for the Property dated as of September 6, 2013, prepared by the Title Company.

(vv) "Transfer" has the meaning set forth in Section 6.9.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

Exhibit A: Legal Description of the Property
Exhibit B: Schedule of Performance
Exhibit C: Scope of Development

ARTICLE 2. PREDISPOSITION ACTIVITIES

Section 2.1 Schedule of Performance. Certain tasks described in this Agreement must be completed no later than the dates set forth in the Schedule of Performance attached to this Agreement as Exhibit B, subject to Section 9.3. The Schedule of Performance may be modified by Operating Memoranda as described in Section 9.15, executed by the Developer and by the City Manager on behalf of the Agency without formal amendment of this Agreement.

Section 2.2 Developer Deposit. Within thirty (30) days of execution of this Agreement the Developer shall deposit with the Agency the sum of Ten Thousand Dollars (\$10,000) (the "Deposit"). The Deposit shall be refunded to the Developer upon the earlier to occur of (i) commencement of construction of the Improvements; or (ii) termination of this Agreement pursuant to Section 7.1 or 7.2.

Section 2.3 Financing Plan. As of the Effective Date, the Agency has approved the initial Financing Plan. A critical assumption of the Financing Plan is the receipt of the City HOME Loan. No later than the date set forth in the Schedule of Performance, the Developer shall submit an updated and revised Financing Plan which shall include a development budget, proposals for leasing the Commercial Space (if not to be master leased by the Agency), and copies of secured funding commitments. The Agency shall approve or disapprove the revised Financing Plan in writing within fifteen (15) calendar days after the Agency's receipt which approval shall not be unreasonably withheld, conditioned or denied. Failure by the Agency to either approve or disapprove a submission made by the Developer within the time set forth above shall be deemed an approval. If the Financing Plan is disapproved by the Agency, the Developer shall have thirty (30) calendar days from the date of the Developer's receipt of the Agency's notice of disapproval to submit a revised Financing Plan. In the event the Agency disapproves the submission a second time, the Agency and the Developer agree to negotiate in good faith to develop a submission that is reasonably acceptable to both the Agency and the Developer within a reasonable period of time, provided that in no case shall the Agency be entitled to require changes inconsistent with the initial Financing Plan and any previously approved items. All financing necessary to acquire the Site and develop the Development, as approved by the Agency in the Financing Plan (not including permanent financing), shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the Agency to the Developer.

Section 2.4 Tax Credit Applications.

(a) The Developer shall submit a timely and complete application to TCAC for a preliminary reservation of 9% tax credits within the time set forth in the Schedule of Performance and continue to submit such applications in each subsequent round until successful.

(b) If two (2) years after the Effective Date, the Developer has not been successful in obtaining a reservation of tax credits from TCAC, the Developer may reapply for tax credits in the following year, provided that the Developer has demonstrated to the Agency that it diligently pursued all funding applications and that its Financing Plan is still viable. If at the end of that third year the Developer is still not successful in obtaining a reservation of tax credits from TCAC, the Developer shall have one additional year to obtain a reservation of tax credits from TCAC, provided that the Developer has demonstrated to the Agency that it diligently pursued all funding applications and that its Financing Plan is still viable.

Section 2.5 Compliance with Relocation Requirements. No later than the date set forth in the Schedule of Performance the Agency shall ensure that any existing commercial tenants have been relocated. All existing tenants shall have been relocated by the Agency prior to conveyance of the Property to the Developer. The Agency shall comply with all applicable relocation requirements including the 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. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property shall be paid by Agency. The Agency represent that there are no residential tenants on

the Property as of the Effective Date. The Agency shall not enter into any new residential tenant leases after the Effective Date. Any new commercial lease entered into after the Effective Date shall be month to month and shall contain all applicable relocation waivers.

