

RESOLUTION NO. _____

**RESOLUTION APPROVING, AUTHORIZING AND DIRECTING
EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CSCDA COMMUNITY IMPROVEMENT
AUTHORITY, AND THE FORM OF A PUBLIC BENEFIT AGREEMENT;
AND APPROVING THE ISSUANCE OF REVENUE BONDS BY THE
AUTHORITY FOR THE PURPOSE OF FINANCING THE ACQUISITION,
CONSTRUCTION OR IMPROVEMENT OF A PROJECT**

WHEREAS, pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”), certain public agencies (the “Members”) have entered into a Joint Exercise of Powers Agreement Relating to the CSCDA Community Improvement Authority, dated as of October 15, 2020 (the “Agreement”), in order to form the CSCDA Community Improvement Authority (the “Authority”), for the purpose of promoting economic, cultural and community development, and in order to exercise any powers common to the Members or granted by the Act, including by the issuance of bonds, notes or other evidences of indebtedness; and

WHEREAS, the City of Milpitas (the “City”), has determined that it is in the public interest and for the public benefit that the City become an Additional Member of the Authority pursuant to Section 12 of the Agreement in order to facilitate the promotion of economic, cultural and community development activities in the City, including the financing of projects therefor by the Authority; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council of the City (the “City Council”), with the assistance of its staff, have reviewed said document; and

WHEREAS, the Authority is authorized to issue and sell revenue bonds for the purpose, among others, of financing or refinancing the construction, acquisition and rehabilitation of capital projects; and

WHEREAS, among projects that may be financed by the Authority, the Authority proposes to issue from time to time its governmental purpose revenue bonds (the “Bonds”) to finance the acquisition, construction, development and certain related costs of a multifamily housing development within the City known as “Turing at the Fields Apartments” and located at 1355 McCandless Drive, Milpitas, California 95035 (the “Project”); and

WHEREAS, the Authority proposes to grant to the City in connection with the financing of the Project the right to cause the Authority to sell such Project, starting upon the date fifteen (15) years from the issuance of the Bonds pursuant to a Public Benefit Agreement (the “Public Benefit Agreement”), by and between the Authority and the City, the form of which is attached hereto as Exhibit A; and

WHEREAS, it is in the public interest and for the public benefit that the City Council approve the issuance of the Bonds by the Authority for the aforesaid purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The City hereby requests to become an Additional Member of the Authority pursuant to Section 12 of the Agreement. The Agreement is hereby approved and the Mayor or the designee thereof is hereby authorized and directed to execute said document, and the City Clerk or such Clerk's designee is hereby authorized and directed to attest thereto.

Section 3. The proposed form of Public Benefit Agreement attached hereto as Exhibit A is hereby approved. In connection with the Project, the City Manager or the designee thereof is hereby authorized and directed to execute an agreement in substantially said form, with such changes therein as such officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. It is the intent of this Resolution that the City Manager or the designee thereof be empowered to approve any changes to the form of Public Benefit Agreement submitted to this meeting, whether or not such changes may be deemed material, including any changes to any related documents, without the need of returning to City Council, unless the changes are to the timing or pricing of sales of the Project that the City may cause the Authority to undertake and are materially adverse to the interests of the City.

Section 4. The City Council hereby approves the issuance of Bonds by the Authority to finance the Project within the City from time to time. For the avoidance of doubt, any future issuance of bonds by the Authority to finance the acquisition, construction, development and certain related costs of other multifamily housing developments within the City shall be subject to approval by the City Council.

Section 5. The issuance of Bonds shall be subject to the approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to the Bonds.

Section 6. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing to acquire or construct any Project or any refinancing of any Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation or operation of any Project; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) except as provided in this Resolution, take any further action with respect to the Authority or its membership therein.

Section 7. The executing officers(s), the City Clerk and all other proper officers and officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates, and to perform such other acts and deeds, as may be necessary or convenient to effect the purposes of this Resolution and the transactions herein authorized.

