



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** July 25, 2016

Approved

Date

8/5/16

**COUNCIL DISTRICT: 6**

**SUBJECT: ACTIONS RELATED TO LEASING PROPERTY TO ABODE SERVICES  
AND PREDEVELOPMENT FUNDING FOR THE EVANS LANE INTERIM  
COMMUNITY HOUSING PROJECT**

## RECOMMENDATION

It is recommended that City Council conduct a public hearing and:

- (1) Accept the report and analysis of potential uses for the 5.93 acre City-owned property located on the east side of Evans Lane, north of Curtner Avenue between Almaden Expressway and Highway 87, (APNs 455-31-053 and 455-31-055), (the "Property").
- (2) Adopt a resolution:
  - (a) Approving the Property as the site for an affordable interim housing community to house formerly homeless residents ("Project") subject to approval of necessary entitlements;
  - (b) Accepting the summary of costs and findings ("Summary Report") prepared pursuant to the California Health and Safety Code Section 33433 for the groundleasing and development of the Property for an affordable interim housing community for the formerly homeless under the terms and conditions of the proposed ground lease;
  - (c) Approving groundleasing of the Property consistent with material terms of the proposed ground lease between the City of San José and Abode Services, Inc., a nonprofit corporation or its affiliate ("Abode"), authorizing the Director of Housing to set final business terms, negotiate and execute the ground lease, and any other related documents and amendments;

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 2

- (d) Approving the selection of Abode as the developer (“Developer”) for the Project and Allied Housing, Inc., an affiliate of Abode, as the operator/service provider (“Operator”) for onsite supportive services and management of the Project; and
  - (e) Approving a conditional grant commitment (“Grant”) for predevelopment funding of up to \$400,000 to Abode from the Low and Moderate Income Housing Asset Fund and authorizing the Director of Housing, or her designee, to set the specific business terms and to negotiate and execute any and all documents and amendments needed in connection with the Grant and funding of predevelopment activities for the Project.
- (3) Adopt the following 2016-2017 Appropriation Ordinance Amendments in the Low and Moderate Income Housing Asset Fund:
- (a) Increase the appropriation to the Housing Department for Housing Loans and Grants in the amount of \$400,000; and
  - (b) Decrease the Housing Project Reserve in the amount of \$400,000.

## **OUTCOME**

The City Council’s approval of the Housing Department’s recommendations in this memorandum will authorize the Director to execute a lease that provides Abode with site control. This lease will allow Abode to pursue other sources of funding, proceed with a development concept, obtain entitlements and complete other predevelopment activities for the proposed affordable interim housing community on the Property.

## **EXECUTIVE SUMMARY**

On September 22, 2015, the City Council directed the Housing Department to identify a potential property for a proposed pilot interim housing community, issue a Request for Proposal (“RFP”) to identify a developer/operator for the Project, and return to Council for future direction at a later date. On June 28, 2016, City Council further directed the Housing Department to explore the option of developing high-density permanent affordable housing on the site.

The Housing Department has complied with the Council’s direction by providing analysis of two options for utilizing the Property. The Housing Department recommends that the City: 1) select Abode Services as the Developer/Operator; 2) enter into a ground lease with Abode for the purposes of developing and operating the Project located on the Property; and 3) issue Abode a predevelopment Grant in an amount not to exceed \$400,000 to complete predevelopment activities for the Project.

If the City Council accepts the Housing Department’s recommendations, Abode would be charged with obtaining the necessary entitlements to effectuate the Project. As a requirement of this process, Abode will convene additional community outreach meetings prior to a public hearing by the Planning Commission and/or City Council regarding the remaining needed

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 3

entitlements. Through this process, the Housing Department and Abode will continue to explore measures to maximize the Project's potential to address area residents' concerns regarding existing conditions in the vicinity of the Property.

## **BACKGROUND**

The Mayor and City Council have identified the need to address homelessness as a high priority. The City Administration has been tasked with recommending strategies to support the creation of housing options for this vulnerable population. Due to the immediate need for housing the City's unsheltered households, the Housing Department explored a range of interim housing options. The City Council approved a variety of programs and concepts which will result in the addition of interim opportunities to house or shelter households who are currently living on the streets. These solutions include:

- Developing a safe parking program;
- Purchasing two hotels;
- Implementing a hotel/motel lease program;
- Pursuing legislation to allow unconventional solutions; and
- Developing an interim housing community.

On June 9, 2015, the Mayor's June Budget Message for Fiscal Year 2015-2016 was approved by City Council, thus directing the Administration to pursue innovative approaches for rapidly housing people. One potential approach utilizes small homes or unconventional structures as a cost-effective means of housing the homeless in a relatively short period time. The Administration has been advocating for the modernization of the Shelter Crisis Act by way of AB 2176. Under AB 2176, the City of San José would have the authority to develop local building, housing, health, habitability, or safety standards, in lieu of such state laws, for the development of emergency bridge housing.

On September 22, 2015, the Housing Department presented City Council with a proposal for developing an affordable pilot transitional housing community using manufactured homes. The Housing Department described how manufactured homes provide a cost-effective and expedient approach to developing housing. The Housing Department's report indicated that the Department would identify a potential property for the pilot community, issue an RFP to identify a developer/operator, and return to Council for further direction at a later date. Council accepted the Housing Department's report regarding the further development of the concept. In addition, Mayor Liccardo, Vice-Mayor Herrera, and Councilmember Rocha submitted a memorandum directing the Housing Department to explore prioritizing the placement of homeless veterans within the housing community.

### **Identification of Potential Property for Interim Housing Community**

Shortly after the City Council meeting on September 22, 2015, the Housing Department completed an analysis of all City-owned properties to identify a potential location for an interim housing opportunity for unsheltered people. The use of City property was determined by staff to

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 4

be a key attribute in meeting the City Council's direction to provide interim homeless housing solutions as expeditiously as possible. Additional criteria for property selection included: 1) site location/proximity to transit; 2) size sufficient to achieve the desired residential density utilizing manufactured housing; and 3) appropriate zoning in conformance with the City's General Plan. The 5.93 acre vacant Property located on the east side of Evans Lane, north of Curtner Avenue (See **Attachment A**), was determined as most appropriate based on the identified criteria. The Property is within walking distance of the Curtner Avenue Light Rail Station and is large enough to accommodate the development. Due to the fact that the Council previously approved the purchase of this site with 20% Redevelopment Funds, State law requires that it be used for affordable housing.

### **Identification of Developer/Operator for Pilot Interim Housing Community**

In January 2016, the Housing Department issued an RFP to solicit and identify proposals describing how the Property could be utilized to provide interim housing options for homeless individuals, with supportive services onsite, through the use of manufactured housing.

RFP responses were due on March 4, 2016. One proposal for the development component and two proposals for the operator component of the Project were received. A review panel comprised of City and County representatives and a community stakeholder reviewed and evaluated each proposal individually. Abode received the highest scores for both the developer and operator components described in the RFP. Despite the fact that few proposals were received, it should be noted the proposal submitted by Abode was comprehensive, high-quality, and received scores that were higher than required.

### **General Plan Amendment**

The Property was purchased by the City with funding designated for affordable housing purposes, thereby limiting its possible uses, and was designated for High Density Residential under the General Plan 2020. However, the Property's General Plan land use designation was inadvertently changed in 2011 through the adoption of the Envision San José 2040 General Plan. The Envision 2040 General Plan set forth ambitious job-creation goals that influenced many of the Plan's policies and the Land Use Transportation Diagram. Through this General Plan update process, the Property was designated as part of the Curtner Light Rail/Caltrain Urban Village and was given a General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial, as was the vast majority of the land within the Urban Village.

In recognition of the urgency of developing housing opportunities for homeless individuals, the Housing Department initiated the process of reverting the Property's land use designation to one that would allow for residential development.<sup>1</sup> In February 2016, the City initiated a General Plan Amendment to modify the Property's land use designation from Neighborhood/Community

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<sup>1</sup> The Housing Department pursued the land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood to allow for the expedient development of an interim housing community option. If the Property were to be further densified, the Housing Department would pursue an appropriate land use designation.

Commercial to Mixed Use Neighborhood. On May 4, 2016, the Planning Commission supported the Planning, Building, and Code Enforcement (“PBCE”) Department’s recommendation to modify the Property’s land use designation.

On June 28, 2016, City Council approved the General Plan Amendment for the Property allowing up to 30 units to the acre. In addition, the Housing Department was directed to explore the option of developing high-density housing on the Property and return to Council on August 16, 2016.

## **ANALYSIS**

As directed by Council, the Housing Department has completed an analysis of two options for use of the Property: an interim housing community with supportive services onsite (Option I); and a permanent high-density housing development that meets the goal of providing affordable housing (Option II). A project description, estimated costs, and approximate timeline for each option is described below.

### **OPTION I: Proposed Interim Housing Community**

In response to the City’s RFP, Abode Services submitted a proposal for developing an interim housing community with supportive services on the Property. As stated above, Abode’s proposal met all criteria for quality and Project outcomes. Abode’s proposal does not include a shelter, drop-in center, or encampment. The proposed Project is similar to a traditional affordable housing community in which each tenant has a lease that requires compliance with all applicable rules of conduct.

#### **Description of Option I Project**

Abode’s initial proposal is to utilize manufactured housing to house 102 homeless veterans and vulnerable single men and women. Each manufactured building measures 1,920 square feet, housing six individuals in private, 150 square foot bedrooms, complete with private porch, two shared full bathrooms, and a shared kitchen, laundry, and living space. Each bedroom will have one locking interior door into the common area and one private exterior entrance associated with the private porch.

