24469213

Regina Alcomendras
Santa Clara County - Clerk-Recorder

05/01/2020 12:22 PM

Titles: 1 Pages: 155

Fees: $0.00
Taxes: $0
Total: $0.00

RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
City of Santa Clara
Housing & Community Services
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

by and between

THE CITY OF SANTA CLARA

and

SHAC LS APARTMENTS II LLC

TABLE OF CONTENTS

Page

ARTICLE 1 SUBJECT OF AGREEMENT 1
Section 1.1 Purpose of the Agreement 1
Section 1.2 The Site 3
Section 1.3 The City 3
Section 1.4 The Developer 3
Section 1.5 Assignment of this Agreement 4
ARTICLE 2 DEVELOPMENT OF THE SITE 4
Section 2.1 Scope of Development; Schedule of Performance 4
Section 2.2 Permits 4
Section 2.3 Zoning and Land Use Requirements 4
Section 2.4 Construction Financing 5
Section 2.5 Relationship of City and Developer 4
ARTICLE 3 USE OF THE SITE 4
Section 3.1 Uses 5
Section 3.2 Maintenance of the Site 7
ARTICLE 4 DEFAULTS, REMEDIES AND TERMINATION 7
Section 4.1 Defaults - General 7
Section 4.2 Institution of Legal Actions 8
Section 4.3 Applicable Law 8
Section 4.4 Acceptance of Service of Process 8
Section 4.5 Rights and Remedies Are Cumulative 9
Section 4.6 Damages 9
Section 4.7 Specific Performance 9
Section 4.8 Termination by Either Party 9
Section 4.9 Dispute Resolution 9
ARTICLE 5 GENERAL PROVISIONS 10
Section 5.1 Notices, Demands and Communications between the Parties 10
Section 5.2 Conflicts of Interest 10
Section 5.3 Nonliability of City Officials and Employees 10
Section 5.4 Force Majuere: Extension of Time of Performance 10
Section 5.5 Approvals 11
Section 5.6 Compliance with Laws 10
Section 5.7 Hold Harmless/Indemnification 10
ARTICLE 6 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS 12
Section 6.1 Counterparts 12
Section 6.2 Integration 12
Section 6.3 Waivers 12
Section 6.4 Amendments 12
Section 6.5 Mortgagee Protection 12

ATTACHMENTS

ATTACHMENT NO. 1 LEGAL DESCRIPTION - SITE
ATTACHMENT NO. 2 SCOPE OF DEVELOPMENT

ATTACHMENT NO. 3 AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
ATTACHMENT NO. 4 BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE AND BELOW MARKET PURCHASE PROGRAM POLICIES AND PROCEDURES GUIDELINES

AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

This AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation (the "City") and SHAC LS APARTMENTS II LLC, a Delaware limited liability company (the "Developer"), whose address is 3000 Executive Parkway, Suite 450, San Ramon, CA 94583. City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows:

RECITALS

A. The Parties previously entered into an agreement entitled "Affordable Housing Agreement By And Between The City of Santa Clara, California, and SHAC LS APARTMENTS II LLC, which was recorded in the Official Records of Santa Clara County, California on March 20, 2019 as Document No. 24138221 ("Original Agreement");

B. The Parties entered into the Original Agreement for the purpose of having Developer provide fifty- two (52) Affordable Housing Units within the Project that will be designated for low and moderate income residents and the Parties now wish to amend and restate the Original Agreement in its entirety to increase the number of Affordable Housing Units in the Project to fifty-three (53); and

C. Upon mutual execution and delivery and recordation of this Agreement, the Original Agreement is null and void and terminated in all respects as if it had never been entered into or recorded.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto do hereby mutually covenant and agree that the Original Agreement is hereby amended and restated in its entirety on the following terms and conditions:

ARTICLE 1 SUBJECT OF AGREEMENT

Section 1.1 Purpose of the Agreement

a. The purpose of this Agreement is to enter into a binding agreement with persons having legal or equitable interest in real property for the development of such property, in order to, among other things, increase, improve and preserve the supply of housing in the community for low and moderate income households as defined in Attachment No. 3, Agreement Containing Covenants and Restrictions, attached hereto.

b. An apartment community containing 286 residential dwelling units is intended to be constructed on the Site as Building A (the "Project"). As a Condition of Architectural Review Approval, Developer has agreed to provide fifty-three (53) affordable rental units ("Affordable Housing Units" or "Units") within the Project that will be

designated for low and moderate income residents and shall meet affordability requirements for low and moderate income residents for a period of 55 years ("Initial Term"). The proportion of Units shall be 90% moderate income and 10% low income. Moderate income shall be defined as 120% of the Area Median Income (AMI) and low income shall be defined as 80% AMI. The distribution of Units shall be forty-eight (48) moderate income and five (5) low income. Should a condominium plan be approved to allow condominium or other individual unit sales in the Project, prior to occupancy of any such units, Developer shall enter into an affordability agreement with the Community Development Department's Housing & Community Services Division restricting fifty-three (53) Units to meet affordability requirements for low and moderate residents for a period of 45 years. The Units shall be constructed to the same standards as the market rate apartment units, and shall be distributed throughout Building A. Review and approval of the distribution of Units, whether as rentals or as market rate sales, shall be at the discretion of the Director of Community Development.

c. Prior to the issuance of a notice of project completion, Developer, at its sole discretion, shall designate whether the Units will initially be offered for sale or rental units. In the event that selection is initially made to rent the units, Developer shall maintain them as rental property under a single owner. Furthermore, if Developer designates the Units to be offered for sale, Developer shall comply with the City's below market rate housing programs by entering into this Agreement whereby the below market rate rental units shall be transferred to below market price ownership units at the time the Developer elects to sell the units for owner-occupancy. This section is in addition to the requirements set forth in 1.1(b).

d. If any of the fifty-three (53) Affordable Housing Units are offered for sale during the Initial Term, as defined in Section 1.1(b), they shall be sold as below market price ownership condominium conversion units to be made available at a price not to exceed the purchase price as noted in Sections 1.1(d) (1) and (2) below. The below market price ownership condominiums shall be sold to a Moderate Income Household at an Affordable Housing Cost as defined in Attachment No. 4., Below Market Purchase Program Covenants, Restrictions and Option to Purchase, attached hereto.

(1) The Affordable Sales Price of each Affordable Housing Unit shall be set as follows:

1-bedroom unit Designated Sales Price of $263,000
2-bedroom units Designated Sales Price of $298,000
3-bedroom units Designated Sales Price of $330,000

(2) Adjustment of the Designated Sales Price shall be determined by City on the basis of annual adjustments to the median income as published by the U.S. Department of Housing & Urban Development and by the California Department of Housing and Community Development and by the percentage change in the Area Median Income from the execution date of this Agreement to the date of sale of the Affordable Housing Unit.

e. The development of the Site to include the provision of affordable housing opportunities pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project is to be undertaken and is being assisted.

f. The full term of the affordability covenants shall be for a total period of fifty-five (55) years for rented Units and forty-five (45) years for Units that are sold (the "Affordability Period"), effective from the date of sale to a qualified household approved by the City.

g. If any general provision of this Section 1.1 conflicts with a more specific provision of this Agreement, the more specific provision shall prevail.

Section 1.2 The Site

a. The Site is legally described in the Legal Description attached to this Agreement as Attachment No. 1.

Section 1.3 The City

a. The City is a chartered California municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California.

b. The address of City for purposes of notice hereunder is at 1500 Warburton Avenue, Santa Clara, California 95050.

c. City as used in this Agreement includes the City of Santa Clara, California and any assignee of or successor to its rights, powers and responsibilities.