Section 8. The City Clerk shall forward a certified copy of this Resolution and an originally executed Agreement to the Authority:

CSCDA Community Improvement Authority
1100 K Street, Suite 101
Sacramento, California 95814
Attention: Chair

Section 9. This resolution shall take effect immediately upon its passage.

ADOPTED by the City Council of the City of Milpitas at a regular meeting of the City Council held on the _____ day of February, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor

ATTEST:

City Clerk

SIGNATURE PAGE FOR JPA AGREEMENT

IN WITNESS WHEREOF, the CITY OF MILPITAS has caused this Agreement to be executed and attested by its duly authorized representatives as of the ____ day of February, 2022.

Additional Member:

CITY OF MILPITAS

By _____

Name:

Title:

ATTEST:

Clerk

EXHIBIT A:
Public Benefit Agreement

[TO BE INSERTED]

RECORDING REQUESTED BY
CSCDA Community Improvement Authority

WHEN RECORDED RETURN TO:
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Steffi Chan

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE
CALIFORNIA GOVERNMENT CODE

PUBLIC BENEFIT AGREEMENT

By and Between

CSCDA COMMUNITY IMPROVEMENT AUTHORITY

and

THE CITY OF MILPITAS

Dated as of _____

Relating to

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING SENIOR LIEN REVENUE BONDS, SERIES 2021A
(TURING-MILPITAS) (SOCIAL BONDS)**

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING MEZZANINE LIEN REVENUE BONDS, SERIES 2021B
(TURING-MILPITAS) (SOCIAL BONDS)**

and

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING SUBORDINATE LIEN REVENUE BONDS, SERIES 2021C
(TURING-MILPITAS)**

PUBLIC BENEFIT AGREEMENT

This PUBLIC BENEFIT AGREEMENT (“Agreement”) is dated as of _____ by and between the CSCDA COMMUNITY IMPROVEMENT AUTHORITY a joint exercise of powers agency organized and existing under the laws of the State of California (including its successors and assigns, “Owner”) and THE CITY OF MILPITAS (“Host”).

BACKGROUND

WHEREAS, Owner proposes to issue Bonds (as hereinafter defined) to finance Owner’s acquisition of the certain multifamily rental housing project (the “Project”) located at 1355 ~~MeCandles~~McCandless Drive, Milpitas, California, located on the real property site described in Exhibit A hereto; and

WHEREAS, Owner intends to sell the Project at the instigation of the Host or upon the retirement of all Project Debt (as defined herein) pursuant to this Agreement.

AGREEMENT

In consideration of the mutual covenants herein contained, and such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Host mutually agree as follows:

Section 1. ~~**Section 1.**~~ **Right to Cause Sale.** Host shall have the right to cause (“Sale Right”) Owner to sell the Property (as herein defined) upon payment by the purchaser thereof (the “Purchaser”) of the applicable Sale Price (as herein provided) within the Sale Right Term (as herein defined) as provided in Section 4 hereof or following the Sale Right Term as provided in Section 5 hereof, and in each case, in compliance with and observance of all of the terms and conditions of this Agreement.

Section 2. ~~**Section 2.**~~ **Definitions.** Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 2; capitalized terms used in this Agreement and not defined in this Section 2 or elsewhere herein shall have the meanings assigned to them in the Indenture (herein defined).

a. ~~**(a)**~~ “Bonds” – collectively, (i) the CSCDA Community Improvement Authority Essential Housing Senior Lien Revenue Bonds, Series 2021A (Turing-Milpitas) (Social Bonds) (the “Series A Bonds”), (ii) the CSCDA Community Improvement Authority Essential Housing Mezzanine Lien Revenue Bonds, Series 2021B (Turing-Milpitas) (Social Bonds) (the “Series B Bonds”), and (iii) the CSCDA Community Improvement Authority Essential Housing Subordinate Lien Revenue Bonds, Series 2021C (Turing-Milpitas) (the “Series C Bonds”), with such other series and sub-series designations as may be set forth in the Indenture, originally issued to finance Owner’s acquisition of the Project and related transaction costs.