Two separate manufactured buildings will be dedicated for use as staff offices and a community room, which would be accessible by all residents for socializing, group events, and classes. The Services and Property Management Offices would be located in a separate manufactured building adjacent to the community room. Additionally, site work will include a small parking lot, full utility connections to all buildings, perimeter security fencing with fob-control gates (secured access), security cameras, landscaping, and walking paths throughout the Property.

Abode is proposing at least four on-site Service Coordinators, each providing intensive case management services to approximately 25 individuals. In addition to providing direct services to

tenants, Abode will convene regular house and community meetings, celebrations, and other group activities. Finally, Abode's proposal employs one maintenance person for routine and emergency property maintenance needs. Security personnel will also be deployed during hours when property management is not available.

### Potential Neighborhood Enhancements

In addition to serving 102 formerly homeless individuals on the Property, Abode's proposal contemplates the development of several potential neighborhood enhancements that the residents and surrounding community may utilize. In order to address the concerns voiced by the community, the City and Abode could invest in services and amenities, such as:

- Deploying the San José Streets Team to remove debris in Canoas Garden/Evans Lane area;
- Activating community engagement;
- Increased security;
- Street and sidewalk improvements, lighting, and the widening of Evans Lane;
- Community garden;
- Dog run/park; and
- Small branch library ("Bridge Library").

The community enhancements would serve not only the residents of the site but would benefit the surrounding neighborhood. It is important to note that not all of the items listed above are included in the project budget. Deploying San Jose Streets Team would be funded by the City's existing funding commitment to that agency. The community engagement would be provided by the Housing Department's Place-Based Neighborhood program staff. The increased security would be provided through the project's operating budget. The project construction budget includes \$2.75 million for site work. This would potentially cover the costs of street, sidewalk and lighting improvements that are typically required through the entitlement process. Any remaining funds could go toward other amenities, such as community garden or dog run. Construction of a small branch library would likely require additional funding approval and extend beyond the timeline discussed below. If the City Council selects Option 1, the Housing Department would deploy a half-time staff member to begin working with the neighborhood on the potential neighborhood enhancements, coordinate with the appropriate City departments such as Library and Transportation, and develop a more specific scope, funding plan (including the identification of ongoing costs) and schedule for any recommended enhancements.

Abode will develop a case management plan with each tenant, including the provision of their service needs and an exit plan. This comes at a critical time as several housing sites are in the early stages of development. When completed, these developments will provide 600 permanent supportive units within the next 3-5 years. In the meantime, the Interim Housing development will provide much more stability than any other interim option.

### Estimated Costs Associated with Option I

Abode's proposal estimates that the total cost to develop the above described Project will be \$12,800,000. However, the total cost will not be known until Abode submits a comprehensive

planning application to the City to determine the Project’s feasibility. As Abode works closely with the City and community to develop the plan, some elements may change from the current proposal.

*Potential Funding Partnerships*

In further support of the time-sensitive nature of this work, the Santa Clara County Board of Supervisors approved funding in September 2015 to implement the County’s Housing Task Force recommendations. Up to \$200,000 in predevelopment funding was allocated to Abode, for use of unconventional housing structures. Abode has elected to utilize this funding for the Evans Lane Project. The Housing Department and Abode will continue to work with the County of Santa Clara to determine if additional County resources may be allocated for the Project.

In addition to securing financial commitments from the City, County, and Housing Authority of the County of Santa Clara (“HACSC”), Abode is committed to pursuing additional support for the Project. For example, Habitat for Humanity has expressed interest in assisting with items such as utility installation, paving, landscaping, decks, stairs, and ramps for the manufactured units. Abode intends to apply for project-based vouchers from HACSC, which, if awarded, would provide the level of income necessary to support operations, without any ongoing City subsidy with the potential exception of ongoing costs related to a branch library. Finally, a local developer is interested in providing financial and/or labor support for the Project. Therefore, any assistance Abode is able to receive for the Project would decrease the City’s financial contributions to the Project.

Timeline for Completion of Option I

The Project could house homeless individuals by late-Spring/Summer 2017, if the Council considers and approves a funding request prior to the approval of the planning permits as outlined below. This would allow Abode to order the manufactured homes while working to complete the planning approvals. Alternatively, the manufactured homes can be ordered after the planning approvals are completed. This would add another two months to the timeline, which would move the estimated project completion to late summer of 2017.

ITEM	DURATION	COMPLETION DATE
City Council approval of ground lease and predevelopment Grant to Abode	NA	August 16, 2016
City Council consideration of a funding to Abode to develop the Project	1-2 months	October/November 2016
Zoning/Planning/Building Permits/Council for Project	4 months	December 2016
Break ground to completion (102 units of interim supportive housing)	5 months	Early summer 2017

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 8

*Pilot Project Wind-Down*

At year 10, the City would initiate predevelopment for future permanent development of the Project. Therefore, the City could complete a 15-year pilot interim housing community, then proceed with the development of permanent housing on the Property. In accordance with City Council direction, the permanent development would be a high-density development as described in Option II. The Interim Housing Community allows the City to maximize utilization of the Property and allows the site to be activated in the near-term.

**OPTION II: Developing Permanent Housing on the Property**

As directed by Council at the June 28, 2016, meeting, the Housing Department has conducted an analysis of the potential placement of high-density permanent housing on the Property. For the purposes of this analysis, the Housing Department has assumed that the Property will be developed into a combination of high-density affordable and market rate rental housing. This configuration maintains the goal of providing affordable housing, while addressing the community's concerns about overconcentration of affordable housing in the neighborhood. In addition, inclusion of market rate rental housing offers a less costly approach in the short-term because the City: 1) would be able to collect revenue by selling a portion of land to the developer and 2) would not be required to provide a financial subsidy to developers of the market rate component of the development.

Description of Option II Project

As previously noted, the Property is 5.93 acres, of which the Housing Department anticipates that approximately 4.7 acres would be available for development, while the remainder may be utilized for setbacks and a small green space/park. To develop high-density permanent housing on the Property, the Housing Department would need to pursue a change in the Property's current General Plan land use designation to Urban Residential, which allows for up to 95 units per acre. Therefore, it is estimated that the Property will yield up to 446 residential units.

To achieve a combination of affordable and market rate housing, the Housing Department assumes that half the units (223) will be developed as market rate rental and half the units (223) will be developed as affordable housing.

An affordable housing project of this size would be accomplished in two phases, each approximately 18 months in duration. The two phases would allow the affordable housing developer(s) to maximize available financing by applying for multiple tax credit rounds. In accordance with the priority of providing housing for currently homeless individuals, the Housing Department recommends that the goal of Phase 1 be defined as 100 apartments of permanent supportive housing. Likewise, it is recommended that the goal for Phase 2 be developed as 123 affordable apartments with a range of incomes. The final composition would not be known until after responses to the City's RFP for this project were received. One master developer would be selected who would complete the GP change, develop a site plan, and may or may not develop the entire site.

July 25, 2016

Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane

Page 9

Estimated Costs Associated with Option II

To estimate the costs associated with this option, the Housing Department conducted an analysis of affordable projects that the City recently approved or is currently considering for funding. This analysis showed that the average total cost of development is approximately \$490,000 per unit, and the average City subsidy for affordable housing development was approximately \$155,000 per unit. Development costs for 223 affordable housing units would therefore equal approximately \$109,270,000 of which the City’s contribution would be \$34,565,000.

As noted above, this scenario assumes a market rate component that would provide the City with revenue from the developer’s purchase of a portion of the Property. It is estimated that the City could sell half of the Property for a value of \$5,000,000. Therefore, the cost of developing permanent high-density housing on the Property, less the revenue from sale of a portion of land on the Property, equals approximately \$29,565,000. It should be noted that the total costs may escalate over time.

Feedback from Developers

To better understand the potential options for developing the Property, the Housing Department engaged with several developers who build market rate and affordable rental housing. The Housing Department will issue a supplemental memorandum providing a summary of the proposals submitted.

Timeline for Completion of Option II

If the City Council directs the Housing Department to pursue the development of permanent high density housing on the Property, the timeline for the affordable housing portion of the project would proceed as follows:

ITEM	DURATION	COMPLETION DATE
City Council direction	NA	August 16, 2016
Develop RFP for publication	2 months	October 2016
Complete RFP process and select developer	5 months	March 2017
Provide developer with predevelopment funding	2 month	May 2017
Complete appropriate level of predevelopment to conduct Environmental Impact Report (“EIR”)	6 months	November 2017
EIR Analysis	9 months	August 2018
Zoning/Planning/Building Permits/Council funding for project	9 months	May 2019
Obtain tax credits/close tax credits	6 months	November 2019

Break ground to completion: development timeline for Phase I (100 unit permanent supportive housing)	18 months	April 2021
Break ground to completion: development timeline for Phase 2 (123 units permanent affordable housing)	18 months	Fall 2022

### **Housing Department Recommendation**

Based upon the comparison of options, as outlined in **Attachment B: Summary Comparison of Options I and II**, the Housing Department recommends that the City proceed with the development of an interim housing community on the Property. The recommended approach:

- Complies with City Council’s direction to pursue innovative approaches for rapidly housing the homeless;
- Responds to the concerns of homeless advocates who are requesting an immediate housing solution in the short-term;
- Allows the City to leverage HACSC, County of Santa Clara, and other funding sources immediately to augment resources to complete and operate the Project;
- Invests immediately in activation of the Property and the surrounding neighborhood, providing amenities to address current community concerns;
- Serves a critical need for housing with supportive services in the interim, as the City and partners complete 600 permanent supportive units that may be built within the next 3-5 years; and
- Utilizes land that is available, near transportation and services, and intended for affordable housing in the near term, with the goal of developing permanent affordable housing after a 15-year pilot period.

