

**ASSIGNMENT PROMISSORY NOTE**  
(LOW MODERATE INCOME HOUSING ASSET FUND)

Principal Amount: \$ 11,000,000

San Francisco, CA

Date:

FOR VALUE RECEIVED, the undersigned, **SUNNYDALE BLOCK 6 HOUSING PARTNERSHIP, L.P.**, a California limited partnership, ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum of Eleven Million and No/100 Dollars (\$11,000,000.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, as provided in this Assignment Promissory Note.

1. Agreement. This Assignment Promissory Note ("Note") is given under the terms of that certain Infrastructure Reimbursement and Assignment Agreement by and between Maker and SUNNYDALE INFRASTRUCTURE, LLC, a California limited liability company ("Infrastructure LLC") (the "Assignment Agreement") dated as of the date set forth above, which Assignment Agreement is incorporated herein by reference. Maker's obligations under this Note and the Assignment Agreement are secured by the pledge of Work Product contained in that certain Amended and Restated Loan Agreement by and between Holder and Infrastructure LLC dated May 20, 2019 (the "Infrastructure Loan Agreement"). Definitions and rules of interpretation set forth in the Infrastructure Loan Agreement apply to this Note. In the event of any inconsistency between the Infrastructure Loan Agreement and this Note, this Note will control.

2. Interest. Except as provided in **Section 3**, no interest will accrue on the Funding Amount.

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date the Funding Amount is disbursed through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the City Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Document.

4. Repayment of Funding Amount. The entire principal balance of the Loan, together with all accrued and unpaid interest and other unpaid fees and costs incurred (all together, the "Payment"), will be due and payable on the fifty-seventh (57th) anniversary of MOHCD authorization of the issuance of the Notice to Proceed for the Block 6 phase of the Project, but in no event later than December 31, 2077 (the "Maturity Date") If the Maturity Date falls on a weekend or holiday, it will be deemed to fall on the next succeeding business day.

5. Security. Maker's obligations under this Note are secured by the pledge of Work Product.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.5 Subject to this Section, Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, *provided, however*, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds, waste or negligent or intentional damage to the collateral for the Loan.

6.6 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note shall be permitted without Holder's prior written consent.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

(a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Project.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the City Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

**"MAKER"**

SUNNYDALE BLOCK 6 HOUSING PARTNERSHIPS, L.P.,  
A California Limited Partnership

By: Sunnydale Block 6 LLC,  
a Delaware limited liability company,  
its managing general partner

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: Related/Sunnydale Block 6 Development Co.,  
LLC, a California limited liability company,  
its Administrative General Partner

By: The Related Companies of California, LLC,  
a California limited liability company,  
its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383**  
**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**

**Housing Authority of the City and County of San Francisco**  
**1815 Egbert Street, Suite 300**  
**San Francisco, CA 94124**  
**Attention: Barbara T. Smith**  
**Acting Executive Director**

Recorder's Stamp

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**"), is made and entered into as of August \_\_, 2019 (the "**Effective Date**"), by and between SUNNYDALE DEVELOPMENT CO., LLC, a California limited liability company ("**Assignor**"), and SUNNYDALE BLOCK 6 HOUSING PARTNERSHIP, a California limited partnership ("**Assignee**"), and consented to by the HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic (the "**Authority**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**").

### **RECITALS**

A. The Authority, the City and Assignor enter into that certain Master Development Agreement dated December 3, 2017, as recorded on March 3, 2017 as Instrument No. 2017-K416598-00 (the "**MDA**") in the Official Records of the City and County of San Francisco (the "Official Records"), and the certain Development Agreement dated March 3, 2017 and recorded on March 3, as Instrument No. 2017-K416604- 00 in the Official Records (the "**DA**") for the redevelopment of the Sunnydale public housing development and the Velasco public housing development in San Francisco, California, to be developed in phases, as more particularly described in the MDA and the DA (the "**Master Development**").

B. The MDA and the DA contemplate the transformation of the Site into approximately one thousand seven hundred (1,700) rental units, which will include seven hundred and seventy five (775) replacement public housing units, and approximately two hundred and nineteen (219) affordable rental housing units.

C. The Authority, the City and the Assignor have entered into various agreements, including the MDA and the DA in connection with the proposed development of the Master Development (collectively, the "**Agreements**").

D. In connection with the development of replacement public housing units and other

affordable rental units in Block 6 within Phase 1A-1 and Phase 1A-2 as defined in the MDA and DA, as more particularly described in Exhibit A ("**Block 6**"), Assignor has formed Assignee to be the developer of the approximate one hundred and sixty-seven (167) affordable units to be constructed within Block 6. The project is intended to assist with the relocation of Existing Households from the Site located adjacent to Block 6.

E. Assignor has requested the Authority's consent to Assignor's desire to assign all of its rights, interests, and obligations under the Agreements with respect to Block 6 to Assignee and that Assignee assume all of Assignor's obligations under the Agreements with respect to Block 6.

F. Assignor desires to assign all of its rights, interests and obligations under the Agreements with respect to Block 6, and Assignee desires to accept the assignment thereof, on the terms and conditions contained herein.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals, the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **1. Assignment.**

As of the Effective Date, Assignor hereby assigns to Assignee all of its rights and obligations under the Agreements with respect to Block 6.