b. ~~(b)~~ “Bond Trustee” – Wilmington Trust, National Association or any successor trustee under the Indenture.

c. ~~(c)~~ “Closing” – shall have the meaning set forth in Section 8 hereof.

d. ~~(d)~~ “Conveyance” – that transaction or series of transactions by which Owner shall transfer, bargain, sell and convey any and all right, title or interest in and to the Property.

e. ~~(e)~~ “Extraordinary Costs and Expenses” – shall have the meaning set forth in the Indenture.

f. ~~(f)~~ “Indenture” – the Trust Indenture between Owner, as issuer, and Bond Trustee, as trustee, pursuant to which the Bonds were issued, provided that principal payment for all Bonds shall be paid in parity or at same priority level as bond interest payments, and that Owner shall pay at least twenty-five percent (25%) of all Bond principal within 10 years of Bond issuance; bond term shall not extend beyond 35 years; and Host shall receive timely notification of any changes to management, financial, or physical conditions, or other significant matters.

g. ~~(g)~~ “Minimum Sale Price” – means the lowest price at which the Property may be sold, as described in Section 4(c) hereof.

h. ~~(h)~~ “Outstanding” – with respect to Bonds, as of any given date, all Bonds which have been authenticated and delivered by the Trustee under the Indenture, except: (i) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation; (ii) Bonds deemed to be paid in accordance with Article VIII of the Indenture; and (iii) Bonds in lieu of which other Bonds have been authenticated under the Indenture.

i. ~~(i)~~ “Owner Indemnified Person” – Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.

j. ~~(j)~~ “Project Administrator” – Waterford Property Company, LLC and its successors and assigns.

k. ~~(k)~~ “Project Debt” – any debt secured by the Project and incurred to finance or refinance Owner’s acquisition of the Project and related transaction costs, including any portion of the Bonds and any bonds, notes or other indebtedness issued by Owner to improve the Project or to refund the Bonds in whole or in part.

l. ~~(l)~~ “Property” – means all of Owner’s right, title and interest (which includes fee simple title to the real property) in and to all property and assets used in or otherwise related to the operation of the Project including, without limitation, all real property and interests in real property, all tangible and intangible personal property including furniture, fixtures, equipment, supplies, intellectual property, licenses, permits, approvals, and contractual rights of any kind or nature together with the right to own and carry on the business and operations of the

Project. The definition of Property does not include any non-residential portion of the Project, which will be under separate ownership and not owned by Owner.

m. ~~(m)~~ “Regulatory Agreement” – means the Regulatory Agreement and Declaration of Restrictive Covenants by and between Owner and Bond Trustee, relating to the Bonds.

n. ~~(n)~~ “Sale Price” – purchase price of the Property to be paid by the Purchaser upon sale of the Property by Owner pursuant to Host’s Sale Right in compliance with Section 4 hereof or sale by Owner pursuant to Section 5 hereof.

o. ~~(o)~~ “Sale Right” – means the right of Host to cause Owner to sell the Property pursuant to Section 1 hereof.

p. ~~(p)~~ “Sale Right Exercise Date” – the date fifteen (15) years from the issuance of the Bonds.

q. ~~(q)~~ “Sale Right Term” – shall commence on the Sale Right Exercise Date and, if not exercised, shall terminate on the date on which no Project Debt remains outstanding.

r. ~~(r)~~ “Transaction Costs” – to the extent not otherwise described herein, any costs or expenses of any kind or nature associated with or incurred by Owner and/or Bond Trustee in connection with the consummation of the Conveyance, regardless of whether such costs and expenses are customarily borne by the seller or purchaser in any such transaction, including but not limited to taxes, recording fees and other impositions, Owner’s and Bond Trustee’s legal and other professional fees, fees for verification agents, bidding agents, escrow agents, custodians or trustees, assumption fees, prepayment fees, the cost of the appraisal, brokers’ fees and expenses, surveys, inspections, title commitments, title insurance premiums and other title-related fees, and all amounts required for indemnification of Owner, Bond Trustee and Project Administrator.

