

**DISBURSEMENT AGREEMENT
BETWEEN THE COUNTY OF SANTA CLARA
AND 231 GRANT AVENUE, LLC**

(School District Funds)

This Disbursement Agreement (the “Disbursement Agreement”), dated for reference purposes only as of _____, 2023 and effective as of the later of the dates set forth on the signature page hereto (the “Effective Date”), is by and between the County of Santa Clara, a political subdivision of the State of California (“County”), and 231 Grant Ave LLC, a California limited liability company (“Developer”).

RECITALS

- A. In response to a Request for Proposals RFP-FAF-FY19-0175 for the Palo Alto Educator Workforce Housing Development issued by the County on February 14, 2019, Developer submitted to the County a proposal for the development of a 110-unit, mixed income residential development for teachers and school employees (the “Project”) located on real property owned by the County with a street address of 231 Grant Avenue, Palo Alto, California and a Santa Clara County Assessor’s Parcel Number of 132-31-074 (the “Property”).
- B. On January 11, 2022, the County, as lead agency, approved the Project and approved entering into a ground lease (the “Ground Lease”) with Developer pursuant to which the Project will be built and operated.
- C. To support Developer’s financing of the Project, the following school districts located in Santa Clara County have agreed to provide a total of \$3,850,000 (the “School District Funds”) to the County to be disbursed to Developer for construction of the Project, in accordance with the terms set forth in “Funding Agreements” between each school district and the County:
 - a. Palo Alto Unified School District - \$1,450,000;
 - b. Mountain View Whisman School District \$600,000;
 - c. Los Altos School District \$600,000;
 - d. Mountain View/Los Altos High School District \$600,000; and
 - e. Foothill DeAnza Community College District \$600,000.
- D. The County and Developer desire to enter into this Disbursement Agreement to set forth the process for and conditions of disbursement of the School District Funds.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION of recitals hereof and the other mutual agreements, obligations and representations, and in further consideration for the making of the School District Funds, the Developer and County hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions.

In addition to the terms defined in the Recitals above, the following capitalized terms shall have the meanings set forth in this Section 1.1 wherever used in this Disbursement Agreement:

- a. "Approved Project Budget" shall mean the budget for all predevelopment, procurement of prefabricated materials, construction, and other costs for the Project, including sources and uses of funds as approved by the County for the purposes of financing the Project, as attached hereto and incorporated herein as **Exhibit A**.
- b. "City" shall mean the City of Palo Alto.
- c. "Construction Loan Closing" shall mean the closing of the construction loan(s) to be obtained by Developer to commence and bring to completion construction of the Project on the Property.
- d. "Default" or "Event of Default" shall have the meaning set forth in Section 6.01 below.
- e. "Developer" shall mean 231 Grant Ave LLC, a California limited liability company, whose members are Mercy Housing California, a California nonprofit public benefit corporation and Abode Communities, a California nonprofit public benefit corporation.
- f. "Eligible Expenses" shall have the meaning set forth in **Exhibit A**.
- g. "Parties" shall mean the County and Developer.
- h. "Resident Selection Criteria" shall mean the Resident Selection Criteria and Policies for Santa Clara County Participating School Districts, prepared by the Developer and approved by the School Districts, as the same may be amended from time to time.
- i. "School District" shall mean one of the school district entities set forth in Recital C above.
- j. "Sources of Funding" shall mean those sources of funding approved by the County for the Project as listed in **Exhibit A**.

Capitalized terms not otherwise defined in this Disbursement Agreement shall have the meanings ascribed to such terms in the Funding Agreements.

ARTICLE 2. FUNDING PROVISIONS

Section 2.01 Funding. Subject to Developer's satisfaction of the funding conditions set forth in this Disbursement Agreement, the County shall make disbursements of the School District Funds to Developer for Eligible Expenses of the Project. Disbursements by the County of School District Funds shall be deemed to be made *pro rata* from each School District based on each School Districts relative funding contribution.

