

LOAN AGREEMENT
(City of San Mateo Child Care Loan Program)

This Loan Agreement (the "Agreement") is dated as of _____, 20____ (the "Effective Date"), and is between the City of San Mateo, a California municipal corporation (the "City"), and _____, a California _____ ("Borrower").

RECITALS

A. In addition to defined terms in these recitals, defined terms used, but not defined, in these recitals are as defined in Article 1 of this Agreement.

B. On August 15, 2022, the City Council approved revision of the Interim Child Care Fund Guidelines for Child Care Fund Program (the "Program").

C. Borrower owns the real property commonly known as _____, San Mateo, California, as more particularly described in Exhibit A (the "Property"), and the Borrower desires to construct, or otherwise expand, an approximately _____ (_____) square foot childcare facility to provide child care services for up to _____ (_____) participants on the Property (the "Development"). The Development and any additional improvements constructed on the Property are referred to as the "Improvements".

D. Borrower submitted an application and the City has selected the Borrower's application for funding. Pursuant to the Program the Borrower desires to borrow from the City, and the City desires to lend to the Borrower, _____ Dollars (\$_____) (the "Loan") for the development of the Development.

E. The Loan is evidenced by the Note, the Regulatory Agreement, and is secured by the Deed of Trust. The Loan is being made solely to finance the construction of the Development, and is intended to increase the supply of quality childcare within the City. Due to the assistance provided Borrower through the Loan, the City is requiring the Borrower to enter into the Regulatory Agreement.

The Parties therefore agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following terms have the following meanings:

- (a) "Agreement" means this Loan Agreement.
- (b) "Annual Report" shall mean the Borrower's annual report to the City regarding the Borrower's compliance with the Program Requirements. A form of the Annual Report is attached as Exhibit D.
- (c) "Approved Development Budget" means the proforma budget for the construction of the Development, including sources and uses of funds, as approved by the City, and attached hereto and incorporated herein as Exhibit B.
- (d) "City" means the City of San Mateo, a municipal corporation.
- (e) "Deed of Trust" means the Short Form Deed of Trust and Assignment of Rents of even date herewith among Borrower, as Trustor, _____ Title Company, as trustee, and the City, as beneficiary, that will encumber the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.
- (f) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (g) "Development" has the meaning set forth in Paragraph C of the Recitals.
- (h) "Event of Default" has the meaning set forth in Section 5.1.
- (i) "Hazardous Materials" means: (1) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical; and (2) any waste, substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic materials", "toxic waste", "toxic substances", or words of similar import under any Hazardous Materials Law.
- (j) "Hazardous Materials Claims" means with respect to the Property: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (2) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.
- (k) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all

amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(l) "Improvements" has the meaning set forth in Paragraph C of the Recitals.

(m) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(n) "Loan" has the meaning set forth in Paragraph D of the Recitals.

(o) "Note" means the promissory note of even date herewith that evidences Borrower's obligation to repay the Loan.

(p) "Program Requirements" shall mean the requirements set forth in Exhibit C, including, but not limited to, the Borrower's obligation to provide child care services at the Property in accordance with the Loan Documents.

(q) "Property" has the meaning set forth in Paragraph C of the Recitals.

(r) "Regulatory Agreement" means the Agreement Containing Covenants Affecting Real Property, of even date herewith, between the City and Borrower related to the Loan, to be recorded against the Property.

(s) "Retention Amount" means ten percent (10%) of each disbursement of the Loan made by the City to Borrower (other than the final disbursement of the Loan).

(t) "Senior Loan" has the meaning set forth in Section 2.5.

(u) "Term" means the term of the Loan which shall commence on the Effective Date and shall terminate on the earlier of: (i) the full forgiveness of the Loan by the City, in accordance with the Note; (ii) the full repayment of the Loan; or (iii) thirty (30) years following the Effective Date.