Section 2.6 Developer Due Diligence. Prior to the conveyance of the Property from the Agency to the Developer, representatives of the Developer shall have the right of access to the Property at all reasonable times to inspect and conduct such studies of the Property as the Developer, in its sole discretion, may desire for a period of one hundred eighty (180) days following the Effective Date (the "Due Diligence Period"). The Developer shall provide the Agency at least forty-eight (48) hours' notice prior to accessing the Property. On or before the expiration of the Due Diligence Period, the Developer shall give written notice to the Agency as to whether the Developer approves or disapproves of the Property. During the Due Diligence Period, the Agency shall provide the Developer the right to enter upon all portions of the Property for the purposes of conducting soils tests, engineering studies, seismic and geologic studies, inspections and testing for Hazardous Materials, and underground storage tanks, investigation of applicable zoning and other land use regulations, analysis of economic feasibility and other studies related to the Developer's use of the Property and the condition of the Property. The Developer shall hold the Agency harmless for any injury or damages arising out of any activity pursuant to this Section. The Developer shall have access to all data and information on the Property available to the Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Section 2.7 Updated Preliminary Title Report. Within twenty (20) days of execution of this Agreement the Agency shall provide the Developer an update to the Title Report and copies of all title exceptions to the Property shown on the updated Title Report.

Section 2.8 Construction Plans. The Developer shall submit its Construction Plans to the City building department for approval within the time set forth in the Schedule of Performance. "Construction Plans" means all construction documentation upon which the Developer and the Developer's general contractor shall rely on for constructing the Improvements identified in the Scope of Development, which includes final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").

ARTICLE 3. CONVEYANCE OF THE PROPERTY

Section 3.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, the Agency shall sell the Property to the Developer, and the Developer shall purchase the Property from the Agency at the time set for the Closing unless this Agreement is sooner terminated. The Property shall be conveyed by the Agency Grant Deed.

Section 3.2 Purchase Price. The Purchase Price shall be deemed paid to the Agency by the Developer upon the Developer's execution of the Agency Note and recordation of the Agency Deed of Trust against the Property.

Section 3.3 Opening Escrow. To accomplish the conveyance of the Property, the Parties shall establish an escrow with the Title Company and shall execute and deliver to the Title Company written instructions that are consistent with this Agreement.

Section 3.4 Agency's Conditions to Closing. The Closing shall occur no later than the date set forth in the Schedule of Performance, as such date may be extended. The Agency's obligation to proceed with the conveyance of the Property is subject to the fulfillment (or waiver in writing by the Agency) of each and all of the conditions precedent set forth in this Section, which are solely for the benefit of the Agency, and which may be waived by the Agency in its sole discretion. If there is no waiver or satisfaction by the date set for the Closing, the Agency may terminate this Agreement upon written notice to the Developer without further liability, and except for continuing obligations provided elsewhere in this Agreement:

(a) The Developer shall have executed and delivered to the Agency the Agency Note, the Agency Deed of Trust, the Agency Regulatory Agreement.

(b) The Title Company is unconditionally and irrevocably committed to issuing a 2006 ALTA Lender's Policy of insurance insuring the lien priority of the Agency Deed of Trust in the amount of the Agency Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Agency and containing such endorsements as the Agency may reasonably require.

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

Section 3.5 Developer's Conditions to Closing. The Developer's obligation to proceed with the acquisition of the Property is subject to the fulfillment (or waiver in writing by the Developer) of each and all of the conditions precedent set forth in this Section, which are solely for the benefit of the Developer, and which may be waived by Developer in its sole discretion. If there is no waiver or satisfaction by the date set for the Closing, the Developer may terminate this Agreement upon written notice to the Agency without further liability, and except for continuing obligations provided elsewhere in this Agreement:

(a) The Agency shall have executed and delivered to the Title Company the Agency Grant Deed.

(b) There shall have been no adverse change in the condition of the Property, or discovery of a physical condition that would adversely interfere with the development of the Development since the conclusion of the Due Diligence Period.

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

(d) The Developer shall be satisfied with the updated Title Report provided by the Agency and the Title Company is unconditionally and irrevocably committed to provide the Developer insurable fee interest to the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (i) the Agency Grant Deed, the Agency Regulatory Agreement, and the Agency Deed of Trust;
- (ii) the liens of any loan described in the Financing Plan; and
- (iii) conditions, covenants, restrictions or easements currently of record and approved by the Developer in its reasonable discretion.

Section 3.6 Condition of Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the Agency hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the Agency to Developer.