ARTICLE 3. DISBURSEMENT OF SCHOOL DISTRICT FUNDS

Section 3.01 General Disbursement Conditions. Prior to any disbursement of School District Funds, Developer shall have fulfilled all of the following conditions to the County's reasonable satisfaction, or obtained the County's written waiver of:

A. Organizational Documents. The County has received copies of Developer's organizational documents, including without limitation, and as applicable, (a) articles of organization and operating agreements, (b) certificates of limited partnership, statements of partnership and partnership agreements,

(c) statements of joint venture and joint venture agreements, (d) articles of incorporation, (e) trust agreements, (f) authorizing resolutions and (g) any amendments to any of the foregoing.

B. Representations. Developer is not then in Default in performance of any of the warranties, representations, covenants, or agreements contained herein and their representations set forth in Article 5 shall be true and correct in all material respects.

C. Insurance. County has received evidence satisfactory to County that Developer has obtained the insurance policies required in **Exhibit B** to this Disbursement Agreement and such policies are in full force and effect.

D. Reports and Studies. County has received copies of any due diligence investigations with respect to Developer or the Property as County deems reasonably necessary, including without limitation, environmental reviews, engineering inspections, seismic studies and financial analysis, and any reliance certificates or similar certifications to County regarding the foregoing reasonably requested by County.

E. Financial Statements. County shall have received and approved such audited financial statements and other financial information regarding the financial condition of Developer as required by the County.

F. Operating Budget/Pro Forma. Developer has submitted to County and County has approved a *proforma* operating budget for the first 20 years of operations for the Property.

G. Information and Records. Developer shall provide the County with copies of requests for disbursements or evidence of other disbursements of funds to Developer from other funding sources providing assistance to Developer in connection with Project, if applicable.

H. Closing Documents. Each of the Ground Lease and the Regulatory Agreement (as defined in the Funding Agreements) shall be fully executed and in full force and effect, and the Regulatory Agreement shall have been recorded in the Official Records of the Office of the Clerk-Recorder of the County of Santa Clara.

I. Resident Selection Criteria. Developer shall have finalized the Residential Selection Criteria and dated the same as of the month and year of the Construction Loan Closing.

Section 3.02 Specific Disbursement Conditions. Not more than once per a month, the County shall disburse to Developer School District Funds within approximately 10 days of the County's receipt of a disbursement request signed and certified by Developer (a "Disbursement Request") which satisfies the following conditions:

A. General Disbursement Conditions. Developer shall be in compliance with the general disbursement conditions set forth in Section 3.01.

B. Funding Agreements. The disbursement of funds to Developer shall comply with the requirements of the Funding Agreements.

C. Updated Budget. Developer shall provide the County with a copy of the Approved Project Budget. In the event there have been any material changes to the Project Budget from the most recent Approved Project Budget, the County shall have approved any such changes.

D. Requested Amount and Reconciliation. Developer shall set forth in the Disbursement Request the following:

- a. the requested disbursement amount;
- b. an allocation of the requested disbursement amount to line items on the Approved Project Budget;
- c. copies of invoices or other documentation indicating the cost to be paid and showing the cost constitutes an Eligible Expense; and
- d. an accounting of the use of School District Funds previously disbursed to Developer, along with (i) a certification by Developer that all School District Funds and any other Project sources of income or revenue advanced have been spent in accordance with the prior disbursement requests, and paid to any applicable contract party, subcontractors and suppliers referred to in the prior Disbursement Requests, and (ii) for expenses of \$5,000 or greater, copies of invoices marked paid or copies of cancelled checks.

E. Lien Waivers. Developer shall provide (i) unconditional lien waivers from all recipients of payments made from the preceding disbursement for work performed by the recipient and shall certify that all of their contractors, subcontractors and material suppliers have been paid in full to date, less any applicable retention withheld in accordance with the construction contract for the Project, and (ii) conditional lien releases from the general contractor and subcontractors for the current disbursement request.

F. Project Contracts. The County has received and approved the construction contract for the Project, the architect's agreement for the Project and any other agreements that County determines are material to construction of the Project.