Section 1.4 The Developer

a. The Developer of Lawrence Station Project is SHAC LS APARTMENTS II LLC, a Delaware limited liability company.

b. The address of SHAC LS APARTMENTS II, a Delaware limited liability company, for purposes of receiving notices pursuant to this Agreement is:

Attention:
Chief Operating Officer
3000 Executive Parkway, Suite 450
San Ramon, CA 94583

Copy to:

777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

c. Wherever the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

Section 1.5 Assignment of this Agreement

a. Prior to the sale of any Affordable Housing Units to Low Income and Moderate Income Households, upon a sale or transfer of the Site, the Developer shall assign its rights and obligations under this Agreement to such successors or assigns in and to the Site. The terms, covenants, and conditions of this Agreement shall run with the land to the Site and shall inure to the benefit of, apply to, and shall bind the successors and assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 2.1 and Section 3.1 hereof.

Section 1.6 Termination of Original Agreement

After mutual execution, delivery and recordation of this Agreement in the Official Records, City and Developer agree to prepare, execute and record a termination of the Original Agreement (but not this Agreement) in the Official Records, in form and substance reasonably acceptable to City and Developer, sufficient to remove the Original Agreement as an encumbrance on title to the Site.

ARTICLE 2 DEVELOPMENT OF THE SITE

Section 2.1 Scope of Development; Schedule of Performance

In accordance with Developer's business plan for the Site, Developer shall complete construction of the Project, including the provision of the Affordable Housing Units, in accordance with the Scope of Development (Attachment No. 2).

Section 2.2 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide appropriate assistance to the Developer in connection with obtaining these permits.

Section 2.3 Zoning and Land Use Requirements

It is the responsibility of Developer, without cost to City, to ensure that zoning of the Site and all applicable City land use requirements will be such as to permit the development of the Project and the use, operation and maintenance of such Project in accordance with the provisions of this Agreement. Developer acknowledges that this Agreement is not a Development Agreement pursuant to Government Code Section 65865 et seq.

Section 2.4 Construction Financing

Developer hereby represents that no City funds shall be used in this Project.

Section 2.5 Relationship of City and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and the Developer. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Site or otherwise.

ARTICLE 3 USE OF THE SITE

Section 3.1 Uses

a. In accordance with Developer's business plan for the Site, the Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site (including, without limitation, fifty-three (53) Affordable Housing Units) and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

b. In addition, the Developer agrees to restrict the occupancy of the fifty-three (53) Affordable Housing Units on the Site as rental units at an Affordable Housing Cost, as defined in Attachment No. 3 Agreement Containing Covenants and Restrictions, attached hereto. During the term of rental use, the Agreement Containing Covenants and Restrictions shall be recorded against the Project, substantially in the form attached hereto as Attachment No. 3. The Agreement Containing Covenants and Restrictions shall be binding on the Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The obligations set forth in the Agreement Containing Covenants and Restrictions shall remain in effect for the respective time period set forth in the Agreement Containing Covenants and Restrictions.

c. Any time during the Affordability Period, as defined in Section 1.1(f), the Developer may elect to sell the units as condominiums. Should the Developer elect to sell the units, the fifty-three (53) Affordable Housing Units shall be sold at an Affordable Sales Price as outlined in Section 1.1(d) ("Below Market Price Unit" or "BMP Unit"). With

respect to the BMP Units, Developer agrees to abide by the City's Below Market Purchase Program Policies and Procedures Guidelines (the "BMP Program Policies & Procedures"), as amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein. If Developer intends to sell the BMP Units as part of a condominium conversion, Developer agrees to include resale restrictions and related language and/or documents required by the City including the forms incorporated herein as Attachment 4 as part of the Covenants, Promissory Note, and Deed of Trust, and recording of the same. The City reserves the right, without any required approval of Developer, to amend the form of the resale restrictions and any related documents in the future to maintain consistency with the BMP Program Policies & Procedures that are in place at the time that a BMP Unit is proposed to be sold by Developer to an eligible buyer.

d. At any time during the Affordability Period, as defined in Section 1.1(f), and as provided for in Attachment No. 3 (Agreement Containing Covenants and Restrictions for Rental Units), the Developer elects to sell the Affordable Housing Units as condominiums, the recordation of Attachment No. 4 (Covenants, Restrictions and Option to Purchase) shall automatically terminate and void Attachment No. 3 (Agreement Containing Covenants and Restrictions for Rental Units) once all units are sold. Attachment No. 3 (Agreement Containing Covenants and Restrictions for Rental Units) shall remain in effect as recorded on title until such time as all fifty-three (53) Below Market Units have sold according to Attachment No. 4. The Developer shall be relieved of providing one rental Affordable Housing Unit for each one sold pursuant to Section 3.1(c).

e. Tenant Protections. Developer shall adhere to Santa Clara City Code ("SCCC") section 18.54.090 "Community Ownership Conversion," which establishes basic tenant protections during a conversion. Developer also agrees to adhere to the following tenant protections in the event of a conversion:

(1) Each tenant residing in one of the 53 Units ("Affordable Tenant") will be given three hundred sixty (360) days' written notice of the Developer's intention to convert prior to termination of tenancy due to the conversion or proposed conversion. This provision shall not alter or abridge the rights or obligations of the Developer, or agent, and tenant(s)' in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by the California Civil Code.

(2) Each Affordable Tenant has been or will be given notice of an exclusive right to contract for the purchase of his/her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the Affordable Tenant. The right shall run for a period of not less than one hundred eighty (180) days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the California Business and Professions Code.

(3) Each Affordable Tenant has been or will be given notice of an exclusive right to lease Affordable Tenant's present unit in the conversion project. The right shall run for a period of not less than one hundred eighty (180) days following City Council approval of conversion. Except as otherwise agreed by Affordable Tenant, each

lease document shall include language consistent with this subsection (e)(3) and City Council approved conditions.

(4) Each Affordable Tenant shall, at the time of City Council approval of conversion, be offered such a lease at the same initial rent and on the same terms and conditions as Affordable Tenant's then existing lease except that duration shall be for at least one year, except as provided in sections 3.1(e)(5) and (e)(6).

(5) Each Affordable Tenant who is age sixty-two (62) or older shall, at the time of City Council approval of conversion, be offered such a lease at the same initial rent and on the same terms and conditions as Affordable Tenant's then existing lease except that duration shall be for at least ten years.

(6) Each Affordable Tenant at the time of City Council approval of conversion who has a child or children living with the Affordable Tenant and enrolled in grades first through sixth shall be offered a lease long enough to allow those children to complete twelfth grade.

(7) Each Affordable Tenant at the time of City Council approval of PD zoning who does not purchase a unit will be paid a moving allowance prior to relocation. The allowance shall be based on the average of bids obtained by the converter from California-Public-Utility-regulated moving companies for moving possessions of affordable tenants from at least three units which are typical in features with others in the conversion project (such as three-bedroom, two-bedroom, one-bedroom) and with the moves to be for a distance of up to one hundred (100) miles. The bids shall be obtained by the converter within six months of the move.

Section 3.2 Maintenance of the Site

Developer, or its successors in interest, shall reasonably maintain the Project on the Site and shall keep the Site in good condition and repair free from any accumulation of debris or waste materials.

ARTICLE 4 DEFAULTS, REMEDIES AND TERMINATION

Section 4.1 Defaults - General

a. Except as provided in Section 5.4, failure by either Party to perform any material obligation set forth in any term or provision of this Agreement constitutes a default under this Agreement. The Defaulting Party must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The Non-Defaulting Party shall give written notice of default to the Defaulting Party, specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in

asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If the default is reasonably capable of being cured within thirty (30) days of notice, as set forth in Section 4.1(b), the Defaulting Party shall have such period to effect a cure prior to exercise of remedies by the Non-Defaulting Party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the Defaulting Party (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Defaulting Party shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the Non-Defaulting Party. In no event shall the Non-Defaulting party be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given.