Section 3. ~~Section 3.~~ **Effectiveness; Term and Termination.** The Sale Right shall become effective on the Sale Right Exercise Date and may be exercised during the Sale Right Term. Owner agrees that it will not enter into any agreement to sell all or any part of the Property during the Sale Right Term other than as may be required by the Indenture (e.g., in the event of default), without the specific written request of the Host and delivery of an Opinion of Bond Counsel to Bond Trustee substantially to the effect that such sale will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

Section 4. ~~Section 4.~~ **Manner of Exercise.**

a. ~~(a)~~ Host’s Notice. To exercise the Sale Right, Host shall provide a notice (an “Exercise Notice”) to Owner (with a copy to the Project Administrator) at any time during the Sale Right Term. Upon request of the Host, Owner shall prepare and submit to Host within 60 days of Host’s request a new Property Conditions Assessment and appraisal prepared by qualified independent consultants approved by the Host.

b. ~~(b)~~ Owner's Best Efforts to Sell. Unless Host notifies Owner in writing that it is withdrawing its Exercise Notice within fifteen (15) business days of delivering the Exercise Notice under Section 4(a) hereof, Owner shall exercise its best efforts in selling and conveying good and marketable title to the Property within ninety (90) days following receipt of the Exercise Notice, or as soon as possible thereafter, but only if it can sell at or above the Minimum Sale Price. The obligation of Owner to sell and convey the Property shall be on a best efforts basis. Owner shall endeavor to sell the Property at a commercially reasonable price, subject to subsection (c) of this Section, by such means as it shall determine to be suitable for such purpose; provided that Host may direct Owner to sell the Property to Host, to a non-profit corporation designated by Host or to a limited partnership (that has a non-profit corporation as a general partner) designated by Host at a price less than commercially reasonable but at or above the Minimum Sale Price; provided further that Owner's determination of the manner of sale and Sale Price shall be final and incontestable, and Owner shall incur no liability to any party as a result of or otherwise in connection with the sale or failure to sell. Subject to subsection (c), nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host. Owner shall direct the Bond Trustee in the foregoing as and to the extent necessary or appropriate.

c. ~~(c)~~ Sale Price. The Sale Price shall be at least equal to the sum of the amounts set forth below (net of any adjustments or prorations of the type described in Section 8(b)) (the "Minimum Sale Price"):

- i. an amount sufficient to either prepay, redeem in whole or fully defease for redemption on the earliest call date all Project Debt; plus
- ii. any fees or other amounts not identified in clause (i) that may be necessary to effect the complete release from and discharge of any lien, mortgage, or other encumbrance on the Property; plus
- iii. any amounts due to Owner (including Owner Indemnified Persons, as provided in the Indenture), the Bond Trustee or any predecessor or successor, or any other Person under any indenture, loan agreement, bond, note, or other instrument relating to any Project Debt (including, without limitation, indemnification amounts, Owner's Extraordinary Costs and Expenses, recurrent and extraordinary fees and expenses, and reimbursable costs and expenses of any kind or nature); plus
- iv. Transaction Costs; minus
- v. Any funds held by or for Owner under the Indenture applied to the retirement of Project Debt. Owner may retain such portion of moneys in the Extraordinary Expense Fund or similar fund under the Indenture it deems reasonable as a reserve against future expected costs and expenses of the type described in subparagraph

(iii). Owner's determination of this amount shall be final and incontestable.