(v) "Transfer" has the meaning set forth in Section 3.8 below.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A:	Legal Description of the Property
Exhibit B:	Approved Development Budget
Exhibit C:	Program Requirements
Exhibit D:	Form of Annual Report

ARTICLE 2.
LOAN PROVISIONS

Section 2.1 Loan.

Upon satisfaction of the conditions set forth in Section 2.6 of this Agreement, the City shall lend to Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

Section 2.2 Interest.

(a) Loan. Subject to the provisions of subsection (b) below, no interest will accrue on the outstanding principal balance of the Loan.

(b) Default Interest. Upon the occurrence of an Event of a Default, interest on the outstanding principal balance of the Loan will begin to accrue, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured, at which time the accrued interest shall be automatically forgiven at the Default Rate.

Section 2.3 Use of Loan Funds.

Borrower shall use the Loan for the construction of the Development consistent with the Approved Development Budget. Borrower may not use the Loan proceeds for any other purposes without the prior written consent of the City.

Section 2.4 Security.

In consideration of the Loan, Borrower shall: (a) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property, and (b) execute the Regulatory Agreement, and cause or permit it to be recorded against the Property.

Section 2.5 Subordination.

(a) Any agreement by the City to subordinate the Deed of Trust and/or Regulatory Agreement to an encumbrance securing and/or evidencing any loan obtained by Borrower finance the Development (each, a "Senior Loan") shall be subject to the satisfaction of each of the following conditions:

(1) All of the proceeds of the Senior Loan, less any transaction costs, are used to provide acquisition, construction and/or permanent financing for the Development.

(2) The lender of the Senior Loan is a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(3) Borrower demonstrates to the City's satisfaction that subordination of the Deed of Trust and the Regulatory Agreement is necessary to ensure the viability of the Development, including the operation of the Development as a childcare facility, as required by

the Loan Documents. To satisfy this requirement, Borrower must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(4) The subordination agreement(s) is structured to minimize the risk that the Deed of Trust and the Regulatory Agreement will be extinguished as a result of a foreclosure by the holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(5) The subordination(s) of the Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the City.

(6) The subordination does not limit the effect of the Deed of Trust and the Regulatory Agreement before a foreclosure, nor require the consent of the Bank prior to the City exercising any remedies available to the City under the Loan Documents.

(b) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager, or his/her designee, will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

(a) Conditions to Disbursement. The total disbursements made pursuant to this Section 2.6 may not exceed _____ Dollars (\$ _____). The City is not obligated to disburse any portion of the Loan, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

(1) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under the Loan Documents;

(2) Borrower holds title to the Property or is acquiring title to the Property simultaneously with the disbursement of the Loan proceeds;

(3) Borrower has delivered to the City a copy of a corporate resolution authorizing Borrower to obtain the Loan, and execute the Loan Documents;

(4) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the City prior to the Effective Date;

(5) Borrower has furnished the City with evidence of the insurance coverage meeting the requirements of Section 3.8 below;

(6) Borrower has executed and delivered to the City the Loan Documents and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the City, including, but not limited to the construction contract, the payment and performance bonds, and the applicable permits for the construction of the Development, all as more particularly set forth below;

(7) The Deed of Trust, and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of San Mateo;

(8) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require. To the extent applicable, the Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the City's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of work that has occurred prior to the recordation of the Deed of Trust against the Property;

(9) The City has received a written draw request from Borrower, including certification that the condition set forth in Section 2.6(a)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with this Agreement, the amount of funds needed less the Retention Amount, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with work performed on, or for the benefit of, the Property, the written request must be accompanied by lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the City. The City reserves the right to inspect the Property and make an independent evaluation that all work has been completed.

(b) Retention Amount. The City is not obligated to disburse any portion of the Retention Amount unless all of the following conditions have been and continue to be satisfied:

(1) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;

(2) Borrower has caused the completion of the construction of the Development (as evidenced by a certificate of occupancy, or equivalent document); and

(3) The City has received a written draw request from Borrower, including certification that the condition set forth in Section 2.6(a)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with this Agreement, the amount of the Retention Amount requested, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with work performed on, or for the benefit of, the Property, the written request must

be accompanied by lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the City. The City reserves the right to inspect the Property and make an independent evaluation that all work has been completed.