Section 4.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 4.1 and the mediation provisions in Section 4.9, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any material default, to recover damages for any material default, or to obtain any other remedy for a material default consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court of that county, or in the United States District Court for the Northern District of California.

Section 4.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 4.4 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon an officer of the Developer) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 4.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 4.6 Damages

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1 and the mediation provisions in Section 4.9, the Defaulting Party shall be liable to the Non-Defaulting party for any damages caused by such default, and the Non-Defaulting party may, after such notice and opportunity to cure (but not before), commence an action for damages against the Defaulting Party with respect to such default.

Section 4.7 Specific Performance

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1 and the mediation provisions in Section 4.9, the Non-Defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 4.8 Termination by Either Party

Either Party shall have the right to terminate this Agreement in the event the other party is in Default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 4.1.

Section 4.9 Dispute Resolution

a. Any controversies between the City, the Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days after the service of the written request of one Party upon the other Party.

b. The Parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

c. The costs of mediation shall be borne by the Parties equally.

d. Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute

related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

ARTICLE 5 GENERAL PROVISIONS

Section 5.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between the City or the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City or the Developer, as designated in Sections 1.3 and 1.4 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail as provided in this Section 5.1.

Section 5.2 Conflicts of Interest

Developer certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 through 87105, and certifies that it does not know of any facts which would violate these code provisions. Developer will advise City if a conflict arises.

Section 5.3 Nonliability of City Officials and Employees

No member, official, employee or consultant of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

Section 5.4 Force Majuere: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, third party litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of the City or any other public or governmental agency or entity (except that an act or failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the

foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

Section 5.5 Approvals

Approvals required of the City or the Developer shall not be unreasonably withheld.

Section 5.6 Compliance with Laws

Developer shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Developer's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Developer has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

Section 5.7 Hold Harmless/Indemnification

A. To the extent permitted by law, Developer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Developer pursuant to this Agreement – including claims of any kind by Developer's employees or persons contracting with Developer to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

B. Developer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Developer, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction

in which the claim is brought and the manner of relief sought.

C. To the extent Developer is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Developer warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Developer's responsibilities under the Act.

ARTICLE 6 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

Section 6.1 Counterparts

This Agreement may be executed in duplicate originals each of which is deemed to be an original. This Agreement includes thirteen (13) pages and four (4) attachments, including all exhibits appended to such attachments, which constitute the entire understanding and agreement of the Parties.

Section 6.2 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

Section 6.3 Waiver

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Section 6.4 Amendments

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

Section 6.5 Mortgagee Protection.

No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Developer's Site. No lender taking title to the Site through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such lender. Any lender who has recorded a deed of trust or mortgage against the Site shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or

the areas of noncompliance set forth in City's notice. No lender who takes title to the Site through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project on the Site.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

for

BRIAN DOYLE
City Attorney

for DEANNA J. SANTANA Ruth Mizobe Shikada
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SHAC LS APARTMENTS II LLC,
a Delaware limited liability company

By: SHAC LS Apartments II Venture LLC, a Delaware limited liability company, its manager

By: SHAC LS Apartments II Manager LLC, a Delaware limited liability company, its manager

By: SummerHill Apartment Communities, a California corporation, its managing member

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Local Address: 3000 Executive Parkway, Suite 450, San Ramon, CA 94583
Email Address: _____
Telephone: (925) 244-7500
Fax: (925) 244-7501

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

State of California)
County of Santa Clara)

On April 17, 2020 before me, Anne Katherine Tran,
personally appeared Ruth Mizobe Shikada, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ANNE KATHERINE TRAN
COMM. #2313839
Notary Public - California
Santa Clara County
My Comm. Expires Nov. 26, 2023

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SHAC LS APARTMENTS II LLC,
a Delaware limited liability company

By: SHAC LS Apartments II Venture LLC, a Delaware limited liability company, its manager

By: SHAC LS Apartments II Manager LLC, a Delaware limited liability company, its manager

By: SummerHill Apartment Communities, a California corporation, its managing member

By: _____
Name: Katia Kamangar
Title: Executive Vice President

By: _____
Name: Jason Biggs
Title: Secretary

Local Address: 3000 Executive Parkway, Suite 450, San Ramon, CA 94583
Email Address:
Telephone: (925) 244-7500
Fax: (925) 244-7501

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

State of California)
County of SANTA CLARA)

On 4/10/2020 before me, JUDY LEPULU, notary public,
personally appeared KARIN KAMANGAR and JASON BIGGS
_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/they executed the same in ~~his~~/~~her~~/their authorized capacity(ies), and that by ~~his~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

JUDY LEPULU
Notary Public – California
Santa Clara County
Commission # 2226830
My Comm. Expires Jan 22, 2022

Signature _____ (Seal)

ATTACHMENT NO. 1
AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

LEGAL DESCRIPTION - SITE

[behind this page]

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 10400 LAWRENCE STATION", FILED FOR RECORD DECEMBER 21, 2017 IN BOOK 910 OF MAPS, AT PAGES 27-36, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS AMENDED BY THAT CERTAIN "CERTIFICATE OF CORRECTION" RECORDED MARCH 16, 2018 AS INSTRUMENT NO. 23889259 OF OFFICIAL RECORDS.

APN: 216-59-001

ATTACHMENT NO. 2
AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

SCOPE OF DEVELOPMENT

[behind this page]

ATTACHMENT NO. 2
AFFORDABLE HOUSING AGREEMENT

SCOPE OF DEVELOPMENT

The project site is located at 3580 Rambla Place (APN# 216-59-001) and is 2.58 acres in size. The site is part of the first phase of the Lawrence Station Area Plan. The site has been demolished and the majority of the infrastructure to serve the site has been completed. The proposed project consists of 286 apartment units with approximately 249,721 rentable square feet and approximately 2,301 square feet of retail space for neighborhood serving commercial uses. The residential units will be constructed in a 5-story wood-frame building above two floors of structured parking that is partially below grade. There is a mix of 1- and 2-bedroom units ranging in size from 653 to 1,266 square feet. Common amenities for the residential project include a swimming pool, spa, and exercise room.

Unit amenities will include:

- Washer/dryer in each unit
- General Electric "Star" Appliances or equivalent, including oven/range, microwave, dishwasher, disposal, and refrigerator
- Recessed lighting
- Quality carpeting
- Central heat and air conditioning
- Pergo, or equivalent wood entry flooring
- High quality cabinets in kitchen and bathrooms
- Designer color-coordinated kitchens with laminated or acrylic countertops and quality flooring

As proposed by the Developer, the forty-eight Moderate-Income and five Low-income units will be comprised of thirty-seven (37), 1-bedroom and sixteen (16), 2-bedroom units roughly proportionate to the mix of market rate units.

ATTACHMENT NO. 3
AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

AMENDED AND RESTATED
AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
(Including Affordable Housing Restrictions for Rental Units)

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

Recording Requested By and
When Recorded Mail To:

CITY OF SANTA CLARA
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Division Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AMENDED AND RESTATED
AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
(Including Affordable Housing Restrictions for Rental Units)

THIS AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions for Rental Units ("Agreement"), is made by and between SHAC LS APARTMENTS II LLC, a Delaware limited liability company ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows with reference to the following facts:

RECITALS

A. SHAC LS APARTMENTS II LLC, is the legal owner of the real property legally described on Exhibit A attached hereto ("Property"). A 286 unit apartment community has been or will be constructed on the Property (the "Project").