Section 5. ~~**Section 5. Mandatory Conveyance.**~~ Upon the retirement of all Project Debt, Owner shall use its best efforts to effect a Conveyance within ninety (90) days thereafter, subject to Section 4(c) hereof; provided, however, that Host, by notice to Owner within two (2) weeks after notice from Owner that no Project Debt remains outstanding, shall have the option to cause Owner to sell the Property (i) to a non-profit corporation or a limited partnership (that has a non-profit corporation as a general partner) designated by Host upon payment by such non-profit corporation or limited partnership, as applicable, of a sale price approved by Host, which sale price shall be at least equal to the Minimum Sale Price, or (ii) to Host upon payment of the Minimum Sale Price. Nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host.

Section 6. ~~**Section 6. Surplus Cash; Surplus Conveyance Proceeds.**~~ Upon a Conveyance of the Property, Owner shall apply the proceeds of such Conveyance (i) to redeem the Bonds then Outstanding, (ii) to prepay, redeem in whole or fully defease any other Project Debt, and (iii) to pay any fees or other amounts listed in Section 4(c)(ii) – (iv). Any proceeds remaining following the foregoing payments (such remaining amounts hereinafter referred to as “*Surplus Conveyance Proceeds*”) shall be transferred to Host ~~and Host shall share such Surplus Conveyance Proceeds with other taxing agencies selected by Host, and in the amounts determined by Host in its sole discretion and responsibility.~~

Section 7. ~~**Section 7. Terms of Conveyance.**~~

a. ~~(a)~~ The Conveyance shall be in the nature of a grant deed to Purchaser in which Owner shall deliver one or more deeds, bills of sale, or other instruments of transfer without recourse or warranty of any kind or nature.

b. ~~(b)~~ The Property will be conveyed to Purchaser in **AS IS CONDITION, WITH ALL FAULTS,** ~~and without representations or warranties of any kind or nature as to the condition of the Property;~~ good and clean order, except for ordinary wear and tear, with all capital improvements completed as recommended in Section 14(o) below.

c. ~~(c)~~ There shall be no partial transfer and that, upon consummation of the Conveyance, Owner shall be fully divested of any and all right, title or interest in and to the Property.

Section 8. ~~**Section 8. Closing.**~~

a. ~~(a)~~ The closing of the Conveyance (“*Closing*”) shall take place, in the case of a Conveyance pursuant to Section 4 hereof, not later than the ninetieth (90th) calendar day following Owner's receipt of the Exercise Notice, or as soon as possible thereafter, and in the case of a mandatory conveyance pursuant to Section 5 hereof, not later than the ninetieth (90th) calendar day following the retirement of all Project Debt, or as soon as possible thereafter.

b. ~~(b)~~ Prorations. All general and special real property taxes and assessments, and rents shall be prorated as of the Closing, with Purchaser responsible for all such items to the extent arising or due at any time following the Closing. General real property taxes shall be prorated at the time of Closing based on the net general real property taxes for the year of Closing.

Section 9. ~~Section 9.~~ Recording. This Agreement, and any amendment thereto, shall be recorded with the recorder's office of the County; *provided*, that upon termination of the term of this Agreement, Host shall cooperate with Owner to remove any such recorded Agreement or amendment thereto from title to the Property upon Owner's reasonable request therefor and, in any event, by no later than thirty (30) days after the expiration of the original term of this Agreement. In the event that, within said time, Host fails to so cooperate and provide its original signature to a termination of such recorded Agreement or amendment thereto, then Host hereby irrevocably constitutes and appoints Owner as Host's true and lawful attorney (and agent-in-fact) to execute in Host's name any such termination.

Section 10. ~~Section 10.~~ Subordination. ~~This~~ After the initial issuance of the Bonds, ~~this Agreement shall only be subordinate to any claim, pledge or interest in the Property securing the Bonds or any Project Debt matters approved by the Host.~~

Section 11. ~~Section 11.~~ Maintenance of Membership. In order to preserve the Property's exemption from property tax, Host agrees to remain a member of Owner joint powers authority so long as any Bonds remain Outstanding.