Section 2.7 Repayment Schedule.

(a) Partial Forgiveness. For each year the Borrowers satisfies the Program Requirements, as evidenced by the City's approval of the Annual Report, in accordance with Section 3.1, the City shall forgive a portion of the Loan in an amount equal to [ten percent (10%)] of the original principal amount **[NOTE- TO BE DETERMINED]**. In the event the Borrower satisfies the Program Requirements for [ten (10) years] **[NOTE- TO BE DETERMINED]**, during the Term, then the entire Loan amount shall be forgiven, and in such event, the following shall occur: (i) this Agreement shall terminate; (ii) the City shall mark the Note as "Cancelled" and return the original Note to the Borrower; and (iii) the City shall cause the reconveyance of the Deed of Trust and termination of the Regulatory Agreement. In the event the Borrower, fails to satisfy the Program Requirements for [ten (10) years] during the Term, then upon expiration of the Term, the Loan (less any portion previously forgiven by the City pursuant to the Loan Documents) shall be immediately due and payable.

(b) Payment in Full of Loan. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 3.7; (ii) an Event of Default; and (iii) the expiration of the Term.

(c) Prepayment. Borrower may prepay the Loan at any time without premium or penalty.

Section 2.8 Non-Recourse.

Except as provided below, Borrower shall not have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the City against all such security for the Note, or impairs the right of City to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the City under this Agreement, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

Section 2.9 Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with:

(a) All applicable laws, codes, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter; and

(b) All directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the City for the procurement and maintenance thereof.

Section 2.10 State Prevailing Wages.

(a) To the extent required by applicable law, Borrower shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages for the construction of the Development as those wages are determined pursuant to California Labor Code Sections 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(4) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors performing work on the Property to be registered as set forth in California Labor Code Section 1725.5;

(6) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for work on the Property to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for work on the Property unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the work at the Property is subject to compliance monitoring and enforcement by the DIR;

(7) provide the City all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(8) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(9) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(b) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the work undertaken at the Property. The requirements in this Section survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 2.11 Accessibility.

Borrower shall cause the Development to be constructed in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Development in accordance with the Accessibility Requirements. The requirements in this Section survive repayment of the Loan and the reconveyance of the Deed of Trust.

Section 2.12 Equal Opportunity.

During the construction of the Development, discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work on the Property is not allowed.

Section 2.13 Change in Development; Progress Reports.

Following the Effective Date, the Borrower shall not make any change to the total square footage of the Development or any other change that will result in the reduction of the permitted number of users of the childcare facility without the City's prior written consent, which shall not be unreasonably withheld, delayed, or conditioned. Until such time as Borrower has received a certificate of occupancy from the City for the Development, Borrower shall provide the City with quarterly progress reports regarding the Property.

Section 2.14 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours during the Term, for the purposes of determining compliance with this Agreement.

Section 2.15 Approved Development Budget; Revisions to Budget.

As of the Effective Date, the City has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the City for approval within five (5) days after the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the City will be required to amend the Approved Development Budget.

Section 2.16 Construction Contract.

(a) Prior to commencement of work at the Property, Borrower shall submit to the City for its approval a draft of the proposed contract for the construction of the Development. All work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California. The City's approval of the construction contract shall not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) Upon receipt by the City of the proposed contract, the City shall promptly review same and approve or disapprove it within five (5) days. If the construction contract is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a revised contract for City approval, which approval is to be granted or denied in five (5) days in accordance with the procedures set forth above.

Section 2.17 Performance and Payment Bonds.

Prior to the commencement of work at the Property, Borrower shall deliver to the City copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the work (the "Construction Bonds"). Such bonds shall: (i) be in a form reasonably acceptably to

the City; (ii) be issued by a surety licensed to do business in California, named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the City; and (iii) name the City as a co-obligee.

Section 2.18 Commencement and Completion of Construction.