B. The Parties previously entered into an agreement entitled "Agreement Containing Covenants and Restrictions (Including Affordable Housing Restrictions for Rental Units), which was recorded in the Official Records of Santa Clara County, California on March 20, 2019 as Document No. 24138222 ("Original Agreement").

C. The Parties entered into the Original Agreement for the purpose of having Developer provide fifty-two (52) Affordable Housing Units within the Project that will be designated for low and moderate income residents and the Parties now wish to amend and restate the Original Agreement in its entirety to increase the number of Affordable Housing Units in the Project to fifty-three (53).

D. Developer accepts responsibility for meeting the provision of fifty-three (53) affordable rental housing units within the Project. The fifty-three (53) affordable rental housing units shall be provided in the Project according to the terms herein stated. The proportion of units shall be 90% moderate income and 10% low income. Moderate income shall be defined as 120% of the Area Median Income (AMI) and low income shall be defined as 80% of the AMI. The distribution of these units shall be forty-eight (48) moderate income and five (5) low income units.

E. All fifty-three (53) proposed affordable rental housing units shall be made available at Below Market Rate (BMR) rents that do not exceed Affordable Housing Cost, as defined in this Agreement. Each of the 53 BMR units are designated and identified in the attached Exhibit B.

F. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

G. Upon mutual execution and delivery and recordation of this Agreement, the Original Agreement is null and void and terminated in all respects as if it had never been entered into or recorded.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing for low-income (as defined in Section 1(a) below) and moderate-income households (as defined in Section 1(b) below) at rent below market rate, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordable Housing Cost" shall mean a monthly rent plus a reasonable utility allowance that does not exceed the following:

(a) For a Low-Income Household, the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).

(b) For a Moderate-Income Household, the product of thirty percent (30%) times one hundred twenty (120%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for fifty-five (55) years from the date of execution of that certain Affordable Housing Agreement by and between the City of Santa Clara and SHAC LS APARTMENTS II LLC, a Delaware Limited Liability Company, dated April _____, 2020 (herein referred to as the "Affordable Housing Agreement").

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the fifty-three (53) Below Market Rate rental units, of which all fifty-three (53) units shall be designated in Exhibit B by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement.

"Annual Income" shall mean the annual income limits established by the California Department of Housing and Community Development.

"Below Market Rate" or "BMR" shall mean the provision of a dwelling unit at rent levels less than market rates.

"City" shall mean the City of Santa Clara, California.

"Area Median Income" shall mean the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

"Household" shall mean one or more persons occupying a housing unit.

"HCD" shall mean the California Department of Housing and Community Development.

"Income-Qualified Household" shall mean a household with an income that does not exceed the following:

(a) For a Low-Income BMR Unit, eighty percent (80%) of the Area Median Income adjusted for family size.

(b) For a Moderate-Income BMR Unit, one hundred twenty percent (120%) of the Area Median Income adjusted for family size.

"Project" shall mean the 286 unit residential apartment facility located upon the real property legally described in the Legal Description attached hereto as Exhibit A, inclusive of fifty-three (53) units rented at a Below Market Rate Monthly Rent, as

defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

"Below Market Rate Monthly Rent" or "Monthly Rent" shall mean, for purposes of this Agreement, an amount that is no greater than the following:

(a) For a Low-Income Household, thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.

(b) For a Moderate-Income Household, thirty percent (30%) of one hundred twenty percent (120%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.

"Utility Allowance" shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

2. Uses

a. General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 286 residential dwelling units and shall include fifty-three (53) Affordable Housing Units for Income-Qualified Households.

b. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, for a term of fifty-five (55) years, that fifty-three (53) Affordable Housing Units shall be either rented or leased to or held available for rental or occupancy by Low Income and Moderate Income-Qualified Households, or made available for sale for Low Income and Moderate Income Households pursuant to the terms of the Affordable Housing Agreement. At any time during the Affordability Period, as defined in the Affordable Housing Agreement, and as provided for in this Agreement, if Developer elects to sell the Affordable Housing Units as condominiums, the recordation of Attachment No. 4 (Covenants, Restrictions and Option to Purchase) to the Affordable Housing Agreement shall supersede this Agreement, which then shall automatically terminate and thereafter be void for any sold Affordable Housing Unit.

(1) Units Generally.

(a) Fifty-three (53) of all the rental Units at Project shall be designated as Affordable Housing Units and shall be occupied or held available for

occupancy by Income-Qualified Households on a continuous basis for the Affordability Period.

(b) Prior to the initial lease-up, Developer shall have designated in the attached Exhibit B the specific Units in the Project to be the Affordable Housing Units and given notice to the City of such designation ("Unit Allocation"). Subject to the terms of this Agreement, the Developer shall have the right, from time to time, to re-designate the Affordable Housing Units so long as: (i) the unit designation (including, but not limited to: the number of bedrooms, units with accessibility modifications) remains substantially the same throughout the Affordability Period; (ii) the Affordable Housing Units are distributed throughout the Project; and (iii) the Developer shall obtain the City's prior written approval before re-designating the Affordable Housing Units, the approval of which shall not be unreasonably withheld or delayed.

(c) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.

(2) Affordable Housing Unit Rents

(a) Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Monthly Rent applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to monthly rent.

(b) The Monthly Rent for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by HCD. Upon request, City shall notify the Developer of the applicable area rents based on number of bedrooms.

(c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in Area Median Income. In no case may Monthly Rents for the Affordable Housing Units exceed the amount derived by the Monthly Rent formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

(3) Income Qualification of Affordable Housing Unit Tenants

(a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.

(b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that Unit, using the definition of Annual Income established by HCD. The Developer may certify initial income qualification using one of the following two source documentation methods:

(i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or

(ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: Pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; Income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.

(c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the households income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.

(d) Income limits, adjusted for household size, will be based off of the Area Median Income for Santa Clara County, which is published periodically by HCD.

(4) <u>Over-Income Tenants in Affordable Housing Units</u>

(a) Affordable Housing Unit tenants whose income no longer qualifies for the Affordable Housing Unit may continue to reside in the Unit. However, they must pay rent at the current market rent being charged for a comparable market rate unit at the Project. Notwithstanding the foregoing, Developer and City agree that (1) if a tenant no longer qualifies as a Low Income Household but would qualify as a Moderate-Income Household, the tenant may continue to rent the Affordable Housing Unit at a Monthly Rent determined for a Moderate-Income Household, and Developer shall not be required to add a replacement Low Income Household Unit until the next available comparable Moderate-Income Household Unit becomes available; and (2) if a tenant

no longer qualifies as a Moderate Income Household, Developer and City may agree in writing to allow the Affordable Housing Unit tenant whose income no longer qualifies as a Moderate Income Household to continue to reside in the Affordable Housing Unit so long as the Annual Income for such tenant does not exceed one hundred forty percent (140%) of the Area Median Income (adjusted for household size appropriate for the Unit). During such time the tenant shall continue to pay a Monthly Rent that is equivalent to thirty percent (30%) of one hundred twenty percent (120%) of the Area Median Income divided by twelve (12) and Developer shall not be required to add a replacement Moderate Income Household Unit. If the income of a tenant who remains a tenant at the Project under Section 4(a)(2) above exceeds 140% of the Area Median Income adjusted for household size, then such tenant may continue to reside in the Unit provided they pay rent at then current market rent for a comparable market rate unit at the Project, and the provisions of Section 4(b) below shall apply.