G. Construction Schedule. The County has received and approved the construction schedule for the Project.

H. Plans and Specifications. The County has reviewed and approved a complete set of plans and specifications for the Project. Developer acknowledges and agrees those certain schematic designs of Van Meter Williams Pollack LLP, Job #1925, dated April 30, 2021 have been approved by the County.

I. Utilities. Developer has provided utility will serve letters for gas, electric, sewer, water, telephone and cable.

J. Permits. Developer has provided copies of required site, encroachment and building permits (including those for off-site work) or permit ready letters if permits are not available.

Section 3.03 Return of Funds; Transfer of Personal Property.

A. In the event School District Funds are disbursed to Developer and such funds are not spent by Developer for the requested purpose, upon the County's delivery of written notice to Developer specifying such failure and after providing Developer at least thirty (30) days to review and respond to such notice, Developer shall return such funds to the County and the County shall return such funds to the School Districts (on a pro rata basis based on relative funding contributions), unless otherwise agreed to by the School Districts. No School District Funds shall be spent or retained by Developer unless spent or held in accordance with this Disbursement Agreement.

B. Developer shall be liable to County for the full amount of any School District Funds which are not used towards the development of the Project as contemplated by this Disbursement Agreement due to (a) the fraud or intentional misrepresentation with respect to any representations, warranties or certifications made by Developer in connection with the School District Funds or the Disbursement Agreements, (b) the application of insurance proceeds, condemnation awards or other similar funds or payments attributable to the Property,

which (subject to any requirements of a senior lender) should have been paid to County, or should have been used in a manner contrary to the use actually made by Developer; and (c) waste of the Property after the commencement of the Ground Lease.

C. Although the School District Funds are a grant of funds, in the event that loans made by the County and the City of Palo Alto have been fully paid during the Term of the Regulatory Agreement, the Developer shall make distributions from residual receipts from the Project to the District, on a pro rata basis with the other School Districts, up to the total District Funds. Residual receipts in this paragraph shall have the same general definition as such term in the loan documents for the loan(s) made by the County, with adjustment to such definition as reasonably necessary to reflect the circumstances at the time of the calculation.

ARTICLE 4. COVENANTS

Section 4.01 Acceptance of Obligations. In consideration of the School District Funds to be provided hereunder, Developer warrants, represents and agrees to and accepts the restrictions, obligations and conditions contained in this Disbursement Agreement.

Section 4.02 Compliance with Laws; Plans. Developer shall complete the work on the Project and ensure that all work is done in accordance with good building practices and in conformity with all applicable governmental laws, regulations, rules and codes and in strict accordance with the plans and specifications approved by the County. Developer shall provide written notice to and request prior written approval from the County (which approval shall not be unreasonably withheld) of any change in the plans, would result in an increase or decrease in the cost of construction of the improvements in excess of \$50,000 individually and in excess of \$100,000 in aggregate in the Approved Project Budget.

Section 4.03 Sources. County shall be provided written notice by Developer within ten (10) days of Developer's notice of any new proposed grants, funding or contracts which are proposed as sources of income for the Project other than the approved Sources of Funding.

Section 4.04 Distributions. Following the occurrence and during the continuance of an Event of Default, Developer shall not (a) make any distribution either in cash, stock or any other property, (b) redeem, retire, repurchase or otherwise dispose of any interest in Developer, or (c) repay any outstanding indebtedness or other advance to any partner of Developer.

Section 4.05 Approvals and Compliance. Developer has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by law to be obtained for the Project. Developer shall not make any material changes to the Residential Selection Criteria without the approval of all School Districts which are affected by the changes.

Section 4.06 Record Keeping; Reporting.

A. Construction Period Reporting. Starting with the end of the third full month after the Construction Loan Closing until the completion of construction of the Project, Developer shall provide the County with quarterly reports on the financing and development of the Project (including with respect to the

School District Funds and any other sources), which reports will be provided by the County to the School Districts.