Borrower shall make best efforts to commence construction of the Development on or prior to _____, 20____; provided, however, in no event shall Borrower cause any construction work to be performed on the Property unless and until the Borrower has obtained all necessary permits for such work from the City and/or any other applicable governmental authority. Borrower acknowledges that nothing in this Agreement obligates the City to issue any permit to the Borrower or for any proposed work on the Property. Borrower shall make best efforts to diligently prosecute such work to completion by no later than _____.

ARTICLE 3. LOAN REQUIREMENTS

Section 3.1 Annual Report; Information.

No later than each March 1, throughout the Term, the Borrower shall submit to the City the Annual Report that includes the status of implementation of the Program Requirements for the preceding year. The Annual Report shall also include a narrative summarizing the annual efforts, highlights, and challenges in achievement of goals that assure a high-quality program and includes a description of professional development and/or continuing education for staff that support quality and continuous improvement. The Borrower's submission of, and the City's approval of, the Annual Report is a condition precedent to the annual forgiveness of the Loan (if any). In the event the City disapproves of an Annual Report, then the City shall deliver, within sixty (60) days after receipt of the Annual Report, a written notice to the Borrower setting forth, in reasonable detail, the reasons for the City's disapproval. Upon approval by the City of the Annual Report, the City shall deliver a written notice to the Borrower setting forth the portion of the Loan forgiven and the remaining balance of the Loan. In addition to such Annual Report, Borrower shall deliver such other information regarding the Development the City may reasonably request from time to time during the Term, including, but not limited to any litigation affecting the Borrower or the Property, or any notices from any licensing agency.

Section 3.2 Hazardous Materials.

(a) Borrower shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in projects like the Development or kept and used in and about property of this type.

(b) Borrower shall immediately advise the City in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the City (or counsel of its own choice if a conflict exists with Borrower) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

(d) Borrower shall indemnify and hold harmless the City and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (1) any actual or alleged past or present violation of any Hazardous Materials Law; (2) any Hazardous Materials Claim; (3) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (4) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (5) the breach of any representation of warranty by or covenant of Borrower in this Section 3.5, and Section 4.1(l). Such indemnity shall include, without limitation: (A) all consequential damages; (B) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the City in connection with clauses (A) and (B), including but not limited to reasonable attorneys' fees and consultant fees except to the extent caused by the City's active negligence or willful misconduct. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the City of Hazardous Materials.

(e) Without the City's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent is not

necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(f) Borrower hereby acknowledges and agrees that: (1) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (2) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (1) waive its lien on such environmentally impaired or affected portion of the Property; and (2) exercise, (A) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (B) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 3.3 Maintenance; Damage and Destruction.

(a) During the course of construction and operation of the Development Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if

Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

(b) Subject to the requirements of senior lenders, and if economically feasible in the City's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the City in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and is to be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the City as a special repayment of the Loan, subject to the rights of the senior lenders, if any.

Section 3.4 Fees and Taxes.

Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency. However, Borrower is not required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (b) if requested by the City, Borrower deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 3.5 Operation of Development as Childcare Facility.

Borrower shall operate the Development as a childcare facility consistent with: (a) the Regulatory Agreement; and (b) any other regulatory requirements imposed on the Borrower or the Property, including, but not limited to, obtaining and maintaining any required license(s).

Section 3.6 Nondiscrimination.

Borrower covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the admission of users of the Development, nor may Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination. The foregoing covenant will run with the land.

Section 3.7 Transfer.

For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title.

(a) No Transfer is permitted without the prior written consent of the City, which the City may withhold in its sole discretion. Notwithstanding any provision to the contrary, the Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City. In the event of any conflict between this subsection and any other provision of the Loan Documents, this subsection shall prevail.

(b) The City hereby approves the grant of the security interests in the Development for any deed of trust to which the City has agreed to subordinate.

Section 3.8 Insurance Requirements.