(b) Affordable Housing Units occupied by tenants whose income no longer qualifies for that affordable unit are considered in temporary "non-compliance" with this Agreement. Except as otherwise allowed pursuant to Section 4(a) above, to bring the Affordable Housing Unit back into compliance, the Developer must:

(i) Rent the next vacant Unit of the same size (i.e.: 2-bedroom) to an Income Qualified Household for a Low Income BMR Unit (unless there are already five (5) Affordable Housing Units rented to Income Qualified Households for five (5) Low Income BMR Units, in which case the next vacant Unit of the same size shall be rented to an Income Qualified Household for a Moderate-Income BMR Unit) whose Annual Income would qualify them for the "non-compliant" Affordable Housing Unit. This Unit replaces the "non-compliant" Affordable Housing Unit at the affordability level of that Affordable Housing Unit; and

(ii) Re-designate the original Affordable Housing Unit that was in non-compliance as a market rate unit in Project. The tenants may be charged market rents as determined by Developer.

(5) <u>Waiting List for Affordable Housing Units</u>

(a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.

(b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide City evidence of attempts to contact households on the Waiting List.

(6) Lease Provisions

(a) Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below in Section 6(b)-(f). A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.

(b) The lease may not contain any terms prohibited by applicable law.

(c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.

(d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.

(e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.

(f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and

approval by the City, the approval of which shall not be unreasonably withheld or delayed.

(7) Initial Leasing, Marketing and Tenant Selection Procedures.

(a) Not later than ten (10) days prior to the commencement of marketing, Developer or an Affiliate approved by City of Santa Clara shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all fifty-three (53) Affordable Housing Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.

(b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations

(c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.

(d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules, regulations and ordinances, including without limitation, all applicable federal and state labor standards.

(e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project, or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.

(f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land".

(2) In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land."

3. Monitoring/Annual Report

(a) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall

responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.

(b) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report (the "Annual Report"). The first Annual Report shall be due 1 year after leasing at the Project has commenced. The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.

(c) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.

(d) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):

(1) Apartment Number or other unit designation.
(2) Number of bedrooms.
(3) Household Size.
(4) Tenant Income (certified annually).
(5) Tenant-Paid Rent.
(6) Explanation of any change in the designated affordable units, and reason for change that occurred in the previous fiscal year (July 1 to June 30).

(e) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.

(f) Once leasing at the Project has commenced, Developer shall pay City on an annual basis, concurrently with the issuance of the Annual Report, a multi-family monitoring fee of $48.95 per Affordable Housing Unit (the "Monitoring Fee"). The first Monitoring Fee shall be payable one (1) year after leasing at the Project has commenced.

4. Enforcement

The City of Santa Clara is deemed to be the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

Developer agrees that, if a breach is not cured within thirty (30) days after written notice by City is provided to Developer, or if such breach cannot be reasonably cured within the thirty (30) day period and Developer has not commenced the curing of such Default, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to pay to the City the full amount of such excess to the City within ten (10) business days of City's written demand. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of $150 per month per unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement constitutes a default.

(a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(b) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (1) initiates corrective action within said period, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.

(d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third parties, technical problems with transportation or other events outside the Developer's control.

6. Indemnification

The Developer shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project with respect to the Developer's performance hereunder. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct or breach of this Agreement by the City. If any such claim is asserted, or any such

impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or comprise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

7. General Provisions

(a) City as Beneficiaries

(1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.

(2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof; provided, however, that if Developer elects to sell the Affordable Housing Units as condominiums the recordation of Attachment No. 4 to the Affordable Housing Agreement shall supersede this Agreement which then shall terminate and thereafter be void for any sold Affordable Housing Unit. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

After mutual execution, delivery and recordation of this Agreement in the Official Records, City and Developer agree to prepare, execute and record a termination of the Original Agreement (but not this Agreement) in the Official Records, in form and substance reasonably acceptable to City and Developer, sufficient to remove the Original Agreement as an encumbrance on title to the Property.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as

United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

City of Santa Clara
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attn: Division Manager

SHAC LS APARTMENTS II LLC
c/o Summerhill Apartment Communities
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Chief Operating Officer, Development

With a copy to:
SHAC LS APARTMENTS II LLC
c/o Summerhill Apartment Communities
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.

(j) Dispute Resolution

(1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.

(2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one

day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.

(3) The costs of mediation shall be borne by the parties equally.

(4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

(l) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Project. No lender taking title to the Project through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of the Project by such lender. Any lender who has recorded a deed of trust or mortgage against the Project shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice. No lender who takes title to the Project through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SHAC LS APARTMENTS II LLC,
a Delaware limited liability company

By: SHAC LS Apartments II Venture LLC, a Delaware limited liability company, its manager

By: SHAC LS Apartments II Manager LLC, a Delaware limited liability company, its manager

By: SummerHill Apartment Communities LLC, a California corporation, its managing member

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Local Address: 3000 Executive Parkway, Suite 450, San Ramon, CA 94583
Email Address: _____
Telephone: (925) 244-7500
Fax: (925) 244-7501

_____

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

State of California)
County of)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
County of)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

[behind this page]

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 10400 LAWRENCE STATION", FILED FOR RECORD DECEMBER 21, 2017 IN BOOK 910 OF MAPS, AT PAGES 27-36, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS AMENDED BY THAT CERTAIN "CERTIFICATE OF CORRECTION" RECORDED MARCH 16, 2018 AS INSTRUMENT NO. 23889259 OF OFFICIAL RECORDS.

APN: 216-59-001

EXHIBIT B

DESIGNATED FIFTY-THREE (53) BELOW MARKET RATE UNITS BY INCOME CATEGORY AND UNIT SIZE

[behind this page]

LAWRENCE STATION - HIGH DENSITY - BUILDING 'A'

Building A

1 Bed Units

Unit Types per Level	P1	P2	P2_PM1	P2.ALT.2	P2.ALT.2_PM	P2.ALT.3 (ADAM)	P2.ALT.3_PM (ADAM)	P2.ALT.10_PM (ADAM)	P2.ALT.17 (ADAM)	P4	P5	P6	P7	P7-ALT.2	P7-ALT.3_PM (ADAM)	P8	P8_PM(B)
Ground Level	2	3		3		1			1		1	1	1	1			
Level 1 (Podium)	4	8	1	6	1	1			1	1	1	1	1		1	4	5
Level 2	4	11	1			1	5	1		1	1	1	1		1	5	3
Level 3	4	11	1			1	5	1		1	1	1	1		1	5	3
Level 4	4	11	1			1	5	1		1	1	1	1		1	5	3
Level 5	4	9	1			1	5	1		1	1	1	1		1	4	5
Total No of Units	24	54	5	11	1	6	23	4	2	5	6	6	6	1	5	26	19
Percentage	56.2%																

2 Bed Units

Unit Types per Level	P8	P8-ALT.3	P8-ALT.4	P8-ALT.8(B)	P9-ALT.10 (ADAM)	P10	P10-ALT.2	P10-ALT.3	P10-ALT.4	P11	P11-ALT.2	Total
Ground Level	2	2		1				1		1		7
Level 1 (Podium)	1	3	1	2	1	2			1	1		50
Level 2	1	2	1	2	1	2			1	1		51
Level 3	1	2	1	2	1	3			1	1		54
Level 4	1	2	1	2	1	3			1	1		54
Level 5	1	2			1	3			1	1		38
Total No of Units	6	13	5	8	5	13	1	1	5	5	1	305
Percentage	43.8%											