B. Annual Financial Statements. Developer shall furnish or cause to be furnished to County, within 120 days after the close of each fiscal year-end, the annual financial statements for Developer certified as true and accurate by Developer's accountant or Chief Financial Officer. Developer must deliver to County copies of any operating and financial reports provided to other lenders for the Project promptly after submittal.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

Section 5.01 Representations and Warranties. Developer makes the following representations and warranties for the benefit of the County.

a) Developer has complied with all laws and regulations concerning Developer's organization, existence and the transaction of Developer's business, and is in good standing in each state in which Developer conducts business. Developer is authorized to execute, deliver and perform Developer's obligations under each of the agreements entered into in connection with the Project.

b) When duly executed and delivered, this Disbursement Agreement will constitute the legal, valid and binding obligations of Developer in accordance with their respective terms.

c) No action, suit or proceeding is pending or, to the best of Developer's actual knowledge, threatened against or affecting Developer or the Project adversely in any material respect. There (a) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Developer, and (b) has been no assertion or exercise of jurisdiction over, the Developer or any member thereof by any court empowered to exercise bankruptcy powers.

d) Developer is not in material default under any agreement pertaining to the Project to which it is a party, including any lease of real property. The execution, delivery and performance of this Disbursement Agreement will not contravene or constitute a default under or result in a lien upon assets of Developer under any applicable law, any organizational documents of Developer or any instrument binding upon or affecting Developer, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Developer.

e) All information, financial statements, reports, papers and data given or to be given to County with respect to Developer or the Project, including but not limited to Disbursement Requests, are, or at the time of delivery will be, accurate, complete and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

ARTICLE 6. DEFAULT AND REMEDIES

Section 6.01 Event of Default. Each of the following shall constitute a "Default" and "Event of Default" by Developer under this Disbursement Agreement:

A. Breach of Covenants. Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of this Disbursement Agreement within thirty (30) days after the date Developer receives the notice of the breach from the County, or, if the breach cannot be cured within thirty (30) days, the Developer shall have such longer period as is reasonably necessary so long as Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days.

B. Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

C. Assignment; Attachment. Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

D. Suspension; Termination. Developer shall have voluntarily suspended its business.

E. Unauthorized Transfer. Any transfer other than as permitted by Section 7.03.

F. Representation or Warranty Incorrect. Any material Developer representation or warranty contained in this Disbursement Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of this Disbursement Agreement, proving to have been incorrect in any material respect when made and that Developer was aware that the representation or warranty was incorrect when made.

Section 6.03 Occurrence of Default. Upon occurrence of an Event of Default, the County will give written notice to Developer, and, following the expiration of all applicable cure periods, the County may terminate this Disbursement Agreement and proceed with any and all remedies available under this Disbursement Agreement, or any other remedies available under rules of law or equity. Developer agrees that an Event of Default under this Disbursement Agreement shall be deemed an Event of Default under any loan or other agreement Developer has with the County in connection with the Project.

Section 6.04 Waiver of Rights and Remedies. In no event will any payment by County constitute or be construed to be a waiver by County of any breach or violation of the requirements, obligations, conditions, covenants or other provisions of this Contract or any default which may then exist on the part of Developer, and the making of any such payment while any such breach, violation or default exists will in no way impair or prejudice any right or remedy available to County with respect to such breach, violation or default. In no event will payment to Developer by County in any way constitute a waiver by County of its rights to recover from

Developer the amount of money paid to Developer on any item which is not eligible for payment under or for the Project or this Disbursement Agreement or any other right. No delay or omission by County to exercise any right occurring upon any noncompliance or default by Developer with respect to any of the terms of this Disbursement Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by County of any of the covenants, conditions or agreements to be performed by Developer shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

Section 6.05 Non-Waiver of Default. County's failure or delay in giving notice of a breach or an Event of Default will not constitute a waiver of any Event of Default, nor will it change the time of such Event of Default, nor will it deprive the County of its right to institute and maintain any actions or proceedings which County may deem necessary to protect, assert, or enforce any such rights or remedies. Notwithstanding the foregoing, the County will provide notice to Developer of any Event of Default.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01 Address of Notices.