(a) Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(1) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(2) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(3) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(4) Builders' Risk insurance during the course of construction and upon completion, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(5) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the City, naming the City a Loss Payee, as its interests may appear which insurance shall be maintained only until the entire balance of the Loan has been disbursed.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2), and (3) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Borrower shall maintain the coverage described in subsection (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 4.1 Representations and Warranties.

Borrower hereby represents and warrants to the City as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article are deemed to be continuing during all times when any portion of the Loan remains outstanding:

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

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. The Loan Documents and all other documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Borrower, or conflict with any provision of the organizational documents of Borrower, or conflict with any agreement to which Borrower is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the City pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the City fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material

adverse change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the construction of the Development in accordance with the terms of this Agreement.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect on the property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Borrower and its subsidiaries, taken as a whole, or which could result in: (i) a material impairment of the ability of Borrower to perform under any loan document to which it is a party; or (ii) a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

(l) Hazardous Materials. To the best of Borrower's knowledge, except as disclosed in writing by Borrower to the City prior to the Effective Date: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property; (ii) neither the Property nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

ARTICLE 5. DEFAULT AND REMEDIES

Section 5.1 Events of Default.

Any one or more of the following constitutes an "Event of Default" by Borrower under this Agreement:

(a) Failure to Obtain Permit; Failure to Complete Work. If Borrower fails to obtain the necessary permit(s), or Borrower otherwise fails to comply with the requirements of Section 2.17.

(b) Failure to Make Payment. If Borrower fails to make any payment when such payment is due pursuant to the Loan Documents and such failure continues for ten (10) days after receipt of written notice from the City.

(c) Breach of Covenants. If Borrower fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement, or in any of the other Loan Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the City to Borrower, or if such breach cannot be cured

within such 30 day period, Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article, the specific provisions shall control.

(d) **Default Under Other Loans.** If a default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(e) **Insolvency.** If a court having jurisdiction makes or enters any decree or order: (1) adjudging Borrower to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties; (4) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (1) to (4), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (5) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(f) **Assignment; Attachment.** If Borrower assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(g) **Suspension; Termination.** If Borrower voluntarily suspends or terminates its business.

(h) **Liens on Property and the Development.** If any claim of lien (other than liens approved in writing by the City) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(i) **Condemnation.** If there is a condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(j) **Unauthorized Transfer.** If any Transfer occurs other than as permitted pursuant to this Agreement.

(k) **Representation or Warranty Incorrect.** If any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or

report submitted to the City in connection with any of the Loan Documents, proves to have been incorrect in any material respect when made.

Section 5.2 Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the City is relieved of any obligation to disburse any portion of the Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the City may proceed with any and all remedies available to it under law, this Agreement, and the other Loan Documents. Such remedies include but are not limited to the following:

(a) Acceleration of Note. The City may cause all indebtedness of Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Borrower is liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City has the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand therefor, Borrower shall reimburse the City for any funds advanced by the City to cure such monetary default by Borrower, together with interest thereon from the date of expenditure until the date of reimbursement at the Default Rate.

Section 5.3 Right of Contest.

Borrower may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 5.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the other Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies will operate as a waiver thereof, nor does any single or

partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6. GENERAL PROVISIONS

Section 6.1 Relationship of Parties.

Nothing contained in this Agreement is to be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Borrower or its agents, employees or contractors, and Borrower will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the demolition or construction work, and operation of the Development, Borrower is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 6.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the work, or the operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties.

Section 6.4 Indemnification.

Borrower shall indemnify, defend and hold the City and its Council members, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the City, its agents, and its employees. The provisions of this Section will survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 6.5 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City is personally liable to Borrower in the event of any default or breach of this Agreement by the City or for any amount that may become due from the City pursuant to this Agreement.

Section 6.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 6.7 Discretion Retained By City.

The City's execution of this Agreement in no way limits any discretion the City may have in the permit and approval process related to the construction of the Development.

Section 6.8 Notices, Demands and Communications.