Unit Type	Area (SF/AC MRSF)	Total Area (MAC MRSF)
P1	853	12,812
P2	703	41,343
P2_PM1	784	3,776
P2.ALT.2	813	9,943
P2.ALT.2_PM	804	804
P2.ALT.3 (ADAM)	813	4,878
P2.ALT.3_PM (ADAM)	813	18,696
P2.ALT.10_PM (ADAM)	804	3,216
P2.ALT.17 (ADAM)	763	1,526
P4	770	3,850
P5	843	5,064
P6	803	5,782
P7	680	4,085
P7-ALT.2	803	803
P7-ALT.3_PM (ADAM)	810	4,375
P8	770	19,250
P8_PM(B)	713	13,548
P8	1,364	29,222
P8-ALT.3	1,364	18,752
P8-ALT.4	1,130	6,524
P8-ALT.8(B)	1,044	5,308
P9-ALT.10 (ADAM)	1,284	6,420
P10	1,163	14,556
P10-ALT.2	1,163	1,163
P10-ALT.3	1,163	1,163
P10-ALT.4	1,163	5,815
P11	1,250	6,250
P11-ALT.2	1,250	1,250
Total		346,731

Average SF per Unit Type: 773 — 1,138

Overall Average Unit SF: 873

Guest Suites

SUITE 1	SUITE 2	SUITE 3
		1
1	1	
1	1	1
	2	
	1	
422	422	844
422	422	844
1,688		
600		

n Space

Private Open Space																												
Private Open Space per Unit	0	10	10	117	117	51	110	105	110	96	73	83	73	67	67	95	53	71	116	116	77	80	273	151	152	151	140	134	
Total Provided Private Open Space	0	3,780	280	1,287	117	342	2,200	440	220	480	438	498	365	67	268	2,125	1,179	1,988	2,898	580	463	400	3,281	151	152	1,206	740	134	36,882

Common Open Space	Front Yard	R1 - Podium Deck	R6 - Roof Deck	Side Yard (Right Sl)	Side Yard	Indoor Amenities	
Total Provided Common Open Space	18,500	34,401	2,210	8,980	14,234		58,880
Total Provided Indoor Amenities						10,517	10,517
Total Provided Open Space							47,398

Provided Parking (Per Code)	Universal	EV-Ready (0.2%)	Flex	Tandem	Accessible(2%)	Compact	Motorcycle	Total
Residential								
G1 Level Parking	78	6	0	63	7	20	8	177
G2 Level Parking	72	6	0	70	8	0	6	164
Total Provided Residential Parking	150	12	0	132	7	20	6	341
	3.5%			2.1%				
Retail								
G1 Level Parking	28	0	3	0	2	5	0	38
On Street Surface Parking	15	0	0	0	0	9	0	15
Total Provided Retail Parking	43	0	3	0	2	5	0	53
Total Provided Parking	191	12	3	132	9	25	6	374

(Total + 19 PUBLIC ACCESSIBLE PARKING NEW TANDEM SPACE)

Bicycle Parking Review	Bicycle Peg Spaces	
Residential		
Class I (per Code)	150	Lockers
1 Class I per 10 units	30	Racks
Total Site Residential Pkg	300	
Retail		
1 Class I per 30 employees	2	Lockers
1 Class II per 5,000 sf	4	Racks
Total site retail pkg	6	

Provided bicycle parking	Bicycle Class I	Bicycle Class II	Total
Residential			
G1 Level Parking	180	0	180
G2 Level Parking	25	5	30
On-Site Outdoor parking	0	20	20
Total provided bike parking	180	25	200
Retail			
G1 Level Parking	2	4	6
On-Site Outdoor parking	0	5	5
Total provided retail parking	2	4	6

Total Rental Floor Area
2,321
Total Leasing Area
2,102
Maximum Building Height
85'-0"
Coverage
66,916

KTGY Group, Inc.
12555 West Jefferson Blvd.
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2623

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2403
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

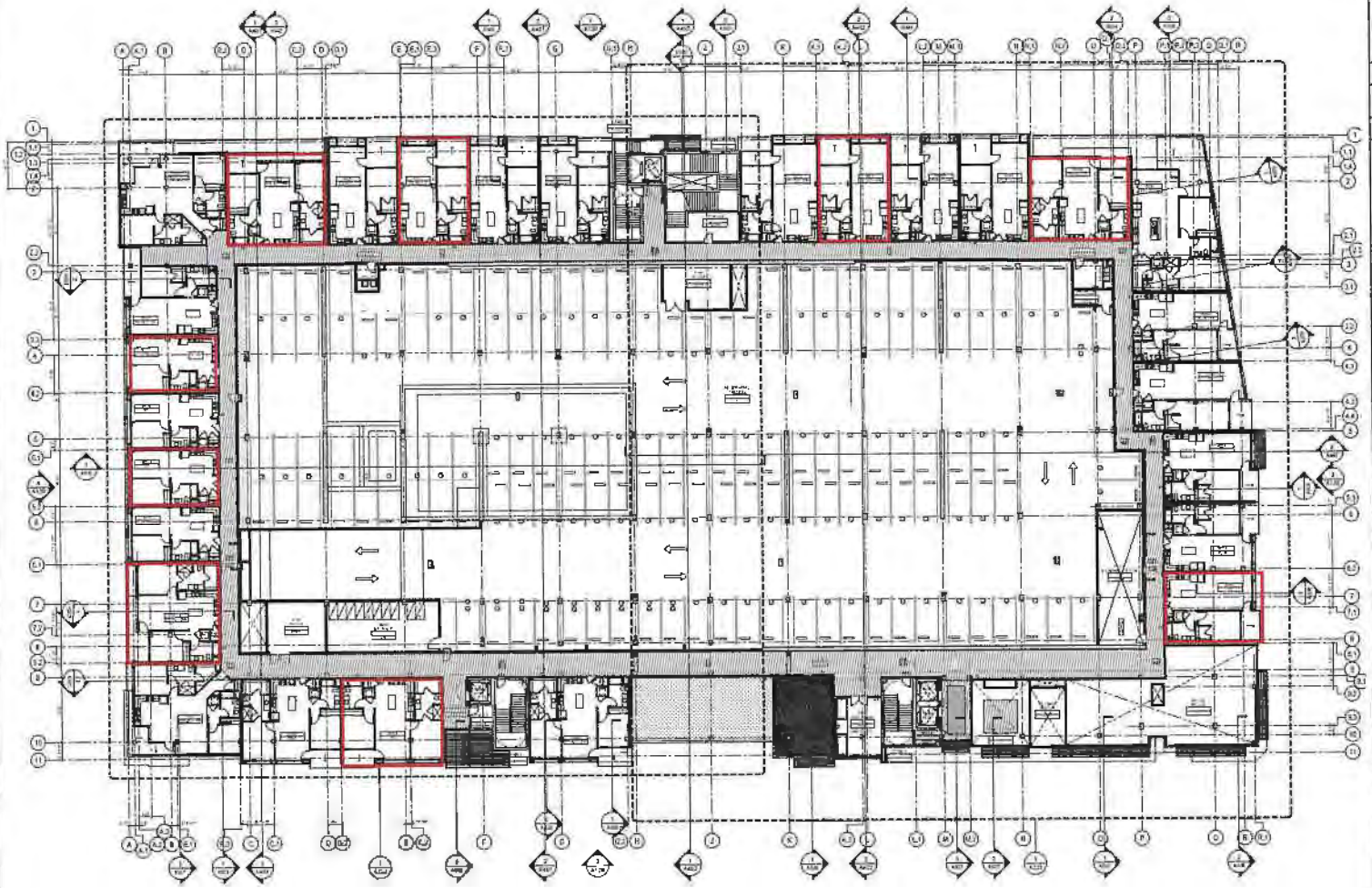
2017-07-21_CHECK SET

No.	Date	Description
	7/16/2015	PROGRESS SET
	7/22/2015	SD SUBMITTAL SET
	8/22/2015	25% DD PROGRESS SET
	9/29/2015	50% DD PROGRESS SET
	11/20/2015	75% DD PROGRESS SET
	12.21.2015	BLDG DEPT SUBMITTAL
	03/03/2016	100% DD SUBMITTAL
	3/21/2017	25% CD SUBMITTAL
	5/12/2017	50% CD SUBMITTAL
	6/14/2017	75% CD SUBMITTAL