#### Selection of Abode Services as Developer/Operator

The Housing Department recommends that City Council select Abode as the Developer/Operator for the interim housing community on the Property. The proposal submitted by Abode met all of the City’s RFP requirements, was reviewed by a diverse panel, and received high scores during the review process. Abode has extensive experience designing, developing, and operating housing for formerly homeless populations. They also have the financial and organizational capacity necessary to undertake this development.

#### Lease of the Property from the City to Abode to Operate the Property

The City proposes to ground lease the Property to Abode for an initial term of 15 years at \$1 per year plus any net cash flow that results from operating the Property on an annual basis. The lease will state that it is the responsibility of Abode to provide an operating subsidy and case management services to the residents. In addition, the lease also contains the following requirements:

July 25, 2016

Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane

Page 11

- Operate the Project for affordable housing purposes;
- Comply with the affordability covenants that will restrict occupancy of each unit;
- Provide on-going property management services and social services appropriate for the population;
- Provide security personnel for coverage outside of property management hours;
- Prohibit loitering outside the facility;
- Pay all taxes, operating expenses, insurance costs, utility expenses, charges, and impositions associated with the Property during the term of the lease;
- Maintain the Property in good repair and tenantable condition; and
- Proactively respond to neighborhood concerns.

A provision of the lease will specify that the City may, at its option, terminate the lease without penalty if Abode is unsuccessful in obtaining the necessary entitlements to effectuate the Project. A copy of the Proposed Ground Lease with Abode is included as **Attachment C**.

When the approved 15-year term of the ground lease expires, the Housing Department envisions that the manufactured homes would be removed so that the entire 5.93 acres may be developed. At that time, the City will have the option of continuing the interim housing community or developing permanent affordable housing on the Property.

#### Predevelopment Grant to Abode

The Housing Department operates a predevelopment subsidy program that provides nonprofit affordable housing developers with grants and loans of up to \$100,000, at favorable interest rates. These predevelopment subsidies facilitate activities related to the entitlement process, which is a necessary precursor to applying for Project funding and completing the Project in a timely manner. These subsidies may be approved by the Director of Housing under the Director's Delegated Authority from the City Council. However, the \$100,000 available per the Director's authority is insufficient funding for Abode to complete all necessary predevelopment activities for this Property before submitting a comprehensive planning application to the City in Fall 2016. The Housing Department is seeking Council approval for a Grant of up to \$400,000 to assist Abode with conducting extensive community outreach, entitling, and obtaining the necessary financing to develop the Property.

During the predevelopment phase, Abode will conduct extensive due diligence to research and determine whether their initial proposal is appropriate for the Property. In addition, the Grant funding would be available in the event that Abode is required to conduct further analysis to comply with the California Environmental Quality Act ("CEQA").

Specific business terms for the Grant will be approved by the Director of Housing pursuant to the Director's Delegation of Authority ordinance, located in Chapter 5.06 of Title 5 of the San José Municipal Code. The proposed funding source for the Grant is the Low and Moderate Income Housing Asset Fund.

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 12

### 33433 Summary Report

Prior to the disposition of any property acquired with tax increment funds for development, a report disclosing the financial aspects of the transaction must be prepared and made available for public inspection at least two weeks prior to the date of the public hearing. Accordingly, staff prepared a Summary Report Pursuant to Section 33433 of the California Health and Safety Code ("33433 Report") analyzing the costs and benefits related to the disposition of the Property to Abode. This 33433 Report analyzes the Project assuming that a grant of up to \$15 million may be needed for predevelopment and development costs. Notices of public hearing for the 33433 Report were published in the Mercury News prior to the City Council's consideration of this action as required under the Code and the report and lease were made available for public review upon publication.

### **Community Outreach Process**

As noted in the Community Outreach section of this memorandum, residents of the surrounding neighborhood have expressed concerns about the current environment near the Property. The Housing Department staff and Abode Services have met with residents, business owners, and other stakeholders in the surrounding neighborhood. Despite numerous meetings, conversations, and discussion, there remains a group of residents and local business owners opposed to the proposed interim housing plan at Evans Lane. While the group initially engaged with Housing Department staff in dialogues about the project and the existing problems in the neighborhood, the group has since disengaged from any of the subsequent meetings or conversations facilitated by the City or Abode. Their steadfast position has been that quality of life issues in the community must be addressed and that the proposed project will only serve to exacerbate an already problematic situation. As an alternative, various members of the group have suggested "permanent affordable housing for the homeless with the priority on victims of domestic violence, veterans, and families."

The project is still in its preliminary stage of development. Additional public outreach meetings will occur prior to approval of the development. A full analysis of neighborhood concerns and possible solutions will be prepared and presented as part of the Project proposal to PBCE and the funding proposal to City Council. The Project may serve as a catalyst for investment and improvement, bringing needed activation and amenities to this neighborhood. The Housing Department will assign a half-time neighborhood staff person to begin working on the neighborhood concerns and to ensure that City services are being accessed by the surrounding neighborhood.

### **Next Steps/Timeline**

The actions in this memorandum authorize the lease of and a Grant to Abode to begin predevelopment activities for the Property. If the City Council adopts the Housing Department's recommendations outlined in this memorandum, the Housing Department and Abode will further engage the community and initiate the entitlement process. The Housing Department intends to return to the City Council in October/November 2016 to provide an update on the progress of the

July 25, 2016

Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane

Page 13

interim housing community, provide additional information as to the scope, cost of potential neighborhood enhancements and, if applicable, request that the City Council appropriate funds for the development of the Property.

### **EVALUATION AND FOLLOW-UP**

If the Property is developed, Abode will maintain an informational website and meet with the neighborhood on a monthly basis to provide updates on the Project.

The status of the Project will be reported to the public in the Housing Department's periodic Production Report, posted to its website in the Data and Reports section at [www.sjhousing.org](http://www.sjhousing.org). If the recommended actions are approved, and the Property is developed, the pilot interim housing community would be included in these reports. Information on the status of the number of people housed and the impacts of the program will be provided in periodic reports to City Council regarding the City's efforts to address homelessness.

### **PUBLIC OUTREACH**

#### **Community Outreach to Date**

On March 30, 2016, PBCE hosted an outreach meeting to discuss the proposed General Plan Amendment. Approximately 200 members of the public attended the meeting. Comments expressed at the meeting centered around crime and safety of the surrounding community; the over-concentration of affordable housing in the area; the Property's proximity to another affordable housing project, the 701 Curtner Avenue Studios; the screening process for Project's residents; limited resources of the San José Police Department; depreciating property values; proper management of the Project; ingress and egress on Evans Lane, the current homeless population already in the neighborhood; traffic; and parking. During the meeting, several attendees circulated and signed a petition opposing the Project. Several community members who attended the meeting showed support for the potential pilot, citing the need for additional affordable housing and a desire to see homeless veterans be housed within the future Project.

The March 30, 2016, meeting fulfilled the public process requirements for the proposed General Plan Amendment. However, the Housing Department and Abode are committed to extensive community engagement efforts, and several additional public meetings have already been conducted, as described below:

- On April 14, 2016, the Housing Department provided information to the Housing and Community Development Commission ("HCDC") about the proposed Project. Similar to the concerns voiced in the first community meeting, residents of the surrounding neighborhood demonstrated concern about the lack of amenities in the existing area, particularly for youth, and the fact that added residential units could compound these issues. The Evans Lane project was also mentioned in Annual Action Plan. On its vote pertaining to that item, the Commission recommended approval of the FY 2016-17

Annual Action Plan to the City Council, with the modification that the Evans Lane project called out on page 32 of the plan to be changed to permanent affordable housing for the homeless with the priority on victims of domestic violence, veterans, and families. The motion passed by a vote of 9-0-1. This concept was supported via a letter from a coalition of concerned Evans Lane residents and business owners to the Mayor and City Council dated May 14, 2016. On June 1, 2016, Abode Services hosted a community meeting at the Willow Glen Community Center. At the meeting, Abode gave an overview of their goals for the Project. Abode expressed their desire to create a successful affordable housing community that has a positive impact on the neighborhood. During the meeting, participants discussed the potential of this Project to act as a catalyst for further neighborhood improvements. A number of potential investments were discussed that could bring added benefit to the neighborhood. While Abode conducted outreach for the meeting, it was not as well attended as previous community meetings.

- On June 20, 2016, the Housing Department and Abode hosted a community meeting at the Willow Glen Community Center, attended by roughly 40 individuals. At the meeting, the Housing Department and Abode provided a more detailed concept plan for the Project, including rough renderings of the manufactured units as well as the layout for the Property. Participants raised questions that ranged from the overall timing of the Project to Abode's tenant screening criteria for identifying residents. Overall, the comments at this meeting were positive in nature, expressing support for the efforts to house homeless individuals. The audience was complimentary of Abode's design concepts and comprehensive plans for delivering services.
- On June 23, 2016, the Housing Department and Abode met with the Willow Glen Neighborhood Association. Roughly 40 individuals attending the meeting. At the meeting, the Housing Department and Abode provided the Neighborhood Association and those in attendance with an update on the potential Project. The community members stated their concerns, asked good questions, and provided the Housing Department and Abode with critical feedback that will add value to the Project's concept as it is developed.
- On July 20<sup>th</sup>, 2016, the Housing Department and Abode hosted a community meeting at the San José Scottish Rite Center. Several steps were taken to inform and welcome attendees to the meeting:
  - The Housing Department sent out email invitations (200+) to all individuals who attended previous meetings or otherwise indicated interest by providing their email addresses;
  - Abode sent a mailer to every property within 1000 feet of the proposed Project; and
  - The Mayor's Office hand-delivered flyers in English, Spanish, and Vietnamese to the nearby neighborhood residences and communities.