Formal notices, demands and communications between the City and the Borrower shall be sufficiently given if, and shall not be deemed given unless, (a) dispatched by certified mail, postage prepaid, return receipt requested, or (b) sent by express delivery or overnight courier service, or (c) sent via email to the email address set forth below, with a copy of such notice concurrently sent by either of the methods set forth in the preceding clauses (a) or (b), to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City: City of San Mateo
330 W. 20th Avenue
San Mateo, CA 94403
Attn: Community Development Department
Email: _____

Borrower: _____

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.9 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 6.10 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Borrower and its successors and

assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the City and its successors and assigns.

Section 6.11 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 6.12 Severability.

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

Section 6.13 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 6.14 City Approval.

The City has authorized the City Manager, or his or her designee, to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents.

Section 6.15 Waivers.

Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Borrower may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 6.16 Title of Parts and Sections.

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

Section 6.17 Entire Understanding of the Parties.

The Loan Documents constitute the entire agreement of the parties with respect to the Loan. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Agreement.

Section 6.18 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

CITY:

CITY OF SAN MATEO, a California municipal corporation

By: _____

Name: _____

Its: _____

BORROWER:

[SIGNATURE BLOCK TO BE INSERTED]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

EXHIBIT C

PROGRAM REQUIREMENTS

1. **Child Care Spaces.** Borrower shall retain and make available a total of [written number] (#) licensed child care spaces. Exception only accepted if Borrower is unable to provide a sufficient number of qualified staff to meet required ratios for a period of time not exceeding ninety (90) days.
2. **Affordable Child Care Spaces.** Borrower shall provide [written number] (#) of affordable spaces available to households who do not exceed 80% Area Median Income (AMI) as is annually published by the City. This shall include the reporting of the following documented data: 1) number of households, 2) annual household income, 3) amount of child care tuition charged, and 4) market rate tuition.
3. **Licensing.** Borrower shall provide third-party confirmation of current facility licensing.
4. **Financial Reports.** Borrower shall submit annual financial documents for the facility operation, either organizational audits or tax records.

EXHIBIT D


FORM OF ANNUAL REPORT

This document will be provided to borrowers in Word format to complete and submit.
This is an image of the document template.

City of San Mateo Child Care Loan Annual Report

January 20__ through December 20__

This form is due not later than March 1 of each calendar year for the term of the loan.



Borrower Name: _____

Date of Report _____

<p>This is the number of spaces required as part of the project's loan agreement.</p>	<p>Number of Spaces: ____</p> <p>Number of Affordable to households not exceeding 80% AMI: ____</p>					
<p>Report the total number spaces available each month, both the total number available and the number of affordable spaces provided.</p>	Month	# Total	# Afford.	Month	# Total	# Afford.
	January			July		
	February			August		
	March			September		
	April			October		
	May			November		
	June			December		

Please describe any circumstances that prevented the ability to meet the number of spaces required.

<p>Please list data for households receiving tuition assistance. Use confidential coding, not household names.</p> <p>The market rates and tuition charged may vary depending on when the child was accepted or if rates change.</p>	Household (HH) Identifier	Annual HH Income	Tuition Charged	Market Rate

CITY OF SAN MATEO – CHILD CARE LOAN ANNUAL REPORT
1

Contact Information

If you need to provide any changes for the contacts that follow, do that here. If not, you can select this placeholder (arrow to the left of the section title) and press Delete to remove it.

Borrower Primary Contact

Office: Office Phone

Mobile: Cell Phone

Email: Email

Child Care Facility Operator Contact

Office: Office Phone

Mobile: Cell Phone

Email: Email

Required Documentation

Please attach the following documents:

1. Third-party confirmation of current facility licensing.
2. Annual financial documents for the facility operation, either organizational audits or tax records.

Program Narrative

Please provide a brief narrative summarizing the annual efforts, highlights, and challenges in achievement of goals that assure a high-quality program and includes a description of professional development and/or continuing education for staff that support quality and continuous improvement.

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LOAN AGREEMENT

BETWEEN

CITY OF SAN MATEO

AND

[NAME OF BORROWER TO BE INSERTED]