(b) Prior to the Closing, the Agency shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Property. If any Hazardous Materials are identified on the Property that were caused by or permitted to occur by the Agency on the Property or which the Agency had knowledge of but failed to disclose to the Developer, the Agency and Developer agree to meet in good faith to discuss the Agency's obligation for costs regarding any necessary remediation. In no event shall the Agency be required to indemnify the Developer regarding Hazardous Materials.

Section 3.7 Closing. Upon the Closing the Title Company shall record the Agency Grant Deed, Agency Deed of Trust, and Agency Regulatory Agreement against the Site, and shall provide the Agency the title policy described in Section 3.4 (b) and provide the Developer the title policy described in Section 3.5(d).

Section 3.8 Costs of Escrow and Closing. Ad valorem taxes and assessments, if any, on the Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. The Developer shall pay the cost of all title insurance policies, transfer tax, Title Company document preparation, recordation fees and escrow fees of the Title Company, if any, to close escrow.

ARTICLE 4.
AGENCY LOAN PROVISIONS

Section 4.1 Agency Seller Carry-Back Loan. The Agency Loan shall be governed by the terms and provisions of this Agreement, the Agency Note, and the Agency Deed of Trust.

Section 4.2 Additional City Financing.

(a) The City has received Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The City has agreed to provide Developer a commitment of at least One Million Dollars (\$1,000,000) Dollars of HOME Funds

for the Development (the "City HOME Loan"), conditioned on Developer securing financing for the Development as set forth in the Financing Plan approved by the City. The conditional commitment will be provided by the Agency in a form to be considered a "public funding commitment" for the purposes of Developer applying for low income housing tax credits. The City shall provide the Developer a firm commitment for the HOME Funds within thirty (30) days of the Developer's award of low income housing tax credits for the Development.

(b) The City HOME Loan will have a term of fifty-five (55) years with 3% simple interest, with payments from a pro-rata share of fifty percent (50%) of Residual Receipts. The City HOME Loan will be evidenced by a Regulatory Agreement (in addition to other loan documents) which will set forth the applicable HOME requirements, consistent with any regulatory agreement evidencing the County financing described below. Additional terms of the City HOME Loan will be set forth separately in documents between the City and Developer or its successor or assigns.

(c) The Financing Plan will document the need for the City HOME Loan and provide the City with information necessary to underwrite its financial contributions to the Development. The Developer will provide the City the revised Financing Plan for approval pursuant to Section 2.3.

Section 4.3 Interest. Simple interest will accrue on the outstanding principal balance of the Agency Loan at a per annum rate of interest equal to three percent (3%), commencing on the Closing.

Section 4.4 Repayment of Agency Loan.

(a) Annual Payments. The Developer shall make payments of principal and interest to the Agency in the amount of the Agency Prorata Percentage of fifty percent (50%) of Residual Receipts. Such annual payments shall be due and payable in arrears no later than May 1 of each year with respect to the previous calendar year, commencing on May 1st of the first year after the Agency's issuance of a certificate of occupancy for the Improvements. The Developer shall provide the Agency with any documentation reasonably requested by the Agency to substantiate the Developer's determination of Residual Receipts. Repayments shall be credited first to interest, then to principal. The Developer may retain the remaining fifty percent (50%) of Residual Receipts.

(b) Sharing of Residual Receipts with other Lenders. The Agency acknowledges that the County of San Mateo (the "County") and other lenders as set forth in the Financing Plan may provide additional financing for the Development. The Agency agrees to share fifty percent (50%) of Residual Receipts with the County and such other approved lenders, pro-rata in proportion to the amount of Agency Loan, the City HOME Loan and the financing provided by the County and other approved lenders (the "Agency Prorata Percentage"). Any Residual Receipts payment of the City HOME Loan will be deferred until payment in full of the Agency Loan.

(c) Special Repayments from Net Proceeds of Permanent Financing. No later than sixty (60) days after Developer receives its final capital contribution from Developer's limited partner investor, or if no limited partner investor, the date Developer has closed all

permanent financing for the Development, Developer shall pay to the Agency as a special repayment of the Agency Loan, an amount equal to the Agency Prorata Percentage of one hundred percent (100%) of the Net Proceeds of Permanent Financing.