The meeting was attended by approximately 45 individuals. At the meeting, a majority of community members expressed support for Abode's proposal and the concept of housing homeless individuals quickly. In response to discussion of a possible high-density permanent housing option, two individuals cited concerns about the potential for increased traffic, parking demands, and safety near the Expressway. One attendee expressed concerns about Abode's capacity to effectively manage the Project.

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 15

In addition to hosting public meetings, Housing Department staff and Abode Services have met with residents, business owners, and other stakeholders in the surrounding neighborhood.

This Memorandum will be posted on the City Council Agenda website for the August 16, 2016, City Council meeting.

### **COORDINATION**

Preparation of this report was coordinated with the Office of the City Attorney, Planning, Building, and Code Enforcement, the Library Department, and the Department of Transportation.

### **FISCAL/POLICY ALIGNMENT**

This expenditure is consistent with: the City's *Envision 2040 General Plan and the 2014-23 Adopted Housing Element* in that it will help the City meet its Regional Housing Needs Allocation and the City's 15% affordable housing goal by providing affordable units for extremely low- and very low-income residents. It is also consistent with the City's *2015-20 Consolidated Plan* in that it will provide units that will be affordable for very low- and extremely low-income households; and, the *Community Plan to End Homelessness* approved by the City Council in February 2015 in that it proposes to provide housing for the homeless.

### **COST SUMMARY/IMPLICATIONS**

1. **AMOUNT OF RECOMMENDATION:**

<b><u>EXPENSES</u></b>	<b><u>AMOUNT</u></b>
Pre-development Costs	\$400,000
<b>TOTAL</b>	<b>\$400,000</b>

2. **SOURCE OF FUNDING:** Low and Moderate Income Housing Asset Fund (346)

3. **FISCAL IMPACT:** The recommended budget adjustments would allow for disbursement of up to \$400,000 for a pre-development grant. There are no immediate anticipated operating costs to the City. However, any one-time and ongoing costs associated with the additional potential amenities have not yet been estimated. These costs would be included in a full proposal from Abode, if predevelopment funds for the Project are approved. The potential sources of appropriate funding sources would also be identified at that time.

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 16

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the actions recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Proposed Action	2016-2017 Proposed Operating Budget	Last Budget Action (Date, Ord. No.)
346	8437	Housing Project Reserve	\$63,083,000	(\$400,000)	X-53	6/21/16, Ord. 29762
346	0070	Housing Loans & Grants	\$20,033,742	\$400,000	X-54	6/21/16, Ord. 29762

**CEQA**

Evans Lane Transitional Housing Project-Initial Study and Mitigated Negative Declaration (Resolution No. 77876 adopted on 6/28/2016) (Planning File Nos. GP16-001; PDC16-007). Council District 6. (Housing/City Manager).

JACKY MORALES-FERRAND  
Director of Housing



JENNIFER A. MAGUIRE  
Senior Deputy City Manager/  
Budget Director

For questions, please contact Patrick Heisinger, Senior Development Officer at 408-975-2647.

**ATTACHMENTS**

- Attachment A: Map of the Evans Lane Property
- Attachment B: Summary Comparison of Options I and II
- Attachment C: Proposed Ground Lease with Abode

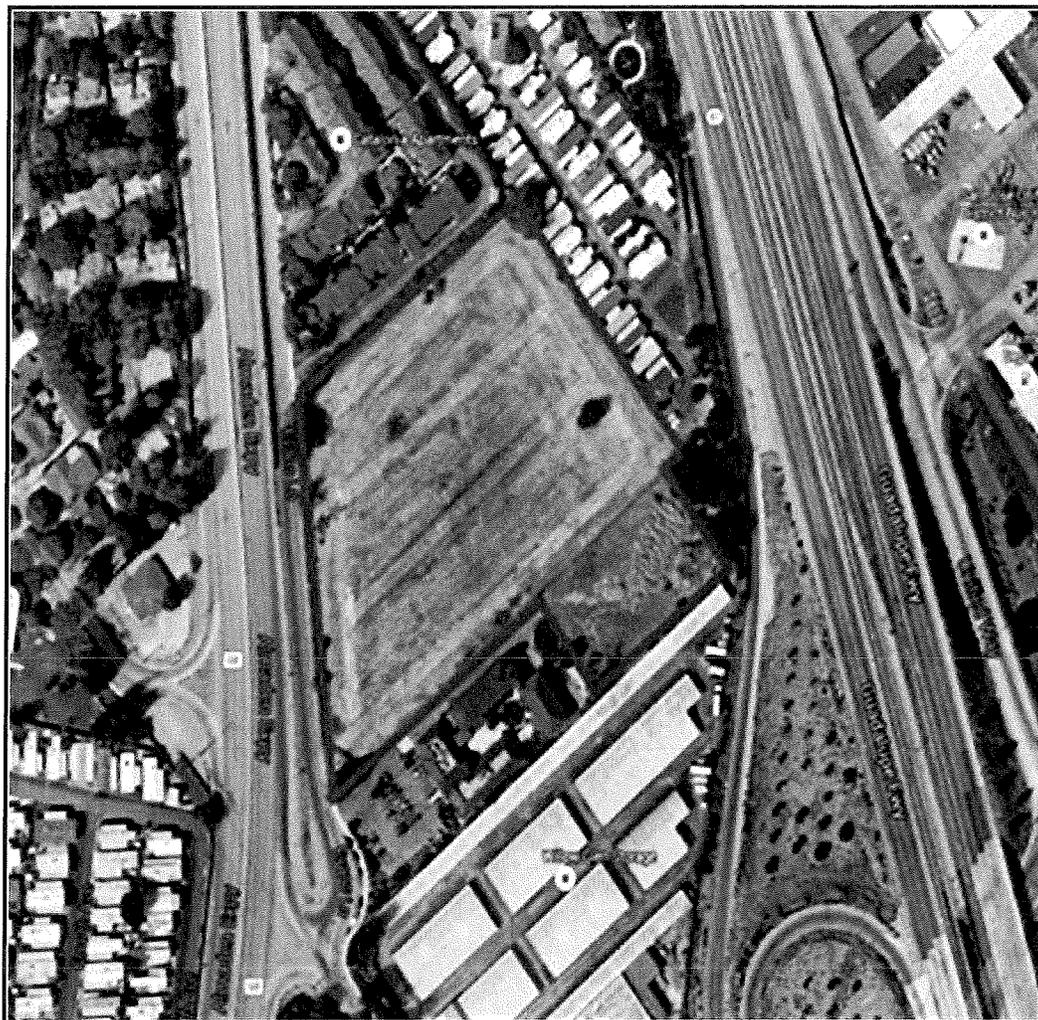
HONORABLE MAYOR AND CITY COUNCIL

July 25, 2016

**Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane**

Page 17

**ATTACHMENT A**



July 25, 2016

Subject: Pilot Interim Housing Community at the City-Owned Property on Evans Lane

Page 18

**ATTACHMENT B**

**SUMMARY COMPARISON OF OPTIONS I AND II**

<b>ITEM</b>	<b>OPTION I</b>	<b>OPTION II</b>
Description	Interim Supportive Housing Community	Permanent Affordable/ Market-Rate Housing
Density	17 units/102 residents	446 units (223 affordable)
Total Development Costs	\$12.8M-\$15M	\$109M
Total Cost to City	\$12.8M-\$15M	\$29.6M <sup>2</sup> -\$34.6M
Costs per unit	\$125K-\$147K <sup>3</sup>	\$133K <sup>4</sup> -\$155K <sup>5</sup>
Timeline / months	9 months	4.5-6 years
Timeline / completion date	May 2017	Fall 2022
Pros	<ul style="list-style-type: none"> <li>• Meets need to rapidly house homeless individuals.</li> <li>• Meets critical need for onsite supportive services.</li> <li>• Activates and provides amenities to the surrounding neighborhood.</li> <li>• Creates interim pipeline of residents in advance of 600 permanent PSH units being completed.</li> <li>• Leverages funding from Santa Clara County and HACSC for immediate housing solutions for the homeless.</li> <li>• Utilizes Property for permanent housing after 15-years.</li> </ul>	<ul style="list-style-type: none"> <li>• City's investment results in permanent housing affordable for 55 years.</li> <li>• Makes higher density housing available after 6 years (as opposed to after interim community).</li> </ul>
Cons	<ul style="list-style-type: none"> <li>• Requires considerable investment for structures that are interim.</li> </ul>	<ul style="list-style-type: none"> <li>• Higher cost to the City (+131%) and cost per unit (+6%).</li> <li>• Duration to complete (and house residents) is longer.</li> <li>• Delays the delivery of amenities to the neighborhood for several years.</li> <li>• Vulnerable to risk of escalating costs over time.</li> <li>• Predicated on affordable housing developer's ability to secure State and federal tax credits to fund the project.</li> </ul>

<sup>2</sup> This cost assumes an estimated \$5,000,000 in revenue from sale of a portion of the Property to a market rate developer.