A. All notices, demands or other communications of any type under this Disbursement Agreement shall be in writing and shall be (a) delivered in person, in which event the notice shall be deemed received when delivery is actually made; (b) sent by overnight courier for next business day delivery, in which event the notice shall be deemed received on the first business day after delivery to, and acceptance for delivery by, the courier; or (c) sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, in which event the notice shall be deemed received at the time of personal delivery or on the first attempted delivery on a business day. Each party may change its address by written notice in accordance with this Section. All such notices shall be sent to the following addresses:

PARTIES:

COUNTY: County of Santa Clara
Office of Supportive Housing
2310 N. First St., Suite 201
San Jose, CA 95131
Attention: HCD Division Manager

DEVELOPER: 231 Grant Ave LLC, a California limited liability company
C/o Mercy Housing California
1256 Market Street
San Francisco, CA 94102
Attention: Tim Dunn

And:
Abode Communities
1149 S. Hill Street, Suite 700
Los Angeles, CA 90015
Attention: Lara Regus

With a copy to: Evan Gross
Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612

Section 7.02 Notices. Developer shall promptly notify County in writing of:

a) the occurrence of any Event of Default;

b) any litigation affecting Developer, or the Property, or any other circumstance, event or occurrence that may reasonably be expected to result in a material adverse change in (a) the financial condition of Developer that would prevent it from carrying out Developer's obligations under any of the material documents entered into by Developer in connection with the construction of the Project, or (b) the physical condition or operation of the Property; and

c) any notice that the improvements or construction thereof, the Property or Developer's business fails in any respect to comply with any applicable governmental law, statute, order, ordinance, regulation or permit.

Section 7.03 Assignment; Transfer. Developer acknowledges that a material consideration for County in providing the School District Funds is consideration of the special experience, skill and ability of Developer to entitle and develop the Project in a manner that will achieve the County's objective to provide quality affordable housing. Consequently, Developer will not permit any voluntary transfer, assignment or encumbrance of this Disbursement Agreement other than as may be approved by County in accordance with this Disbursement Agreement.

Any transfer, or assignment, without the County's consent will be voidable, and at the County's election, will constitute an Event of Default under this Disbursement Agreement, provided, however, that a transfer shall not include a transfer of the member or manager interests of the Developer to a transferee who controls, is controlled by or is under common control with the named limited partner or general partner as of the Effective Date; provided, however, the Developer shall give the County prior notice of any such transfer. The County's consent to any such transfer or assignment shall not be unreasonably withheld, conditioned or delayed. No consent to any assignment will constitute a further waiver of the provisions of this Section. If an assignee is approved by the County, all obligations and duties of Developer as set forth herein will be binding on the approved assignee.

Section 7.04 Independent Contractor; No Third-Party Beneficiaries. Nothing contained in this Disbursement Agreement will be construed as creating the relationship of employer and employee or principal and agent between the County and Developer or Developer's agents or employees, and Developer will at all times be deemed an independent contractor and will be wholly responsible for the manner in which it, its agents, or both, perform the services required of it by the terms of this Disbursement Agreement. Developer has the right to exercise full control of employment, direction, compensation and discharge of all persons assisting it in the performance of services hereunder. Developer acknowledges and agrees to be solely responsible for all matters relating to payment of employees, including compliance with Social Security, income tax, withholding and all other laws and regulations governing such matters. Developer will be solely responsible for its own acts and those of its agents and employees during the term of this Disbursement Agreement. Nothing

contained in this Disbursement Agreement will create or justify any claim against the County by any third person with whom Developer may have employed or contracted or may employ or contract relative to the development of the Project, the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services related to this Disbursement Agreement.