### **2. Assumption.**

As of the Effective Date, Assignee hereby assumes all of Assignor's obligations under the Agreements with respect to Block 6 and agrees that it shall be bound by the terms and provisions of the Agreements as if Assignee had executed the same in place of Assignor. Assignee agrees to indemnify, protect, defend, and hold Assignor harmless from and against any and all claims, damages, losses, costs and expenses (including reasonable attorney's fees) arising out of, in connection with or relating to, Assignor's obligations under the Agreements, and originating after the Effective Date.

### **3. Successors and Assigns.**

This Assignment shall be binding on and inure to the benefits of the parties hereto and their respective successors and assigns, subject to any applicable approval by the United States Department of Housing and Urban Development.

### **4. Consent of the Authority.**

The Authority hereby consents to the assignment of the Agreements by Assignor to Assignee as set forth in this Assignment.

### **5. Notices, Demands, Communications.**

Formal notices, demands, and communications among the parties shall not be deemed given unless dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt, to the parties' principal offices as follows:

To Assignor: Sunnydale Development Co., LLC  
c/o Mercy Housing California  
1256 Market Street  
San Francisco, CA 94102  
Attn: Ramie Dare

Sunnydale Development Co., LLC  
c/o The Related Companies of California  
44 Montgomery Street, Suite 1300  
San Francisco CA 94104  
Attn: Ann Silverberg

To Assignee: Sunnydale Block Housing 6 Partnership, L.P.  
c/o Mercy Housing California  
1256 Market Street  
San Francisco, CA 94102  
Attn: Ramie Dare

Sunnydale Block 6 Housing Partnership, L.P.  
c/o The Related Companies of California  
44 Montgomery Street, Suite 1300  
San Francisco CA 94104  
Attn: Ann Silverberg

and to: Gubb & Barshay  
505 14th Street, Suite 450  
Oakland, CA 94612  
Attn: Evan Gross, Esq.

Bocarsly Emden Cowen Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attn: Lance Bocarsly, Esq.

To Authority: Housing Authority of the City and County of San Francisco  
1815 Egbert Avenue  
San Francisco, CA 94124  
Attn: Barbara T. Smith, Acting Executive Director

and to: Goldfarb & Lipman LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
City Center Plaza  
Oakland, CA 94612  
Attn: Dianne Jackson McLean, Esq.

To City: Mayor's Office of Housing and Community Development  
City and County of San Francisco  
1 South Van Ness, 5th Floor  
San Francisco, CA 94103  
Attn: Director

and to: Dennis J. Herrera, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Real Estate/Finance

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on a written receipt for delivery, refusal of delivery or the date the notice was returned as undeliverable.

**6. Section Titles.**

Any titles of the sections or subsections of this Assignment are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Assignment's provisions.

**7. Governing Law.**

This Assignment shall be interpreted under and pursuant to the laws of the State of California.

**8. Severability.**



If any term of this Assignment is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the parties have been materially altered by such holding of invalidity, in which event the parties shall modify this Assignment to remedy such holding of invalidity.

**9. Attorneys' Fees.**

If any legal action is commenced to interpret or to enforce the terms of this Assignment or to collect damages as a result of any breach of this Assignment, then the party or parties prevailing in any such action shall be entitled to recover against the non-prevailing party or parties all reasonable attorneys' fees and costs incurred in such action.

**10. Amendment; Modification.**

This Assignment shall not be modified or amended except by written instrument executed by and among the Assignor, Assignee, and the Authority.

**11. Counterparts.**

This Assignment may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

**[Remainder of page intentionally blank.]**

**[Signatures on following pages.]**

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

**ASSIGNOR:**

**SUNNYDALE DEVELOPMENT CO., LLC**, a California limited liability company

By: Mercy Housing California, a California nonprofit public benefit corporation

Its: Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: The Related Companies of California, LLC, a California limited liability company

Its: Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**SUNNYDALE BLOCK 6 HOUSING PARTNERSHIP, L.P.**, a California limited partnership

By: Mercy Housing Calwest., a California nonprofit public benefit corporation, its managing general partner

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

By: Related/Sunnydale Block 6 Development Co., LLC, a California limited liability company, its administrative general partner

By: The Related Companies of California, LLC, a California limited liability company, its sole member

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

**[Signatures continue on following page.]**

**AUTHORITY:**

**HOUSING AUTHORITY OF CITY AND  
COUNTY OF SAN FRANCISCO**, a public  
body corporate and politic

By: \_\_\_\_\_  
Barbara T. Smith,  
Acting Executive Director

**APPROVAL AS TO FORM AND  
LEGALITY**

\_\_\_\_\_  
Dianne Jackson McLean, Esq.  
Goldfarb & Lipman LLP,  
Special Counsel to Authority

Dated: \_\_\_\_\_

**CITY:**

**MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT**, a  
municipal corporation

By: \_\_\_\_\_  
Daniel Adams, Acting Director

APPROVED AS TO FORM

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi Gewertz, Deputy City Attorney

Dated: \_\_\_\_\_



EXHIBIT A

**Block 6- Legal Description**

[insert metes and bounds description]