<sup>3</sup> Figure is specified in Abode's proposal.

<sup>4</sup> Cost per affordable unit if land is sold to a market rate developer at estimated price of \$5,000,000.

<sup>5</sup> Estimated prices based upon analysis of recently approved and currently considered affordable housing projects.

**ATTACHMENT C**

**GROUND LEASE**

**BY AND BETWEEN**

**CITY OF SAN JOSE**

**(LESSOR)**

**AND**

**ABODE SERVICES**

**(LESSEE)**

**(EVANS LANE)**

## GROUND LEASE

### (Evans Lane)

THIS GROUND LEASE ("Lease") is entered into and made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **City of San José**, a municipal corporation ("Lessor" or "City") and **Abode Services**, a California nonprofit public benefit corporation ("Lessee").

### RECITALS

A. The City is the owner of certain real property located on the east side of Evans Lane, north of Curtner Avenue, between Almaden Expressway and Highway 87 in the City of San José, as more particularly described on **EXHIBIT A** attached hereto (the "Property").

B. Lessee intends to develop an affordable housing project on the 5.93 acre Property.

C. The Lessee's affordable supportive housing project is intended to include seventeen (17) manufactured housing buildings that will each provide six (6) single bedrooms with shared facilities, for a total of one hundred two (102) affordability restricted single bedroom/shared facilities units (the "Dwelling Units"), two (2) manufactured buildings that will include a manager's unit, staff rooms and facilities, and a community room, together with associated improvements and landscaping (the "Project").

D. The City will be providing a grant of up to Fifteen Million Dollars (\$15,000,000.00) from Low and Moderate Income Housing Asset funds to fund the development of the Project, including up to \$400,000 in predevelopment funding.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained in this Lease, the parties agree as follows:

#### 1. DEFINITIONS

The following terms shall have the following meanings in this Lease:

"Affordability Restriction" shall mean the affordability restrictions to be recorded against the Lessee's leasehold interest in the Property created by this Lease and recorded concurrently with the memorandum of this Lease.

"Default" shall mean an Event of Default as defined in Section 13.

“Dwelling Unit” shall mean a single bedroom in a building together with the use of shared facilities and common spaces within the building, each of which are intended to be occupied by Tenants of the Project.

“Grants” shall mean the grant(s) from the City of San José to Lessee for the Project.

“Grant Documents” shall mean all Grant agreements, notes, deeds of trust, security documents, including regulatory agreements, use agreements, security agreements, fixture filings, and financing statements required of the Lessee which are executed by the Lessee in connection with the Grant.

“Improvements” shall mean the buildings, structures and other improvements, including the building fixtures therein, now or hereafter located on the Property.

“Lease” shall mean this ground lease between the Lessee and the Lessor for the Property and shall include any and all amendments made to this Lease in writing.

“Lease Term” shall have the meaning provided in Section 2.

“Lease Year” shall mean a period of one calendar year beginning January 1 and ending December 31. The first Lease Year shall commence on the first day of the Lease Term and end on the last day of the following December. The last Lease Year shall begin on January 1 of that year and end on the last day of this Lease.

“Leasehold Deed of Trust” shall mean any mortgage, deed of trust, security agreement or collateral assignment securing a Loan or Grant and encumbering the leasehold interest in the Property.

“Lender(s)” shall mean the following grantor: the City of San José.

“Lessee” shall mean Abode Services, a California nonprofit public benefit corporation, including its successors and assigns.

“Lessor” shall mean the City of San José, a municipal corporation.

“Memorandum of Lease” shall mean the Memorandum of Lease in substantially the form attached as **EXHIBIT B** to be entered into between the Lessor and Lessee.

“Net Cash Flow” shall mean Project Gross Receipts less Project Permitted Expenses.

“Party” shall mean the Lessor or the Lessee individually.

“Parties” shall mean the Lessor and the Lessee collectively.

“Project” shall have the meaning given in Recital C above.

“Project Gross Receipts” shall mean all rents, rent operating subsidies, if any, and other consideration or amounts received by or credited to the Lessee directly or indirectly during the calendar year and derived from operation of the Property and/or the Project (before considering any related expenses, cost or commission) and shall include but not be limited to: all rents, including interest on any rent deposits to the extent received by Lessee; fees and charges paid by or on behalf of Tenants; deposits forfeited by Tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room operations; and any proceeds from the rental of parking spaces to Tenants if parking privileges are not included in rent payment for dwelling units. Project Gross Receipts shall be determined on a cash basis method of accounting unless otherwise agreed to by the City.

“Project Permitted Expenses” shall mean all reasonable and necessary, direct, unduplicated, out of pocket expenses and disbursements which Lessee shall pay during the calendar year because of or in connection with the ownership, operation, maintenance of the Property and/or the Project and such other uses as may be approved in writing by the City. New expenses not shown in the proforma budget attached to the City’s grant agreement may only be added to subsequent budgets for new services to the Project and must be approved in writing in advance by the City. Project Permitted Expenses shall be determined on a cash basis method of accounting unless otherwise agreed to by the City. Project Permitted Expenses shall not include depreciation, amortization, depletion and other non-cash expenses, or liquidated damages due under the Grant Agreement.

“Property” means the land leased hereunder, more fully described in the attached **EXHIBIT B** and incorporated into this Lease by this reference.

“Taking” means institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States, State of California, County of Santa Clara, City of San José or any other governmental authority, or any other entity under the right of eminent domain.

“Tenants” shall mean the residents of the Project who are authorized by Lessee to occupy the Dwelling Units consistent with the Affordability Restriction.

## **LEASE; TERM; RENT; USE; TAXES AND ASSESSMENTS**

Lease of the Property. For and in consideration of the covenants and agreements to be kept and performed by the Lessee, Lessor hereby leases the Property to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Property from the Lessor pursuant to the terms of this Lease. The Lessee or its designee shall construct and operate the Project in compliance with all applicable laws. Prior to the effective date of this Lease, Lessor and Lessee shall execute the Memorandum of Lease, in substantially the form of **EXHIBIT B**, and shall record the Memorandum of Lease in the Official Records of the County of Santa Clara. The Lessor shall, in its sole discretion, have the option to record this Lease.

Commencement. The Lease shall commence on \_\_\_\_\_ (“Commencement Date”). Prior to that date, the Lessor and Lessee may enter into a Right of Entry Agreement to provide the Lessee with access to the site for testing and other purposes.

Lease Term. The term of this Lease (the “Lease Term”) shall commence on the Commencement Date and shall continue from such date until the fifteenth anniversary of the Commencement Date, unless earlier terminated in accordance with this Lease.

Rent. The Lessee shall pay to the Lessor, at the City of San José, 200 East Santa Clara Street 12<sup>th</sup> Floor, San Jose, CA 95113, or such other place as Lessor may designate in writing, “Rent” in the amount of One Dollar (\$1.00) per Lease Year plus an annual amount rent equal to 100 percent (100%) of Net Cash Flow. Rent shall be payable on the Commencement Date, and annually thereafter on or before **July 1**.

Use of Project. Lessee shall at all times during the Lease Term use or cause the Project to be used for affordable housing purposes as set forth in this Lease and the Restriction, consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Project and the Affordability Restriction. Lessee further agrees:

(i) not to use the Project for any disorderly or unlawful purpose, but only to provide proper housing and related facilities to Tenants, and to maintain the character of the Project as required by any Grant Documents, for so long as such agreements remain in effect;

(ii) to use reasonable efforts to prevent any Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Property;

(iii) to use reasonable efforts to prevent any Tenant from violating any of the covenants and conditions of this Lease with respect to the Property;

(iv) to take reasonable action, if necessary, to abate any violation of this Lease by any Tenant upon notice from the Lessor.

#### Taxes and Assessments.

(i) Payment by Lessee. Lessee acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Lessee agrees to pay and discharge, as additional rent for the Property during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Property, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not

commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Property, the Property or any improvements which are now or hereafter located thereon, or against any of Lessee's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to this Lease on account of any taxable possessory right which Lessee may have acquired pursuant to this Lease. Lessee shall pay or reimburse Lessor, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Lessee hereunder. Nothing herein shall impair Lessee's right to request and receive exemption from the payment of real estate taxes under California Revenue and Taxation Code Section 214(g).

(ii) Lessee's Right to Contest. If Lessee disputes any amount or validity of any liens, taxes, assessments, or charges upon the Property or the Improvements, Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. Lessor agrees to render to Lessee all reasonable assistance, at no expense to Lessor, in contesting the validity or amount of any such liens, taxes, assessments or charges, including joining in the signing of any protests or pleadings which Lessee may deem advisable to file. During any such contest, Lessee shall (by the payment or bonding of such liens, disputed taxes, assessments or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Property.

(iii) Triple Net Lease. This Lease is a triple net lease in that the Lessee is responsible for paying for any real estate taxes, building insurance, and maintenance. If Lessor pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Lessor will be entitled to be reimbursed by Lessee the full amount of such payments as additional rent within thirty (30)

days of written demand by Lessor. Failure to timely pay the additional rent shall be an Event of Default (as defined in Section 13).

Lessor's Option to Terminate. The Lessor may, in its sole discretion, terminate the Lease if the entitlements necessary for construction of the Project are not received within 18 months of the execution of this Lease.