(d) Payment in Full. Developer shall pay all outstanding principal and accrued interest on the Agency Loan, in full, on the earliest to occur of (i) a Developer Event of Default for which the Agency exercises its right to cause the Agency Loan indebtedness to become immediately due and payable, and (ii) the expiration of the Term.

Section 4.5 Prepayment. Developer may pay the principal and any interest due on the Agency Loan in advance of the time for payment thereof as provided in this Agreement, without penalty.

Section 4.6 Non-Recourse. Following recordation of the Agency Deed of Trust the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Agency Loan or the performance of the covenants of the Developer under the Agency Deed of Trust and Agency Regulatory Agreement. The sole recourse of the Agency with respect to the principal of, or interest on, the Agency Note and defaults by the Developer in the performance of its covenants under the Agency Deed of Trust and Agency Regulatory Agreement shall be to the property described in the Agency Deed of Trust.

Section 4.7 Subordination of Agency Deed of Trust and Agency Regulatory Agreement.

(a) Deed of Trust. The Agency agrees to subordinate the Agency Deed of Trust to the liens of the deeds of trust securing construction and/or permanent financing for the Improvements as shown on the approved Financing Plan.

(b) Regulatory Agreement. Upon a determination by the Commissioners or the City Manager that the requirements of Health and Safety Code Section 33334.14 are satisfied, the Agency shall subordinate the Agency Regulatory Agreement and any Notice of Affordability Restrictions on Transfer of Property required to be recorded in compliance with the Redevelopment Law, to the liens of the deeds of trust securing construction and/or permanent financing for the Improvements.

ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS

Section 5.1 Construction Pursuant to Plans. The Improvements shall be constructed substantially in accordance with the terms and conditions of the land use permits and approvals and building permits, including any variances granted.

Section 5.2 Commencement of Construction. The Developer shall obtain a building permit and commence construction of the Improvements no later one hundred eighty (180) days after receipt of tax credits, as set forth in the Schedule of Performance.

Section 5.3 Completion of the Improvements. The Developer shall diligently prosecute to completion the construction of the Improvements no later than twenty-four (24) months after commencement of construction as set forth in the Schedule of Performance.

Section 5.4 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 5.5 Compliance with Applicable Laws. The Developer shall cause all construction work 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. Developer shall also conform to the prevailing wage requirements of California Labor Code §1720, et seq. 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.

Section 5.6 Progress Report. The Developer shall provide quarterly progress reports to the Agency regarding the status of the construction of the Development. The Developer shall provide the reports and information required under this Section until the Development is fully leased up.

Section 5.7 Construction Responsibilities. As between the Agency and the Developer it shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of the construction of the Improvements will take place in accordance with this Agreement. 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, and consultants. Any review or inspection undertaken by the Agency with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the Agency, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Development.

Section 5.8 Inspections. The Developer shall permit and facilitate, and shall require its contractors, to permit and facilitate, observation and inspection at the Development by the Agency during reasonable business hours for the purposes of determining compliance with this Agreement. The rights granted to the Agency pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority, including, but not limited to, any inspection rights related to the building permit for the Property.

Section 5.9 Information. The Developer shall provide any information reasonably requested by the Agency in connection with the Development.

Section 5.10 Records. 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 Agency 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 Agency Loan funds. Records must be kept accurate and current.

ARTICLE 6. ONGOING DEVELOPER OBLIGATIONS

Section 6.1 Use. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated as affordable housing in accordance with all applicable requirements of the Redevelopment Law, and the Regulatory Agreement, and for Approved Commercial Uses.

Section 6.2 Regulatory Agreement. If the Developer proceeds to purchase the Property, the Agency and the Developer shall cause to be recorded against the Site concurrently with the Closing, the Regulatory Agreement providing, among other matters, for the lease of not more than forty-nine percent (49%) of the units in the Development at affordable housing cost to low and moderate income households, as defined in the Regulatory Agreement, for a time period of no less than fifty-five (55) years from issuance of a certificate of occupancy for the Development, consistent with the Redevelopment Law. In addition, the parties agree to record against the Site a Notice of Affordability Restrictions on Transfer of Property as required by the Redevelopment Law.

Section 6.3 Commercial Space.