License Stamp

BUILDING PROJECT DATA

A020



G2 FLOOR PLAN | 1

BLDG FLOOR COMP. NOTES

DIMENSION NOTE

LEGEND

EXIT SIGNS & FIRE EXTINGUISHERS

SYMBOL LEGEND

TACTILE EXIT SIGNS

KTGY Group, Inc.
12555 West Jefferson Blvd.,
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2623

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2403
FAX NO. —

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

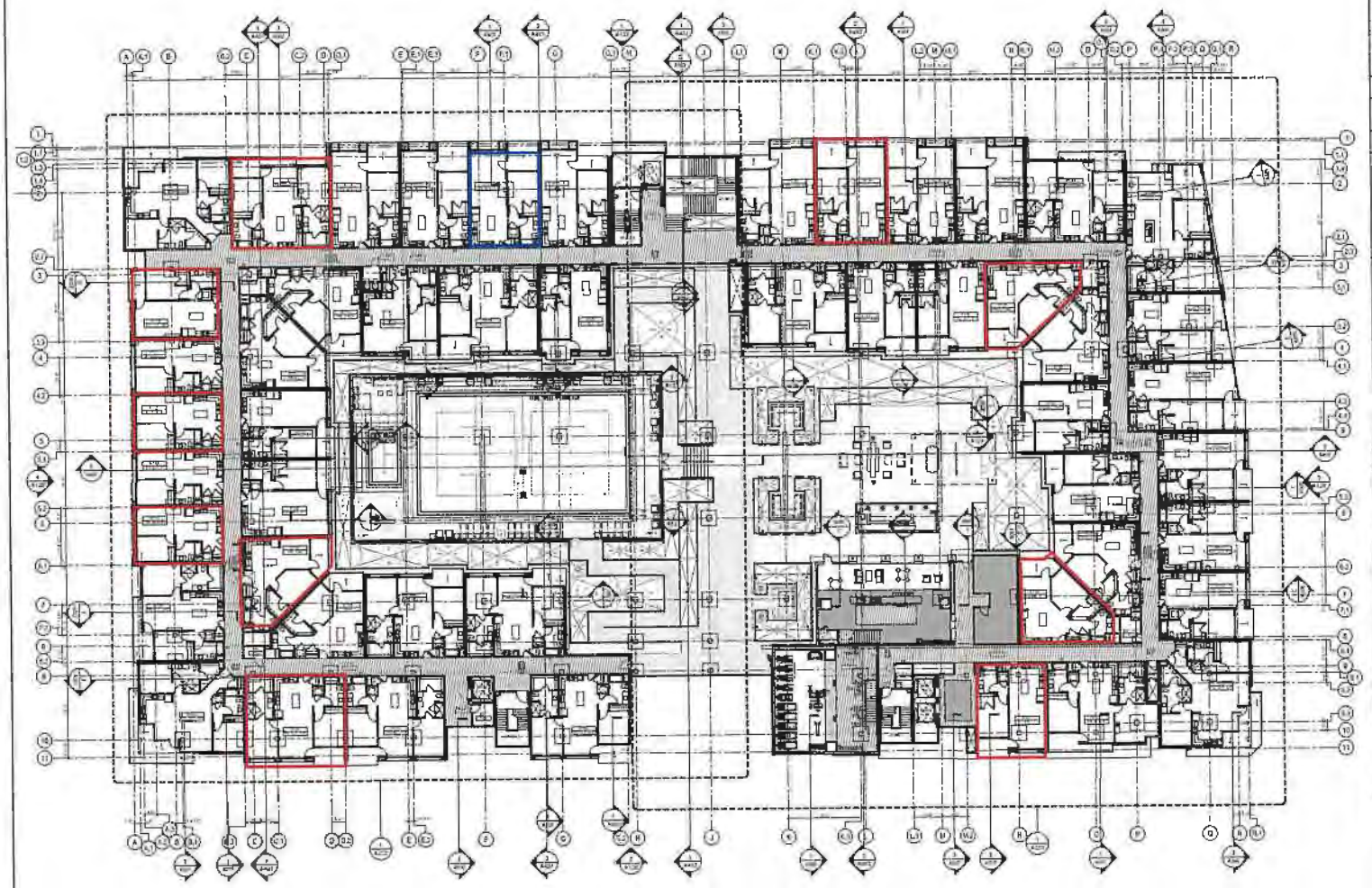
2017-07-21_CHECK SET

No.	Date	Description
	7/13/2016	PROGRESS SET
	7/27/2016	SD SUBMITTAL SET
	9/9/2016	25% DD PROGRESS SET
	9/23/2016	50% DD PROGRESS SET
	11/30/2016	75% DD PROGRESS SET
	12.21.2016	BLDG DEPT SUBMITTAL
	03/03/2017	100% DD SUBMITTAL
	3/27/2017	35% CD SUBMITTAL
	4/21/2017	50% CD SUBMITTAL
	6/14/2017	75% CD SUBMITTAL

License Stamp

G2 LEVEL - OVERALL PLAN

A111



R1 PODIUM FLOOR PLAN | 1

BLDG FLOOR COMP. NOTES

DIMENSION NOTE

LEGEND

EXIT SIGNS & FIRE EXTINGUISHERS

SYMBOL LEGEND

TACTILE EXIT SIGNS

ktgy

KTGY Group, Inc.
12555 West Jefferson Blvd.
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2623

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-843-2403
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