Section 7.05 Insurance and Indemnification. Developer will take all responsibility for its work, and will bear all losses and damages directly resulting from it and from the work of any of its contractors or subcontractors, on account of any act, error or omission of Developer in the performance of this Disbursement Agreement. Developer agrees to indemnify, to assume the defense of (if requested) and to hold harmless the County, its officers, representatives, agents, and employees, and each School District (each such party, an "Indemnitee") from every claim, loss, damage, injury, expense (including reasonable attorney's fees), judgment and direct or vicarious liability of every kind, nature and description arising in whole or in part from the performance of this Disbursement Agreement, except to the extent such claim, loss, damage, injury, expense, judgment or vicarious liability is caused solely, exclusively and directly by the negligence or willful misconduct of the Indemnitee. It is the intent of the parties to this Disbursement Agreement to provide the broadest possible coverage for the County and the School Districts. Developer shall reimburse each Indemnitee for all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Developer contests its obligation to indemnify, defend and/or hold harmless the Indemnitees under this Disbursement Agreement and does not prevail in that contest. This indemnification section shall survive the termination or expiration of this Disbursement Agreement.

Each party to this Disbursement Agreement was represented by counsel in the negotiation and execution of this Disbursement Agreement. The parties are aware of the provisions set forth in California Civil Code Section 1717 and intend this paragraph of the Disbursement Agreement to meet these statutory requirements so the reference to attorneys' fees herein above and elsewhere herein will not apply outside of the indemnification context found in this paragraph.

In addition, Developer will maintain the insurance specified in **Exhibit B** to this Disbursement Agreement during the period specified therein.

Section 7.06 Entire Disbursement Agreement. This Disbursement Agreement, including all exhibits attached hereto, contains the entire agreement between the County and Developer. No written or oral agreements with any officer, agent or employee of the County prior to execution of this Disbursement Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Disbursement Agreement.

Section 7.07 Amendments. No alteration or variation of the terms of this Disbursement Agreement will be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Disbursement Agreement, unless made in writing between the parties will be binding on either of the parties.

Section 7.08. Continued Validity. The invalidity of any clause, part or provisions of this Disbursement Agreement will not affect the validity of the remaining portions thereof.

Section 7.09 Captions. The captions of this Disbursement Agreement are for convenience of reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Disbursement Agreement.

Section 7.10 Non-Discrimination. Developer will comply with all applicable Federal, State and Local laws and regulations including Santa Clara County’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101, 1102 and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. Developer will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Developer discriminate in provision of services provided in or under this Contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

Section 7.11 Non-Smoking Policy. To the extent applicable, Developer and its employees, agents and subcontractors, shall comply with the County’s No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

Section 7.12 Nutritional Beverage Provisions. To the extent applicable, if Developer provides beverages through County departments, or at County programs, County sponsored meetings, County sponsored events, or at County owned/operated facilities, Developer shall not use County funds to purchase beverages that do not meet the County’s nutritional beverage criteria, if applicable. The six categories of nutritional beverages that meet these criteria are: (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

Section 7.13 Wage Theft Prevention

A. Compliance with Wage and Hour Laws: To the extent applicable, Developer, and any contractor it employs to complete work under this Disbursement Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

B. Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted. Relevant investigatory government agencies

include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

C. Prior Judgments against Developer and/or its contractors and subcontractors: **BY SIGNING THIS AGREEMENT, DEVELOPER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT DEVELOPER, ITS CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. DEVELOPER FURTHER AFFIRMS THAT IT, ITS CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.**

D. Judgments During Term of Contract: If at any time during the term of this Disbursement Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that DEVELOPER, its contractor or any subcontractor it employs to perform work under this Disbursement Agreement has violated any applicable wage and hour law, or DEVELOPER learns of such a judgment, decision, or order that was not previously disclosed, DEVELOPER must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. DEVELOPER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require DEVELOPER to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

E. County's Right to Withhold Payment: Where DEVELOPER, its contractor or any subcontractor it employs to perform work under this Disbursement Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to DEVELOPER until such judgment, decision, or order has been satisfied in full.

Section 7.14 Exhibits. All exhibits attached and referred to in this Disbursement Agreement are incorporated in this Disbursement Agreement by this reference as if set forth fully herein. These include:

- | | |
|------------------|---|
| Exhibit A | Project Budget, Project Schedule and Eligible Expenses |
| Exhibit B | Insurance Requirements |

Section 7.15 Authority to Execute. Each party hereto warrants that the person who signs this Disbursement Agreement has full authority to do so and to perform all obligations without the consent or approval of any other party or person.