(a) The Developer shall use commercially reasonable efforts to design the Commercial Space to be "reasonably attractive" to Approved Commercial Uses. The term "reasonably attractive" means flexibly designed space, reasonable ratio of usable area to gross built area, pedestrian friendly, landscaping and lighting designed to promote attractive and safe experience.

(b) The Developer shall use commercially reasonable efforts to enter into leases for the Commercial Space in the Development for Approved Commercial Uses prior to completion of construction of the Development. Fifty percent (50%) of all Net Commercial Revenue generated from the leases will inure to the benefit of the Developer, and the balance will be paid to the Agency and the County annually, concurrent with repayment of the Agency Loan, pro-rata in proportion to the amount of Agency Loan and the City HOME Loan, and the financing provided by the County.

(i) "Approved Commercial Uses" means: any administrative and business offices, business and professional support, personal services, professional services, commercial and neighborhood serving retail uses. The following uses are not Approved Commercial Uses: adult entertainment; night club; 24-hour retail; dry cleaning; betting

establishment; tattoo parlor; maintenance of automobiles; and any use causing excessive noise or odor that would disrupt the residential occupants of the Development.

(ii) "Net Commercial Revenue" means for any period all rental income from tenants of the Commercial Space but excluding any receipts representing reimbursements of operating expenses and ownership costs such as taxes, insurance, utilities, maintenance, repairs, management fees or any other item of cost or expense.

(c) Alternately, the Agency may master lease the Commercial Space from the Developer on terms to be negotiated by the parties subsequent to execution of this Agreement, provided such arrangement is acceptable to Developer's lenders and investor. If the Agency master leases the Commercial Space, the Developer shall have the right to approve any sublessees of the Commercial Space, and all revenue from the subleases will inure to the benefit of the Agency. Any decision of the Agency to Master Lease the Commercial Space must be made no later than sixty (60) days after the Developer obtains an allocation of low income housing tax credits. The Developer and the Agency agree to negotiate in good faith for a period of sixty (60) days after the Agency provides Developer notice of its desire to master lease the Commercial Space, the terms of the master lease. If despite their good faith efforts the parties are unable to agree on mutually acceptable master lease terms within such sixty (60) day period, the Developer may begin the process to identify tenants for the Commercial Space consistent with subsection (a) above.

Section 6.4 Maintenance. The Developer hereby agrees that, prior to completion of construction of the Improvements, the portions of the Site undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once the Improvements are completed, the Development shall be well maintained by the Developer as to both external and internal appearance of the Improvements, the common areas, and the open spaces.

Section 6.5 Taxes and Assessments. The Developer is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Site or the Development, and shall pay such charges prior to delinquency. However, Developer is not required to pay and discharge any such charge so long as the legality thereof is being contested diligently and in good faith and by appropriate proceedings.

Section 6.6 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Site shall contain therein the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use,

occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

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

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

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

(c) In Contracts:

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

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

Section 6.7 Hazardous Materials.

(a) Covenants.

(i) No Hazardous Materials Activities. The Developer hereby represents and warrants to the Agency that, at all times from and after the Closing, the Developer shall not cause or permit the Site, or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) Hazardous Materials Laws. The Developer hereby represents and warrants to the Agency that, at all times from and after the Closing, the Developer shall comply and cause the Site, and the Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(iii) Notices. The Developer hereby represents and warrants to the Agency that, at all times from and after the Closing, the Developer shall immediately notify the Agency in writing of: (i) the discovery of any Hazardous Materials on or under the Site; (ii) any knowledge by the Developer that the Site does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Site, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Site, that could cause the Site, or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws.

(b) Developer Acknowledgement. The Developer hereby acknowledges and agrees that (i) this Section is intended as the Agency's written request for information (and Developer's response) concerning the environmental condition of the Site as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement with respect to the environmental condition of the Site is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

Section 6.8 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:

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

(ii) 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 coverage's for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) 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 coverage's for owned, non-owned and hired vehicles, as applicable.

(iv) 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 Agency, naming the Agency as a Loss Payee, as its interest may appear.

(b) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Comprehensive General Liability and Comprehensive Automobile Liability policies shall be endorsed to name as additional insureds the Agency and its commissioners, members, officers, agents, and employees. All policies and bonds shall contain (i) the agreement of the insurer to give the Agency at least ten (10) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and noncontributing with any insurance that may be carried by the Agency; (iii) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the Agency and its authorized parties in connection with any loss or damage thereby insured against.