## **TITLE TO IMPROVEMENTS; MAINTENANCE; INSURANCE**

Title to Improvements. Lessor hereby grants to Lessee, without warranty express or implied, all right, title, or interest that Lessor may have in the Improvements. The Improvements shall be and remain the property of Lessee during the Lease Term provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. When the Lease Term expires or, when the Lease is otherwise terminated under the terms of this Lease, title to the Improvements shall revert to and vest in Lessor without cost to Lessor. It is the intent of the Parties that this Lease and Memorandum of Lease shall create a constructive notice of severance of the Improvements from the Property and without the necessity of a deed from Lessor to Lessee. The Improvements shall be owned in fee by the Lessee for the term of this Lease. At the request of Lessor, and at the end of the Lease Term or when the Lease is otherwise terminated, Lessee agrees to execute a confirmatory quitclaim deed for the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Property and the Improvements free and clear of Lessee's leasehold interest in the Property, ownership interest in the Improvements and all monetary liens and monetary encumbrances not caused or expressly agreed to by Lessor.

Permits, Licenses and Easements. Lessor agrees that, within thirty (30) days after receipt of written request from the Lessee, it shall (at no expense to the Lessor) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work the Lessee may do pursuant to this Lease, and shall also join in any grants of easements for public utilities useful or necessary for the Project or the Improvements. Provided however, that any such easements or licenses shall be limited to the actual strip of land where the utilities are located and shall include provisions for termination of the easement in the event that it no longer serves the needs of the Project.

Maintenance of the Project. During the Lease Term, Lessee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Project in good repair and tenantable condition, reasonable wear and tear excepted. Lessor may inspect Project to confirm such obligations have been met. Lessor shall have no obligation to maintain the Project or to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Project. Lessee hereby expressly waives all right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

Utilities. Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Project, and the Lessee shall pay or cause same to be paid currently and as due. This provision does not preclude Lessee from requiring payments of utilities from Tenants consistent with the Affordability Restriction.

## **INDEMNIFICATION; HAZARDOUS MATERIALS.**

Indemnification. Lessor shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Property, for any injury or damage to the Improvements, or to any property of Lessee, or to any property of any other person, entity or association on or about the Property or the Improvements. Lessee shall defend, hold harmless and indemnify the Lessor and its officials, officers, agents, contractors, and employees (each an "Indemnified Party" and together, the "Indemnified Parties"), of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Property or the Improvements, including adjoining sidewalks and streets and any of its operations activities thereon or connected thereto; provided, however, that this Section shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Indemnified Parties from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or active negligence by an Indemnified Party.

### Hazardous Materials.

Lessee shall not introduce any Hazardous Substance (as defined below), in, on or to the Property except (i) small quantities of common chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct business at the Property or (ii) other Hazardous Substance that are necessary for the operation of Lessee's business, provided that Lessee shall at all times comply with all federal, state and local laws, ordinances and regulations now or hereafter in effect relating to the use, storage and disposal of Hazardous Substances. Lessee shall immediately notify Lessor of any release or contamination or any inquiry, test, investigation, or enforcement proceeding by or against Lessee or the Property concerning a Hazardous Substance of which Lessee has knowledge. If Lessee's release, storage, use, disposal or transportation of any Hazardous Substance in, on or adjacent to the Property results in any contamination of the Property or the soil or surface or groundwater in or about the Property, regardless of whether such release, storage, use, disposal or transportation of any such Hazardous Substance occurred prior to or after the date of this Lease, Lessee shall clean-up or otherwise remediate all such contamination at its expense.

Lessee shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release and

any condition of pollution, contamination or Hazardous Substance-related nuisance on, or under or from the Property as such terms are defined below.

For purposes of this Section, the following definitions shall apply:

“Hazardous Substance” shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including, but not limited to, all of those materials and substances set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Property.

“Environmental Law” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

“Release” shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substances.

## **ALTERATIONS.**

General Construction Standards. Any alterations, improvements or repair work to the Project shall be accomplished expeditiously and diligently. Lessee shall pay (or cause to be paid) all costs and expenses associated therewith. Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby.

Compliance Laws; Issuance of Permits. All improvements to the Property shall be constructed in strict compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction.

Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

Conditions to Commencement of Construction. In no event shall Lessee commence any construction on the Property until the following conditions have been satisfied or waived by Lessor, in addition to other conditions and requirements imposed by this Lease:

Lessee has obtained building permits and all other governmental approvals necessary for the construction of the improvements.

Lessee has sufficient funds, or has obtained adequate financing, necessary for construction of any such improvements;

Lessee has notified all contractors and posted required notices that the Property is not subject to mechanics liens.

Rights of Access. Following 24 hours notice, except in the case of emergency and subject to the statutory rights of Tenants, representatives of Lessor shall have the reasonable right of access to the Property and the improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease. This limitation of access shall not apply to the City's inspectors or other employees and officers acting within their legal authority.

Notice of Completion. Within 10 days of completion of any construction, Lessee shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion (the "Notice of Completion") with respect to the improvements, and Lessee shall deliver to Lessor, at no cost to Lessor, two (2) sets of the final as-built plans and specifications of the Improvements.

## **GRANTS**

Grant Obligations. Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Grants to operate the Project as set forth therein.

Liens and Encumbrances Against Lessee's Interest in the Leasehold Estate. Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with the Affordability Restriction, and all other regulatory agreements and liens related to the Grants.

Cost of Grants to be Paid by Lessee. Lessee shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Grants, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Grants.

Notice and Right to Cure Defaults Under Grants. Upon the recording of a Memorandum of Lease, Lessor may record in the office of the Recorder of the County in which the Property is situated a request for notice of any default for any deed of trust securing a Grant. In the event of default by the Lessee under a Grant, the Lessor shall have the right, but not the obligation, to cure the default. Any payments made by the Lessor to cure a default shall be treated as rent due from the Lessee which shall be paid within thirty (30) days of the date on which the payment was made by the Lessor.

## **PERMITTED MORTGAGES AND LENDER RIGHTS**

Lessor hereby consents and agrees as follows:

Consent to Mortgage. Lessor hereby consents to the Grants identified pursuant to Section 1(d) and any leasehold deeds of trust securing such Grants and encumbering the leasehold.

Preservation of Leasehold Benefits. After the recordation of the deeds of trust securing the Grants against the leasehold estate and during the term of such Grants, Lessor agrees:

Voluntary Leasehold Termination. That Lessor will not voluntarily cancel or surrender the Lease, or amend the Lease to increase the obligations of Lessee or the rights of Lessor thereunder or voluntarily encumber its fee interest in the land beyond its recording of the Affordability Restriction described in Recital B above, without the prior written consent of Lenders;

Effect of Lessee Waiver. That Lessor will not enforce against any Lender any waiver or election made by Lessee under the Lease which has a material adverse effect on the value of the Leasehold without the prior written consent of Lenders;

Notice to Lender. That Lessor will send to each Lender a copy of any notice given by Lessor to Lessee under the Lease at such address that has been provided to Lessor in writing in accordance with Section 15(b), Notice;

Insurance and Condemnation Proceedings - Notice. That Lessor will provide reasonable prior notice to Lender of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Property and will permit Lender to participate therein as an interested party.

Right to Pay Taxes and Cure Defaults. The Lenders, shall have the right (but not the obligation) to pay any taxes payable by Lessee with respect to the Property, and to cure any monetary or non-monetary default by Lessee under any deed of trust or other encumbrance on the Property or the Leasehold.

### Right of Lender to Cure.

Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given each Lender written notice of such default and such Lenders shall have failed to remedy such default, acquire Lessee's leasehold estate created by this Lease, commence foreclosure or commence other appropriate proceedings as set forth in, and within the time specified by this Section.

Any Lender which has an outstanding Leasehold Deed of Trust shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of breach. Any Lender and its agents and contractors shall have a right to enter the Property upon prior written notice reasonably delivered to the Lessor for purposes of accomplishing the foregoing, so long as such Lender indemnifies and holds Lessor harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from Lessor's active negligence or willful misconduct). Each Lender shall have ninety (90) days after mailing of notice from Lessor describing such default to cure the default; provided, however, that if it is not reasonably possible to effect a cure within ninety (90) days, no default shall occur under this Lease so long as Lender shall give notice to the Lessor thereof, commence such cure within the ninety (90) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to Lessor and further provided, if it is necessary for Lender to obtain possession of the Property in order to effect cure, the period within which Lender is permitted to effect cure shall be extended by the time that is required for Lender to obtain such possession, provided the Lender (i) diligently prosecutes such possession, and (ii) cures such defaults that do not require possession.

All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by Lenders.

Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) business days' prior written notice by the other Party or a Lender, it will execute, acknowledge and deliver to the other Party or to such Lender a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; and (b) the date through which the Rent has been paid.

Notice to Lessor of Leasehold Deeds of Trust. Lessee shall provide written notice to Lessor of the name and address of each Lender prior to the execution of this Lease and written notice of any changes in such parties and their addresses within 10 days of Lessee's receipt thereof.

### **ADDITIONAL MORTGAGEE PROTECTION PROVISIONS**

No Modifications. Lessor and Lessee shall not amend or modify this Lease in any material respect nor shall Lessee exercise any option or election by the Lessee without the prior written consent of the Lenders.

Recognition of Transferee. Foreclosure of any Leasehold Deed of Trust, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Deed of Trust, or any conveyance of the Leasehold estate hereunder from Lessee to any Lender or its designee through, foreclosure, shall not require the consent of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee hereunder so long as such purchaser or other transferee shall assume in writing all obligations of Lessee under this Lease.