Section 12. ~~Section 12.~~ Assignment. Neither party to this Agreement shall assign its interests, obligations, rights and/or responsibilities under this Agreement without the prior written consent of the other party.

Section 13. ~~Section 13.~~ Limitation on Liability.

a. ~~(a)~~ Owner shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement or any sale or Conveyance or failure or price thereof or application of proceeds thereof, except only as to moneys available therefor under and in accordance with the Indenture or this Agreement.

b. ~~(b)~~ No Owner Indemnified Person shall be individually or personally liable for the payment of any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement, or by any proceedings for the sale or Conveyance or failure or price thereof, or Host's exercise or waiver of same, or otherwise except in the case of such Owner Indemnified Person's own willful misconduct.

c. Host shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement or any sale or Conveyance or failure or price thereof or application of proceeds thereof. Host shall not be

individually or personally liable for the payment of any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement.

Section 14. ~~**Section 14.**~~ **Notices, Governing Law, Binding Effect and Other Miscellaneous Provisions.**

a. ~~(a)~~ Notices. All notices provided for in this Agreement shall be in writing and shall be given to Owner or Host at the address set forth below or at such other address as they individually may specify thereafter by written notice in accordance herewith:

If to Owner or
Designated Agent: CSCDA Community Improvement Authority
1700 North Broadway, Suite 405
Walnut Creek, California 94596
Attention: Jon Penkower
Email: jpenkower@cscda.org

With a copy to: Waterford Property Company, LLC
130 Newport Center, Suite 230
Newport Beach, California 92660
Attention: John Drachman
Email:
~~jdrachman@waterfordco.com~~ jdrachman@waterfordco.com

If to Host: The City of Milpitas
455 East Calaveras Blvd.
Milpitas, California 95035
Attention: City Manager

Such notices shall be deemed effective upon actual delivery or upon the date that any such delivery was attempted and acceptance thereof was refused, or if mailed, certified return receipt requested, postage prepaid, properly addressed, three (3) days after posting.

b. ~~(b)~~ Consents and Approvals. All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver, or notice is requested.

c. ~~(c)~~ Non-liability of Host or Owner Officers and Employees. No officer or employee of the Host shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by Host of any obligation of the terms of this Agreement. No officer or employee of the Owner shall be personally liable to Host, or any successor in interest, in the event of any default or breach by Owner of any obligation of the terms of this Agreement.

d. ~~(d)~~ Pronouns. Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa.

e. ~~(e)~~ Amendments. This Agreement may not be modified except in a written instrument signed by Host and Owner.

f. ~~(f)~~ Complete Agreement; Negotiated Benefits. This Agreement together with all schedules and exhibits attached hereto and made part thereof supersedes all previous agreements, understandings and representations made by or between the parties hereto. This Agreement shall inure solely and exclusively to the benefit of the Owner and Host, and no other party shall have any right, remedy, or claim under or by reason of this Agreement. The parties understand that any amount paid to Host under this Agreement is the result of a negotiated agreement and is not imposed for purposes of Article XIII C, section 1 of the California Constitution.

g. ~~(g)~~ Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. All claims of whatever character arising out of this Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between Owner and any other party hereto, if and to the extent that such claim potentially could or actually does involve Owner, shall be filed and maintained in the Superior Court of California, County of Sacramento, California. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such court; (ii) waives any defense of forum non-conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by Owner of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of California that may exist at the time of and in connection with such matter.

h. ~~(h)~~ Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain fully enforceable.

i. ~~(i)~~ Term. This Agreement shall terminate upon the Conveyance.

j. ~~(j)~~ Captions. The captions used in this Agreement are solely for convenience, and shall not be deemed to constitute a part of the substance of the Agreement for purpose of its construction.

k. ~~(k)~~ Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Agreement.