Section 7.16 Governing Law. This Disbursement Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Disbursement Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another

jurisdiction). Any suit or proceeding relating to this Disbursement Agreement, including mediation or other alternative dispute resolution proceedings, shall be brought only in Santa Clara County, California. **EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA**

Section 7.17 EXECUTION AND COUNTERPARTS. This Disbursement Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of this agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by the County.

Section 7.18 Termination. Except for those provisions which are stated to survive, this Disbursement Agreement will terminate upon the termination of the Disbursement Agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Disbursement Agreement as of the date first above written.

County:

County of Santa Clara,
a political subdivision of the State of California

By: _____
Consuelo Hernandez, Director,
Office of Supportive Housing

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Karen Willis, Deputy County Counsel

Developer:

231 Grant Ave LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit
corporation,
its managing member

By: _____

Ramie Dare, Vice President

Date: _____

By: Abode Communities,
a California nonprofit public benefit
corporation,
its member

By: _____

Lara Regus
Senior Vice President, Development

Date: _____

EXHIBIT A
PROJECT BUDGET, PROJECT SCHEDULE, ELIGIBLE EXPENSES, SOURCES OF FUNDING

A. Project Budget¹

Development Uses	Amount	Percent of Total
Construction Costs	\$73,990,146	
Design & Engineering	3,150,672	
Permits & Fees	429,119	
Financing Costs	4,217,743	
Reserves	738,662	
Soft Costs	15,759,813	
Total	\$98,286,155	

Developer will update the County immediately of any material changes to the Approved Project Budget set forth in this **Exhibit B**.

B. Project Schedule

Milestone	Date of Completion
1.	
2.	
3.	
4.	

Developer will notify the County of any delays of more than 30 days past the anticipated dates set forth in the project schedule.

C. Eligible Expenses

“**Eligible Expenses**” are those reasonable and necessary costs incurred by the Developer for the construction of the Project.

D. Sources of Funding

Predevelopment & Construction

Lien Position	Source	Amount
n/a		
n/a		
1		
2		

¹ To be updated at Closing

3		
n/a		
n/a		
n/a		

Permanent

Lien Position	Source	Amount
n/a		
1		
2		
3		
n/a		
n/a		
n/a		

EXHIBIT B
INSURANCE REQUIREMENTS

Indemnity

Developer shall, at Developer's sole cost and expense, provide the indemnification set forth in **Section 7.05** of the Disbursement Agreement.

Insurance

Without limiting the Developer's indemnification of the County, the Developer shall provide and maintain at its own expense, during the term of this Disbursement Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of the term of the Disbursement Agreement, Developer shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Developer upon request. This approval of insurance shall neither relieve nor decrease the liability of the Developer.

A periodic review/change of insurance requirements may be made every five (5) years to ensure appropriate coverage by County standards is in place.

B. Qualifying Insurers

All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-V, according to the current Best's Key Rating Guide, unless otherwise approved by County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000

- b. General aggregate - \$2,000,000
 - i. Products/Completed Operations aggregate - \$1,000,000
 - ii. Personal Injury- \$1,000,000
 - iii. Abuse, Molestation, Sexual Actions, Assault and Battery - \$1,000,000 (required if there is interaction with children or minors)

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Abuse, Molestation, Sexual Actions, Assault and Battery (required if there is interaction with children or minors)
- e. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

4. Workers' Compensation and Employer's Liability Insurance (if applicable)

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Insurance Required upon and after Construction Loan Closing

Notwithstanding the requirements of Section D above, upon the commencement of the Ground Lease, Developer shall provide and maintain or require its General Contractor to provide and maintain, the following insurance coverages and provisions:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides total limits, arranged in any combination of primary and excess insurance, as follows:
 - a. Each occurrence - \$25,000,000
 - b. General aggregate - \$25,000,000
 - c. Products/Completed Operations aggregate - \$25,000,000

All general or excess liability insurance submitted to comply with these requirements shall provide or be endorsed to provide for a separate aggregate limit for the project that is the subject of this Disbursement Agreement. In the alternative, County may approve a higher minimum limit than specified above.