(c) Certificates of Insurance. Upon the Agency'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 Agency, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Agency as additional insured, if requested by the Agency.

Section 6.9 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in the Development. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement, or leasing of the Commercial Space to Approved Commercial Uses.

(b) The Agency hereby approves the transfer of the Site and assignment of the Loan Documents to the Partnership, provided that the assignment agreement or other document evidencing the assignment is reasonably acceptable to the Agency.

(c) The Developer anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require transfer of the limited partnership interest in the Partnership to a tax credit investor (the "Investor"). The Agency hereby approves transfer of the limited partnership interest to the Investor and future Transfers of the Investor's limited partner interest.

(d) In the event the general partner of the Partnership is removed by the Investor for cause following default under the Partnership Agreement, the Agency hereby approves the Transfer of the general partner interest.

(e) The Agency hereby approves a Transfer of the Property from the Partnership to MidPen Housing Corporation, a California nonprofit public benefit corporation ("MidPen"), or a non-profit affiliate of MidPen, and an assumption of the Loan by such transferee on or before the end of the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(f) The Agency hereby approves the grant of the security interests in the Development for financing approved by the Agency on the Financing Plan.

ARTICLE 7. DEFAULT AND REMEDIES

Section 7.1 No Fault of Parties. The following events constitute a basis for a party to terminate this Agreement without the fault of the other:

(a) The Developer despite good faith efforts is unable to complete acquisition of the Additional Parcels;

(b) The Developer disapproves the condition of the Property within the Due Diligence Period, or there shall have been an adverse change in the condition of the Property, or discovery of a physical condition that would adversely interfere with the development of the Development since the conclusion of the Due Diligence Period; or

(c) The Developer does not receive commitments of projected financial assistance or reasonable substitutions therefor, including grants and loans, necessary to develop the Development as shown in the Financing Plan by the date set forth in the Schedule of Performance (as such date may be extended), despite Developer's good faith efforts to obtain such funding.

Upon the happening of any of the above-described events the Agency 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 Development is feasible. If the Agency and the Developer are unable to agree on a mutually satisfactory modification, the

parties may agree to terminate this Agreement, and at the election of either party, this Agreement may be terminated by written notice to the other party. After termination, neither party shall have any rights against or liability to the other under this Agreement.

Section 7.2 Fault of Agency. Except as to events constituting a basis for termination under Section 7.1, the following events each constitute an "Agency Event of Default" and a basis for the Developer to take action against the Agency:

(a) The Agency, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or

(b) The Agency does not attempt diligently and in good faith to cause satisfaction of the conditions required of the Agency in Article 2; or

(c) Other than the failures addressed above in subsections (a) and (b), failure of the Agency to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of this Agreement, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Developer to the Agency or, if the breach cannot be cured within thirty (30) days, the Agency shall not be in breach so long as the Agency is diligently undertaking to cure such breach and such breach is cured within ninety (90) days.

Upon the occurrence of any Agency Event of Default hereunder following the expiration of all applicable notice and cure periods the Developer is afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement; and (2) prosecuting an action for specific performance.

Section 7.3 Fault of Developer. Except as to events constituting a basis for termination under Section 7.1, the following events each constitute a "Developer Event of Default" and a basis for the Agency to take action against the Developer:

(a) Failure of the Developer to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance, one or more of the conditions precedent to the Agency's obligation to convey the Property to the Developer;

(b) Failure of the Developer to pay when due any sums payable under the Loan Documents including but not limited to failure to repay the principal and any interest on the Agency Loan that is due and payable to the Agency pursuant to the Note and other Loan Documents after ten (10) days written notice from the Agency; or

(c) Other than the failures addressed above in subsections (a), and (b), failure of the Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Agency to the Developer or, if the breach cannot be cured within thirty (30) days, the Developer shall not be in breach so long as the Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days;

The occurrence of any Developer Event of Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Agency or automatically where so specified, relieve the Agency of any obligation to make or continue the Agency Loan and shall give the Agency the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following: (i) Termination of this Agreement by written notice to the Developer; or (ii) Acceleration of the Agency Loan.