l. ~~(l)~~ Host City Charge Fee. Owner, or Bond Trustee on its behalf, shall pay to Host on each anniversary of the date hereof, commencing with the first anniversary and terminating upon Conveyance, an annual Host Fee of \$361,970 with annual increases of two percent (2.00%) on the residential portion of the Project (the "Host Fee"); provided, however, that such fee shall be payable as an Operating Expense solely from revenues of the Project available therefor under and in accordance with the Indenture and to the extent permitted by law. The annual Host Fee shall be paid to Host before any annual payments of any kind to Owner and

Project Administrator are made and shall accrue to Host and be paid from future years Operating Revenue if insufficient Operating Revenue is available to meet this obligation at any time during the term of the Public Benefit Agreement until Conveyance. The non-residential portion the Project shall be required to pay all taxes and assessments.

m. Infrastructure Fee. Owner, or Bond Trustee on its behalf, shall pay to Host on each anniversary of the date hereof, commencing with the first anniversary and terminating upon Conveyance, an annual Infrastructure Fee of \$275,693 with annual increase of CPI. The annual Infrastructure Fee shall be paid to Host before any annual payments of any kind to Owner and Project Administrator are made and shall accrue to Host and be paid from future years Operating Revenue if insufficient Operating Revenue is available to meet this obligation at any time during the term of the Public Benefit Agreement until Conveyance.

n. ~~(m)~~Regulatory Agreement Reporting. Owner shall provide or cause to be provided to Host the Certificate of Continuing Program Compliance in accordance with Section 4(e) of the Regulatory Agreement.

o. ~~(n)~~Capital Property Needs Assessment. The Property was evaluated by a Property Needs Assessment dated October 7, 2021. Commencing in January 2031, and on every ten year anniversary thereafter, or as requested by the Host, Owner shall provide Host with ~~the~~a Capital Needs Assessment conducted by an independent consultant selected by the Project Administrator ~~assessing with approval of the Host to assess the~~ capital needs of the Project ~~over the subsequent ten years~~ and the sufficiency of reserve funds and operating income to fund capital costs for the remaining bond term. Reserve funds shall be adjusted as necessary to fully cover revised capital needs based on the Property Needs Assessment.

p. ~~(o)~~Property Management. During the term of this Agreement, Host shall have the authority to review the selection of the original and any replacement ~~property management company and the~~Property Administrator or Property Manager and the ~~administration or~~ management agreement with that company for the Project. If Host determines that the management of the Project during the term of this Agreement is deficient in any manner, Host may provide notice of the deficiency to Owner, and Host and Owner shall meet and confer in good faith to discuss the alleged management deficiency and attempt to reach agreement upon one or more appropriate remedies to address the alleged management deficiency. If no remedy is agreed upon, then Host may select the Property Administrator and Property Manager. Upon Host's acquisition of the Project, Host shall not be obligated to continue the contracts with any property management company for the Project.

q. ~~(p)~~Property Financial, Management, and Maintenance Report. Beginning on January 31, 2023 and continuing annually thereafter during the term of this Agreement, Owner shall, or cause Project Administrator to, submit an annual property maintenance report to Host by January 31st of each calendar year that includes, but are not limited to: (i) ~~provides~~ an overview of all capital expenditures at the Property for the previous year; (ii) a projected schedule of capital expenditures for the ~~current year~~,following year; (iii) current rent roll; (iv) current vacancy rate; (v) past year's and next year's operating income and expenses; (vi) cash flow projection, current operating funds, and current reserve funds; (vii) bond interest and

redemption payments and all bond specific payments; and (iii) a description and reasonable photo documentation of the Project's general condition.

i. Host reserves the right to have the Owner or Project Administrator fund an independent property and/or financial management consultant to review the annual report and provide an assessment of the Property based on industry standards and best practices for management of multi-family residential property.

ii. Owner or Project Administrator will submit to the Host an annual monitoring fee of \$100 per unit or \$37,100 for 2023 to cover City staff costs for project oversight and monitoring with an annual increase of two percent (2.00%) ("Monitoring Fee"). The annual Monitoring Fee shall be paid to Host before any annual payments of any kind to Owner and Project Administrator are made and shall accrue to Host and be paid from future years Operating Revenue if insufficient Operating Revenue is available to meet this obligation at any time during the term of the Public Benefit Agreement until Conveyance.