General liability coverage shall be at least as broad as insurance Services Office form CG 00 01. The policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any so-called "contractor's limitation endorsements" including limitations on:

- a. Explosion, collapse or underground hazards ("XCU")
- b. Products and completed operations
- c. Contractual liability

If any policies contain endorsements excluding items listed above or similar endorsements removing or limiting coverage provided in the basic policy, such endorsements shall be submitted to the County for review along with other evidence of insurance required by this Lease. The County may approve coverage with such endorsement(s), or may require to have the exclusion or limitation removed, or to arrange other insurance for the uninsured exposure.

General liability coverage shall include or be endorsed to include as additional insureds the following:

"County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

The additional insured endorsement shall be at least as broad as Insurance Services Office form CG 20 10, any edition prior to 2004. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance or self-insurance maintained by the County, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Such insurance shall include coverage for completed operations.

2. Automobile Liability Insurance

- a. For bodily injury (including death) and property damage providing total limits of not less than five million dollars (\$5,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
- b. Automobile liability insurance shall be at least as broad as Insurance Services Office form CA 00 01.

3. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including coverage for all states in which work related to this Project may be performed.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per accident.

4. Pollution Liability Insurance

Developer shall provide Pollution Liability coverage including bodily injury, personal injury, and property damage from a pollution event resulting from the construction work or operations of the Project with limits not less than \$5,000,000 per claim or per occurrence and \$5,000,000 aggregate limits, including claim expenses and defense, written on a claims made or occurrence basis for the Project inclusive of the term of construction and a ten (10) year completed operations period, including coverage for mold. If the construction of the Project involves the removal of asbestos, the removal/ replacement of underground tanks and/or the removal of toxic chemicals and substances, the contractor or subcontractor performing such work shall provide the appropriate pollution coverage, with limits of no less than \$5,000,000 per claim or per occurrence.

5. Professional Liability Insurance

- a. Coverage shall apply to any design activity performed by Developer's consultants, including but not limited to Developer's architect and civil engineer, for the Project Improvements, and shall specifically include coverage of the Development Plans for the Project.
- b. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per claim/aggregate.
- c. If coverage contains a self-insured retention, it shall not be greater than two hundred fifty thousand dollars (\$250,000) per claim unless otherwise approved by the County.
- d. If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after the Construction Period is completed. If the Developer's consultant ceases to do business during this period, Developer agrees to purchase an extended reporting option on the last professional liability policy so that the period of coverage for reporting claims extends to at least three (3) years after the Construction Period is completed.

6. Builders' Risk Insurance

- a. Developer shall provide Builders' Risk/Course of Construction insurance on an "all-risk" basis, with a limit of no less than the full replacement value of the Improvements constructed, and covering the work and all materials and equipment to be incorporated therein, including property in transit or elsewhere, subject to certain sublimits, and insuring the interests of the County, the Developer, its contractor and subcontractors and material suppliers. Such insurance shall contain insurer's waiver of subrogation in favor of the Developer, its contractor and subcontractors, and material suppliers.

F. Special Provisions

The following provisions shall apply to this Disbursement Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Developer and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Developer pursuant to this Disbursement Agreement, including but not limited to the provisions concerning indemnification.
2. The County reserves the right to withhold disbursements to the Developer, or declare the Developer in default, in the event of material noncompliance with the insurance requirements outlined above.
3. Except as to limits, which may be determined by Developer in Developer's reasonable discretion, Developer shall require that every subcontractor and subconsultant, of Developer or its contractor, performing or providing any portion of the work while the Ground Lease is in effect, obtain and maintain for the duration of its performance of the work and for the full duration of all guarantee or warranty periods (and such longer periods as required for completed operations coverage), the types of insurance coverage outlined in E.1 through E.6 above, and all such other insurance as required by applicable laws; provided, however, that subcontractors not providing professional services shall not be required to provide Professional Liability coverage. Developer assumes full responsibility for verifying existence and adequacy of subcontractor coverage.