Notices of Proceedings. Lessee shall give all Lenders and Lessor notice of any, arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Property, and any Lender shall have the right to intervene therein and shall be made a party to such proceedings. If any Lender shall not elect to intervene or become a party to the proceedings, Lessee shall provide such Lender with notice of such proceeding and a copy of any award or decision made in connection with such proceeding.

## **INSURANCE**

Required Insurance Coverage. Lessee shall at all times during the Lease Term maintain in full force and effect, at Lessee's sole cost and expense, the insurance set forth on the attached **EXHIBIT C**.

Proceeds of Insurance. For so long as any Grant on the Project is outstanding, all fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Project damaged or destroyed if: (i) the Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible, and (ii) to the extent required, each Lender with an outstanding Grant permits such repair or rebuilding, provided that the extent of Lessee's obligation to restore the Project shall be limited to the amount of the insurance proceeds. If the Project is not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Grants. If no Grant is outstanding, all insurance proceeds received under the policies set forth in this Article shall be used, to the extent possible, for reconstruction or repair in a manner consistent with the provisions of Section 7(c) and Section 10(b).

## **CONDEMNATION, DAMAGE OR DESTRUCTION OF THE PROJECT**

Condemnation. If the Project or the Property or any part thereof shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, the Lessor and the Lessee shall request that awards and other payments on account of a taking of the Project and the Property (less costs, fees and expenses incurred by the Lessor and the Lessee in

connection with the collection thereof) shall be divided by the presiding court between loss of value of the fee interest in the Property and loss of value of the Project. In any case, such awards and payments shall be applied as follows:

Net awards and payments received on account of a partial taking of the Project, other than a taking for a temporary use not exceeding one (1) year shall be allocated and paid in the following order of priority:

If the Lessee and Lessor reasonably believe restoration is economically feasible, and unless the Lessee is then in default and the opportunity to cure has expired under the Grant Documents, first, to pay the cost of restoration of the Project, provided that the extent of the Lessee's obligations to restore the Project shall be limited to the amount of the net award and payment received on account of the taking.

Second, or first if: (i) the Lessee or Lessor does not reasonably believe that restoration is economically feasible, or (ii) the Lessee is in default and the opportunity to cure has expired under the Grant Documents, to any Lenders (in the order of their respective lien priority, if there is more than one Lender) in an amount equal to the decrease (if any) in the value of the security for their respective Grants as a result of the partial taking (calculated as set forth below in this subsection, less amounts payable to or recovered by the Lender pursuant to such taking, but not to exceed the unpaid balance of their Grants. For purposes of this subsection, the amount of decrease in the value of the security for a Grant shall be the amount, if any, necessary to reduce the outstanding principal of said Grant such that the Loan to Value Ratio (as defined below) of said Grant immediately following the taking is equal to the Loan to Value Ratio of said Grant immediately preceding the taking. Grant to Value Ratio shall mean that fraction the numerator of which is the sum of the principal amount of the Grant plus the principal amounts of all Grants higher in lien priority to the Grant and the denominator of which is the appraised value of the Project immediately following the taking or immediately preceding the taking, as applicable. The values of the Project immediately preceding the taking and immediately following the taking shall be determined by an MAI or SRI appraiser selected by the Lessee.

The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in Section 10(a)(ii) – (vii); provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Property or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

Net awards and payments received on account of a partial or total taking of only the Lessor's fee interest in the Property or the reversionary interest in the Improvements (that is, a taking of Lessor's fee interest in the Property or the Lessor's reversionary interest in the Improvements that has no effect on the value of the Lessee's leasehold interest in the Property or the Lessee's fee interest in the Improvements), including severance damages, shall be paid to the Lessor, which amount shall be free and clear of any claims of the Lessee, or any other persons claiming rights to the Property through or under the Lessee, other than Lenders to which the Lessor has subordinated its interest in the Property.

Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee; provided, however, that if such taking for temporary use has resulted in any damage to or destruction of the Project, such net awards and payments shall be first applied to pay the cost of restoration thereof if the Lessee determines that restoration is feasible. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to the Lessor.

Net awards and payments received on account of a total taking of the Project shall be allocated and paid in the following order of priority:

First, to any Lenders with then-outstanding Grants secured by the Project (in the order of their respective lien priority, if there is more than one Lender), in an amount equal to the unpaid balance secured by their respective Grants to the extent there are sufficient funds to make such payments;

The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in Section 10(a) above; provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Property or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

The Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Project (other than funds received from Lenders). The Lessor shall receive that portion of the balance equal to the balance multiplied by a fraction the numerator of which is the number of years elapsed from the date of the Lease to the date of the taking, and the denominator of which is the Lease Term. The Lessee shall receive the balance after deduction of the Lessor's portion.

The Lessee shall receive any award granted for or allocated to trade fixtures, moving expenses or loss of business.

If the Project is taken or condemned during the last five (5) years of the Lease Term under circumstances described in Section 10(a) above, the Lessee may elect to terminate the Lease and proceeds of any payment or award shall be distributed in accordance with the provisions of Section 10(a) above.

## **LESSEE COVENANTS**

Lessee covenants and agrees for itself, and its successors and assigns, that:

Use of Property. During the term of this Lease, Lessee and such successors and assigns shall comply with the following requirements:

Permitted Uses. Lessee shall devote the Property to, exclusively and in accordance with, the uses specified in this Lease. The Lessee shall rent the Dwelling Units in accordance with this Lease and the Affordability Restriction.

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

Non-Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size and design.

Access for Disabled Persons. Comply with all applicable laws providing for access for persons with disabilities, including but not limited to the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

Demolition of Improvements. Upon the end of the Lease Term, if Lessor requests, Lessee shall demolish the Improvements leaving the Property free and clear of such Improvements.

Financial Information. During the Lease Term, Lessee shall provide to Lessor copies of (i) federal income tax returns of Lessee and its general partner(s), if any, within one hundred twenty (120) days after the end of Lessee's fiscal year, (ii) audited income and expense statements, a balance sheet, and a statement of all changes in financial position, all signed by authorized parties of Lessee, each within one hundred twenty (120) days after the end of Lessee's fiscal years and (iii) such additional financial information as may be reasonably requested by Lessor.

## **QUIET ENJOYMENT**

Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Lease Term, subject only to the provisions of this Lease, the Affordability Restriction, and all applicable requirements of law.

## **DEFAULTS AND REMEDIES**

Any one or more of the following events shall constitute an "Event of Default:"

Failure to make any payment required under this Lease, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nonpayment; or

Failure of the Lessee to observe and perform any material covenant, condition or agreement hereunder on its part to be performed, and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, the Lessee fails to provide a schedule of cure to the Lessor, acceptable to Lessor, and after receipt of said notice to cure, and to proceed with diligence to cure in accordance with said schedule; or

A general assignment by the Lessee for the benefit of creditors; or

The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or

The appointment of a receiver or other custodian to take possession of substantially all of Lessee's assets or of this leasehold which appointment is not withdrawn or dismissed within ninety (90) days; or

The Lessee becomes insolvent or declares it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Project; or

Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within ninety (90) days.

No breach by a party shall be deemed to have occurred under this Lease unless another party first delivers to the non-performing party a written request to perform or remedy (the "Notice of Breach"), stating clearly the nature of the obligation which such non performing party has failed to perform. If Lessee is afforded a cure period for such failure, the Notice of Breach shall state the applicable cure period, if any, provided hereunder.

Remedy of Material Breach by Lessee. At any time after the occurrence of an Event of Default hereunder, Lessor, subject in all respects to the provisions of this Lease with respect to Lenders including notice and cure rights in Sections 7 and 8, may terminate this Lease by giving Lessee written notice thereof, setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically

terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenants or others are not in default thereunder and attorn to Lessor as their lessor. Upon the exercise of Lessor's remedies pursuant to this Section, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's estate and Lessee's rights hereunder.

## **ASSIGNMENTS AND TRANSFERS**

Lessee shall have the right to sublease any of the Dwelling Units in the Project, subject to the requirements of the Affordability Restriction, then effective, at any time during the Lease Term without the prior consent of Lessor.

Lessee shall not assign this Lease or sublease any portion of the Property except as provided above without the prior written consent of Lessor, which consent shall be within Lessor's sole and absolute discretion.

## **MISCELLANEOUS**

Instrument Is Entire Agreement. This Lease including the Recitals, the attached Exhibits and the Affordability Restriction constitute the entire agreement between the Parties with respect to the matters set forth in this Lease. This Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, previously entered into between the Lessor and the Lessee relating to the lease of the Property by the Lessor to the Lessee.

Notice. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party:

If to the Lessor:

City of San Jose  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San Jose, CA 95113  
Attn: Project Development  
Re: Evans Lane

If to the Lessee:

Abode Services

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Re: Evans Lane

Recording. The parties agree that the Memorandum of Lease shall be recorded in the Office of the Recorder in Santa Clara County at the time of execution of this Lease.

Non-Waiver of Breach. Neither the failure of the Lessor or the Lessee to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Lessor or the Lessee to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment (i) of any covenant contained in this Lease or of any of the rights or remedies of the Lessee or the Lessor under this Lease, or (ii) or the right in the future of the Lessor or the Lessee to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions of this Lease.

Effective Date; Counterparts. This Lease shall be effective upon mutual execution by the Parties. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Lease Binding on Successors. This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee, and their respective permitted successors and assigns and, as provided in this Lease, Lenders of the Lessee.

Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent or of partnership, joint venture or association or of buyer and seller between the Lessor and the Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act or acts of the Parties, shall be deemed to create any relationship between the Lessor and the Lessee other than the relationship of landlord and tenant.