r. Affordability Covenant.

i. The affordability covenant provisions below shall be reflected and contained in the Regulatory Agreement

ii. Owner shall use its best efforts to ensure that the following income restrictions are met as soon as practicable following the date of issuance of the Bonds and thereafter, at all times: 40% units shall be units in which the aggregate gross income of all tenants in the household therein does not exceed 80% of area median income (AMI) for Santa Clara County (as defined by the California Department of Housing and Community Development), with adjustments for family size; 20% units shall be units in which the aggregate gross income of all tenants in the household therein does not exceed 100% of AMI for Santa Clara County, with adjustments for family size; and 40 % units shall be units in which the aggregate gross income of all tenants in the household therein does not exceed 120% of AMI for Santa Clara County, with adjustments for family size; and studios, one-, two-, and three- bedroom units shall be distributed pro rata across income categories.

iii. Maximum rents for all income categories shall not exceed 30% of the aggregate gross income of all tenants in the household, adjusted for household size and less estimated utility costs paid by tenants.

iv. Owner shall submit an annual report to the Host that certifies compliance with the affordability covenant. Owner shall submit proposed rent increases for review and approval by the Host to verify compliance with the affordability covenant. Host shall be allowed up to 30 days to review proposed rent increases; if no response is received from the Host, rent increase shall be deemed approved.

v. Rent reduction for existing Project qualifying tenants: 18% reduction from current rents for low-income households; 12% reduction from current rents for median income households; and 10% reduction from current rents for moderate-income households.

s. Local Preference Policy. Subject to review and approval by the Host, Owner shall direct the Property Administrator or Property Manager to establish and administer a tenant preference program with administrative guidelines, screening procedures, and a marketing plan to attract income-qualified teachers and administrative, maintenance, and support staff that are employed by public education institutions located within the City of Milpitas. The Local Preference Policy shall comply with state and federal fair housing laws.

t. Project Refinancing. Host shall have the authority to review and approve any debt refinancing, or restructuring, or increase in debt encumbrance that may be proposed by the Owner during the term of the Public Benefit Agreement until Conveyance.

u. Indemnification. Host shall have the same indemnification status as an Owner Indemnified Person and this shall extend to each of Host's officers, governing members, directors, officials, employees, attorneys, agents, and members.

v. Documents for Review by Host: The following will be further outlined in the Regulatory Agreement and the Owner or Project Administrator shall submit to the Host the following for review and approval by the Host prior to issuance of the Bonds:

1. Tenant Leasing Plan
2. Local Preference Policy per Section 14(s)
3. Maintenance Plan
4. Property Management Plan, including staffing
5. Marketing Plan

w. Defaults and Remedies:

1. Default. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within 30 days after receipt of notice from the other party, constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to

the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until 30 days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

2.

Remedies.

- (a) Any uncured violation of this Agreement by Owner and Project Administrator shall cause all annual payments of any kind to Owner and Project Administrator to be suspended until compliance with this Agreement is achieved during the term of the Public Benefit Agreement until Conveyance.
- (b) Host may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to:
 - (i) Actions for monetary damages; and
 - (ii) Actions for injunctive relief or damages

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CSCDA COMMUNITY IMPROVEMENT
AUTHORITY**

By:

Jon Penkower
Authorized Signatory

THE CITY OF MILPITAS

By:

Steven McHarris
City Manager

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM

By: _____

City Attorney

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

The Land referred to herein is situated in the State of California, County of Santa Clara, City of Milpitas, and described as follows:

Summary report: Litera Compare for Word 11.1.0.69 Document comparison done on 2/7/2022 5:39:05 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://imanager/iManage/34794032/5	
Modified DMS: iw://imanager/iManage/34794032/6	
Changes:	
Add	164
Delete	87
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	251