ARTICLE 8. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's fee interest in the Site for the purpose of securing loans approved by the Agency pursuant to the approved Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the Agency pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default and Right to Cure. Whenever the Agency pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the Agency shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Site or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Site which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the Agency relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such

holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement.

Section 8.4 Right of Agency to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the construction of the Development, and the holder has not exercised its option to complete the construction of the Development, the Agency may cure the default, prior to the completion of any foreclosure. In such event the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default.

Section 8.5 Modifications. If a holder of a Security Financing Interest or the Investor should, as a condition of providing financing for development of all or a portion of the Development, request any modification of this Agreement in order to protect its interests in the Development or this Agreement, the Agency shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

ARTICLE 9. GENERAL PROVISIONS

Section 9.1 Notices, Demands and Communications. Formal notices, demands, and communications between the Agency and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the Agency and the Developer as follows:

Agency:	Daly City Housing Development Finance Agency 333 90 th Street Daly City, CA 94015 Attn: City Manager
Developer:	Mid-Peninsula The Farm, Inc. 303 Vintage Park Dr. Suite 250 Foster Agency, CA 94404 Attn: Jan Lindenthal, Assistant Secretary

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section.

Section 9.2 Non-Liability of Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 9.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or

defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather; inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency or City shall not excuse performance by the Agency or City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within fifteen (15) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within fifteen (15) days after receipt of the notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agree to by the Parties in writing.

Section 9.4 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 9.5 Indemnification. Borrower shall indemnify, defend and hold the Agency and its commissioners, members, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Development, except to the extent such claim arises from the negligence or willful misconduct of the Agency, its agents, and its employees.

Section 9.6 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 9.7 No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 9.8 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.9 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire.

Section 9.10 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.11 Action by the Agency. Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the Agency is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the Agency, without further approval by the Commissioners. Any such action shall be in writing. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 9.12 Agency's Warranty of Good Standing and Authority. The Agency represents and warrants to the Developer that (i) this Agreement has been duly entered into and is the legally binding obligation of the Agency, (ii) this Agreement will not violate any judgment, law, consent decree, or agreement to which the Agency is a party or is subject to and will not violate any law or ordinance under which the Agency is organized, and (iii) there is no claim pending, or to the best knowledge of the Agency, threatened, that would impede the Agency's ability to perform its obligation hereunder.

Section 9.13 Representations and Warranties of the Developer. The Developer hereby represents and warrants to the Agency as follows:

(a) Organization. The Developer is a duly organized, validly existing, and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, and the other Agency Documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer.

(d) No Conflict. To the best of Developer's knowledge, the Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

Section 9.14 Complete Understanding of the Parties. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

Section 9.15 Operating Memoranda; Implementation Agreements. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

Operating memoranda or implementation agreements may be executed on the Agency's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the Agency Loan, shall be processed as an amendment of this Agreement in accordance with Section 9.16 and must be approved by the Commissioners in accordance with applicable law.

Section 9.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties, following approval by the Commissioners, in accordance with applicable law.

Section 9.17 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Agreement on or as of the Effective Date.

DEVELOPER:

Mid-Peninsula The Farm, Inc., a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

AGENCY:

DALY CITY HOUSING DEVELOPMENT
FINANCE AGENCY

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of San Mateo, City of Daly City, State of California, and is described as follows:

PARCEL ONE:

Lots 3, 4 and 7 Block 30 as designated on the Map entitled Map No. 1 Vista Grande San Mateo County, California, filed in the Office of the County of San Mateo, State of California on November 5, 1906, in Book "C" of Maps at Page 35 and a copy entered in [Book 4 of Maps at Page 41](#).

PARCEL TWO:

Lot 5 in Block 2 as shown on that certain Map entitled "Map of the Knowles Tract, San Mateo County, California", which Map was filed in the Office of the County Recorder of San Mateo County on May 21, 1888, in Book "A" of Original Maps at Page 42 and copied into Book 1 of Maps, at Page 3.

EXCEPTING THEREFROM that portion thereof conveyed to the State of California by Deed from Julia Chaine, a widow, dated September 2, 1933, and recorded October 5, 1933, in Book 602 of Official Records, at Page 488.