No Merger. There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Property, by reason of the fact that this Lease or such interest in the Lease, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a leasehold deed of trust to a beneficiary who shall hold the fee estate in the Property or any interest of the Lessor under this lease.

Gender and Number. Words of any gender used in this Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

Titles. The titles and article, section or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

Severability. If any provision of this Lease or the application of any provision to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Amendments. This Lease may not be amended or modified without the prior written consent of Lessor and Lessee.

This document continues on the following page.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

Approved as to form:

LESSOR:

CITY OF SAN JOSE, a municipal corporation

By: \_\_\_\_\_  
S. Shasta Greene  
Sr. Deputy City Attorney

By: \_\_\_\_\_  
Jacky Morales-Ferrand  
Director of Housing

Signatures continue on the following page.

LESSEE:

ABODE SERVICES, a California nonprofit public  
benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

## EXHIBIT A

### LEGAL DESCRIPTION

All that certain real property, together with all appurtenances thereto and all improvements now or hereafter located thereon, situated in the County of Santa Clara, State of California, and described as follows:

#### PARCEL ONE:

All that certain real property situate in the City of San José, County of Santa Clara, State of California, being a portion of Lot 8 of the Canoas Tract as shown on the map entitled "Map of Canoas Garden Tract" filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 19, 1912 in Book "N" of Maps page 85 and being more particularly described as follows:

Beginning at a point on the Southeasterly line of the hereinabove mentioned Lot 8 from which the most Easterly corner of said Lot 8 bears North  $52^{\circ} 07' 57''$  East 31.88 feet; thence along said Southeasterly line South  $52^{\circ} 07' 57''$  West 237.48 feet; thence leaving said Southeasterly line North  $32^{\circ} 52' 03''$  West 154.58 feet; thence North  $51^{\circ} 36' 18''$  East, 269.01 feet to the Northeasterly line of said Lot 8; thence along said Northeasterly line South  $38^{\circ} 00' 03''$  East 115.77 feet to the most Northerly corner of the parcel deeded to the State of California and recorded September 17, 1985 in Book J460, Page 581 Official Records of Santa Clara County; thence along the Westerly line of parcel from tangent bearing of South  $2^{\circ} 07' 14''$  East along a curve to the right with a radius of 799.99 feet, through a central angle of  $3^{\circ} 44' 01''$  and an arc length of 52.13 feet to THE TRUE POINT OF BEGINNING.

#### PARCEL TWO:

An ingress and egress and public utility easement appurtenant to the hereinabove described parcel of land in, over, upon and across the following described real property:

All that certain real property situate in the City of San José, County of Santa Clara, State of California, being a 20.00 feet wide easement for ingress and egress across a portion of Lot 8 of the Canoas Tract as shown on the map entitled "Map of Canoas Garden Tract" filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 19, 1912 in Book "N" of Maps page 85 and being more particularly described as follows:

Commencing at the most Southerly corner of the hereinabove described Lot 8, said corner being on the monument line of Canoas Garden Avenue as shown on the Records of Survey filed for record in Book 361 of Maps, at Page 19, and Book 658 of Maps, at pages 21 and 22, Santa Clara County Recorder's Office; thence along the Southeasterly boundary of said Lot 8 North  $52^{\circ} 07' 57''$  East 94.74 feet to intercept the Right of Way and Easement line as granted to the County of Santa Clara by Emil R. Busher and Herman R. Busher by deed on February 10, 1960, and filed in Book 4691, page 388 Official Records of Santa Clara County; thence leaving said boundary and proceeding along said Right of Way and Easement line North  $21^{\circ} 44' 58''$  West 129.00 feet to THE TRUE POINT OF BEGINNING of the center line of the ingress and egress easement; thence leaving said Right of Way and Easement line along the center of the 20.00 feet wide easement herein described through a curve to the left from a tangent bearing North  $52^{\circ} 27' 12''$  East with a radius of 130.00 feet, through a central angle of  $24^{\circ} 25' 44''$  and an arc length of 55.43 feet to a point of reverse curvature; thence a curve to the right with a radius of 190.00 feet, through a central angle of  $19^{\circ} 52' 03''$  East 141.00 feet; thence North  $52^{\circ} 07' 57''$  East 269.36 feet.

#### PARCEL THREE:

Exhibit A

All that certain real property situated in the City of San José, County of Santa Clara, State of California, being a portion of Lot 7 and Lot 8 of Maps at Page 85, Santa Clara County Records, more particularly described as follows:

Beginning at the Northeasterly corner of said Lot 7; thence along the Northeasterly line of said Lot 7, South 39° 11' 29" East 280.50 feet to the Southeasterly corner of said Lot 7; thence along the line common to said Lots 7 and 8, South 50° 53' 00" West 588.14 feet to the Northeasterly line of the land described in that certain Deed of Right-of-Way recorded in Book 4691 at Page 390 of Official Records of said County; thence along last said Northeasterly line North 06° 18' 50" West 333.71 feet to the Northwesternly line of said Lot 7; thence last said Northwesternly line North 50° 53' 00" East 406.99 feet to the point of beginning. Containing 139,566 square feet, more or less.

PARCEL FOUR:

Beginning at the Northeasterly corner of said Lot 8; thence along the Northeasterly line of said Lot , South 39° 11' 29" East 122.78 feet to the most Northerly corner of that certain parcel of land described in Document Number 14077825 of Official Records of said County; thence along the Northwesternly line of said Document the following courses: South 50° 21' 21" West 277.87 feet and South 50° 53' 00" West 371.91 feet to the Northeasterly line of the land described in that certain Deed of Right-of-Way recorded in Book 4691 at Page 388 of Official Records of said County; thence along last said Northeasterly line the following two courses North 22° 59' 54" West 56.55 feet and North 06° 18' 50" West 84.48 feet to the line common to said Lots 7 and 8; thence along said common line North 50° 53' 00" East 588.14 feet to the point of beginning. Containing 77,909 square feet, more or less.

APN: 455-31-055; 455-31-053

Exhibit A

**EXHIBIT B**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:  
City of San Jose

When Recorded mail to:  
City of San José  
Housing Department  
200 East Santa Clara Street, 12<sup>th</sup> Floor Tower  
San José, California 95113-1905  
Attn: Loan Management  
Re: Evans Lane

No fee for recording pursuant to  
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Documentary Transfer Tax \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_

Declarant \_\_\_\_\_

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is dated as of \_\_\_\_\_, 201\_, by and among the City of San José, a municipal corporation ("Lessor") and ABODE SERVICES, a California nonprofit public benefit corporation ("Lessee") with respect to that certain unrecorded Ground Lease dated \_\_\_\_\_, 2016 (the "Lease"), between Lessor and Lessee with respect to certain real property located on the east side of Evans Lane, north of Curtner Avenue, between Almaden Expressway and Highway 87 in the City of San José, County of Santa Clara and more particularly described in the attached **EXHIBIT A** (the "Property").

Pursuant to the Lease, Lessor has leased to Lessee and Lessee has leased from Lessor the Property and Lessor grants to Lessee, all the improvements constructed or to be constructed on the Property for the term of the Lease which improvements are and shall remain real property. The Lease commences on \_\_\_\_\_ and shall continue for a term of fifteen (15) years from the commencement, or sooner termination pursuant to the terms of the Lease. This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

Mail Tax Statements to: **ABODE SERVICES.**

\_\_\_\_\_  
\_\_\_\_\_  
Attn: Executive Director  
Re: Evans Lane

This document continues on the following page.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed.

LESSOR:

Approved as to Form:

CITY OF SAN JOSE, a municipal corporation

By: \_\_\_\_\_  
S. Shasta Greene  
Sr. Deputy City Attorney

By: \_\_\_\_\_  
Jacky Morales-Ferrand  
Director of Housing

Signatures continue on the following page.

DRAFT

**LESSEE:**

ABODE SERVICES, a California nonprofit public  
benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

**EXHIBIT A**

**Legal Description**

The land referred to herein is situated in the County of Santa Clara, City of San Jose, State of California, described as follows:

DRAFT

Exhibit B

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 \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_  
DATE NAME OF NOTARY NAME(S) OF SIGNER(S)

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 acknowledge 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 OF NOTARY

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 \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally  
DATE NAME OF NOTARY  
appeared \_\_\_\_\_

NAME(S) OF SIGNER(S)

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 acknowledge 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 OF NOTARY

## EXHIBIT C

### INSURANCE REQUIREMENTS

Lessee, at Lessee's sole cost and expense, shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the Lease by the Lessee, its agents, representatives, employees, subcontractors, suppliers or any third party.

#### **I. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. Property insurance against loss by fire or hazards included within the term "extended coverage," (excluding earthquake coverage) which insurance shall be "all risk" insurance in form and substance. If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance is also required. The City is to be named loss payee on the policy.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

#### **II. Minimum Limits of Insurance**

Lessee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Property insurance shall be in an amount at least equal to the full replacement value of the buildings, improvements, furniture, furnishings, fixtures, equipment and other items (whether personality or fixtures). If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance's limit shall be in an amount equal to 100% of the appraised value of the Property.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

### **III. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

### **IV. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

#### **1. General Liability and Automobile Liability Coverages**

- a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Lessee; products and completed operations of the Lessee; premises owned, leased or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The Lessee's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Lessee's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
- d. Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

#### **2. Workers' Compensation and Employers Liability**

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

**V. Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**VI. Verification of Coverage**

Lessee shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required endorsements shall be attached to the certificate of insurance which shall be provided by the Lessee's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San Jose, CA 95113-1905