PARCEL THREE:

Lot 6 in Block 30, as designated on the Map entitled, "Map No. 1 Vista Grande San Mateo County, California" , which Map was filed in the office of the Recorder of the County of San Mateo, State of California on November 5, 1906, in Liber "C" of Maps at Page 35 and a copy entered in Liber 4 of Maps at Page 41.

EXCEPTING THEREFROM that portion thereof conveyed to the State of California for widening Mission Street by Deed dated June 29, 1933, and recorded August 3, 1933, in Liber 599 of Official Records, at Page 371.

APN: 003-172-130;
003-172-140;
003-172-150;
003-172-160; and
003-172-170

JPN: 003-017-172-13;
003-017-172-14;
003-017-172-15;
003-017-172-16; and
003-017-172-17

EXHIBIT B

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Disposition, Development, and Loan Agreement (the "Agreement") to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect. As provided in Section 2.1 of this Agreement, this Schedule of Performance may be modified by Operating Memoranda executed in accordance with Section 9.15 of this Agreement.

Action	Date
1. <u>Title Report</u> . Agency shall provide Developer an updated Title Report. [§2.7]	Within twenty (20) days of execution of this Agreement.
2. <u>Developer Deposit</u> . Developer shall provide the Deposit. [§2.5]	Within thirty (30) days of execution of this Agreement.
3. <u>Relocation</u> . Agency shall relocate all existing tenants. [§2.5]	No later than thirty (30) days prior to Closing.
4. <u>Application – Tax Credits (First Application)</u> . Developer shall submit an application to TCAC for a preliminary reservation of 9% tax credits. [§2.4]	Next available TCAC round immediately following Effective Date.
5. <u>Application – Tax Credits (Second and subsequent Applications)</u> . Developer shall submit a second and subsequent applications to TCAC for a preliminary reservation of 9% tax credits if the first application is unsuccessful. [§2.4]	For each TCAC round within two (2) years of the Effective Date.
6. <u>Applications – Tax Credits (Additional Applications)</u> . Developer may submit additional applications to TCAC for a preliminary reservation of 9% tax credits if the applications submitted in the first two (2) years after the Effective Date are unsuccessful [§2.4]	Within three (3) years of the Effective Date; within four (4) years of the Effective Date (subject to Section 2.4(b)).

Action	Date
7. <u>Commitment of HOME Funds.</u> City shall provide the Developer a firm commitment of HOME Funds. [§4.2(a)]	Within thirty (30) days of receipt of tax credit allocation from TCAC.
8. <u>Submission – Financing Plan.</u> Developer shall prepare and submit the revised Financing Plan for Agency approval. [§2.3]	Within 120 days after receipt of tax credit allocation from TCAC.
9. <u>Approval – Financing Plan.</u> The Agency shall approve or disapprove the Financing Plan. [§2.3]	Within 30 days after receipt of the Financing Plan. Opportunity is provided in §2.3 for resubmission and further review of a disapproved Financing Plan.
10. <u>Submission of Construction Plans.</u> Developer shall submit Construction Plans to the City for approval. [§2.8]	Within one hundred fifty (150) days of receipt of tax credit allocation from TCAC.
11. <u>Closing.</u> Agency shall sell the Property to Developer. [§3.4; 3.5]	Upon satisfaction or waiver of conditions set forth in Section 3.4 and 3.5, but in no event later than the date by which the Developer must commence construction of the Development.
12. <u>Commencement of Construction.</u> Developer shall obtain a building permit and commence construction of the Development. [§5.2]	Within one hundred eighty (180) days of receipt of tax credit allocation from TCAC.
13. <u>Completion of Construction.</u> Developer shall complete construction of the Development. [§5.3]	Within 24 months after commencement.
14. <u>Progress Reports.</u> Developer shall provide quarterly progress reports to the Agency. [§5.6]	Until Development is fully leased-up.

EXHIBIT C

SCOPE OF DEVELOPMENT

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

BETWEEN

THE DALY CITY HOUSING DEVELOPMENT FINANCE AGENCY

AND

MID-PENINSULA THE FARM, INC.

(6800 Mission Street)

Dated as of _____, 2014

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Exhibit A: Legal Description of the Property
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