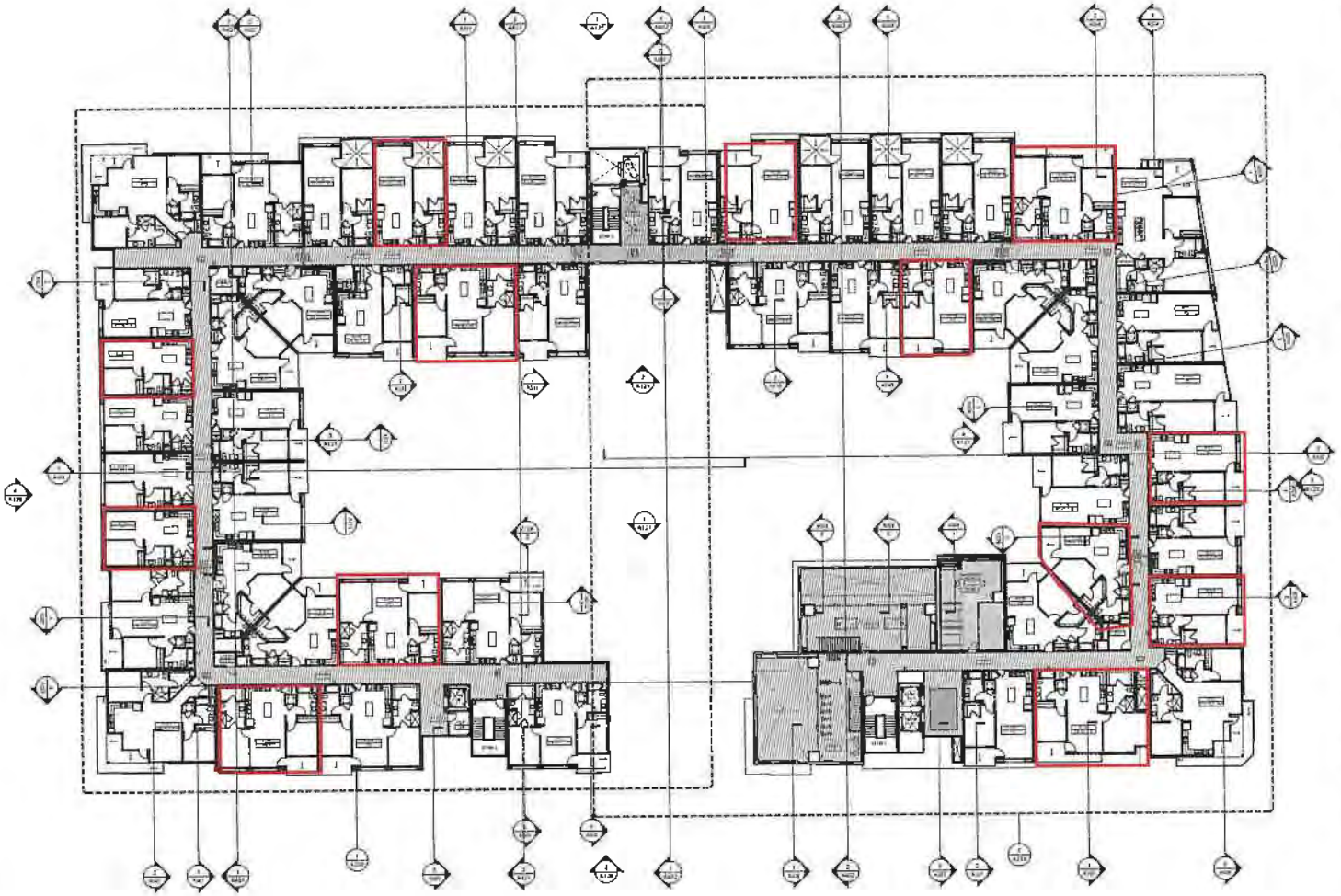
2017-07-21_CHECK SET

No.	Date	Description
	7/18/2016	PROGRESS SET
	7/22/2016	DD SUBMITTAL SET
	8/22/2016	25% DD PROGRESS SET
	9/26/2016	50% DD PROGRESS SET
	11/29/2016	75% DD PROGRESS SET
	12.21.2016	HLDG DEPT SUBMITTAL
	02/07/2017	100% DD SUBMITTAL
	3/23/2017	25% CD SUBMITTAL
	4/21/2017	50% CD SUBMITTAL
	6/14/2017	75% CD SUBMITTAL

License Stamp

R1 PODIUM LEVEL - OVERALL PLAN

A112



R2 FLOOR PLAN

BLDG FLOOR COMP. NOTES

DIMENSION NOTE

LEGEND

EXIT SIGNS & FIRE EXTINGUISHERS

SYMBOL LEGEND

TACTILE EXIT SIGNS

KTGY Group, Inc.
10960 West Jefferson Blvd.,
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2623

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2403
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

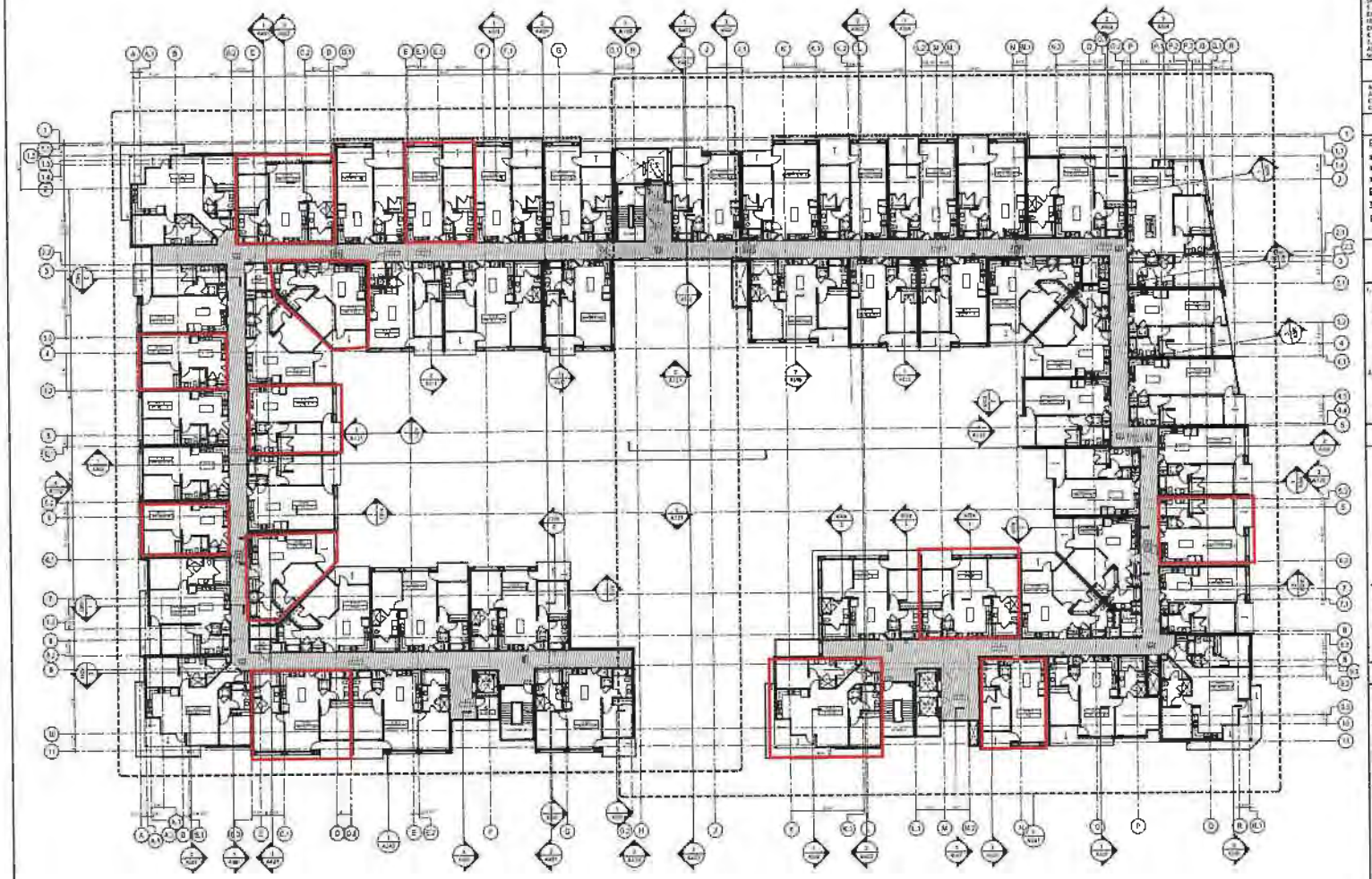
2017-07-21_CHECK SET

No.	Date	Description
	7/1/2016	PROGRESS SET
	7/22/2016	50 SUBMITTAL SET
	9/22/2016	25% DD PROGRESS SET
	9/30/2016	50% DD PROGRESS SET
	11/22/2016	75% DD PROGRESS SET
	12/21/2016	BLDG DEPT SUBMITTAL
	02/07/2017	100% CD SUBMITTAL
	3/22/2017	35% CD SUBMITTAL
	4/21/2017	50% CD SUBMITTAL
	6/16/2017	75% CD SUBMITTAL

License Stamp

R2 LEVEL - OVERALL PLAN

A113



R3 FLOOR PLAN

BLDG FLOOR COMP. NOTES

DIMENSION NOTE

LEGEND

EXIT SIGNS & FIRE EXTINGUISHERS

SYMBOL LEGEND

TACTILE EXIT SIGNS

KTGY Group, Inc.
12555 West Jefferson Blvd.,
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2633

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2403
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

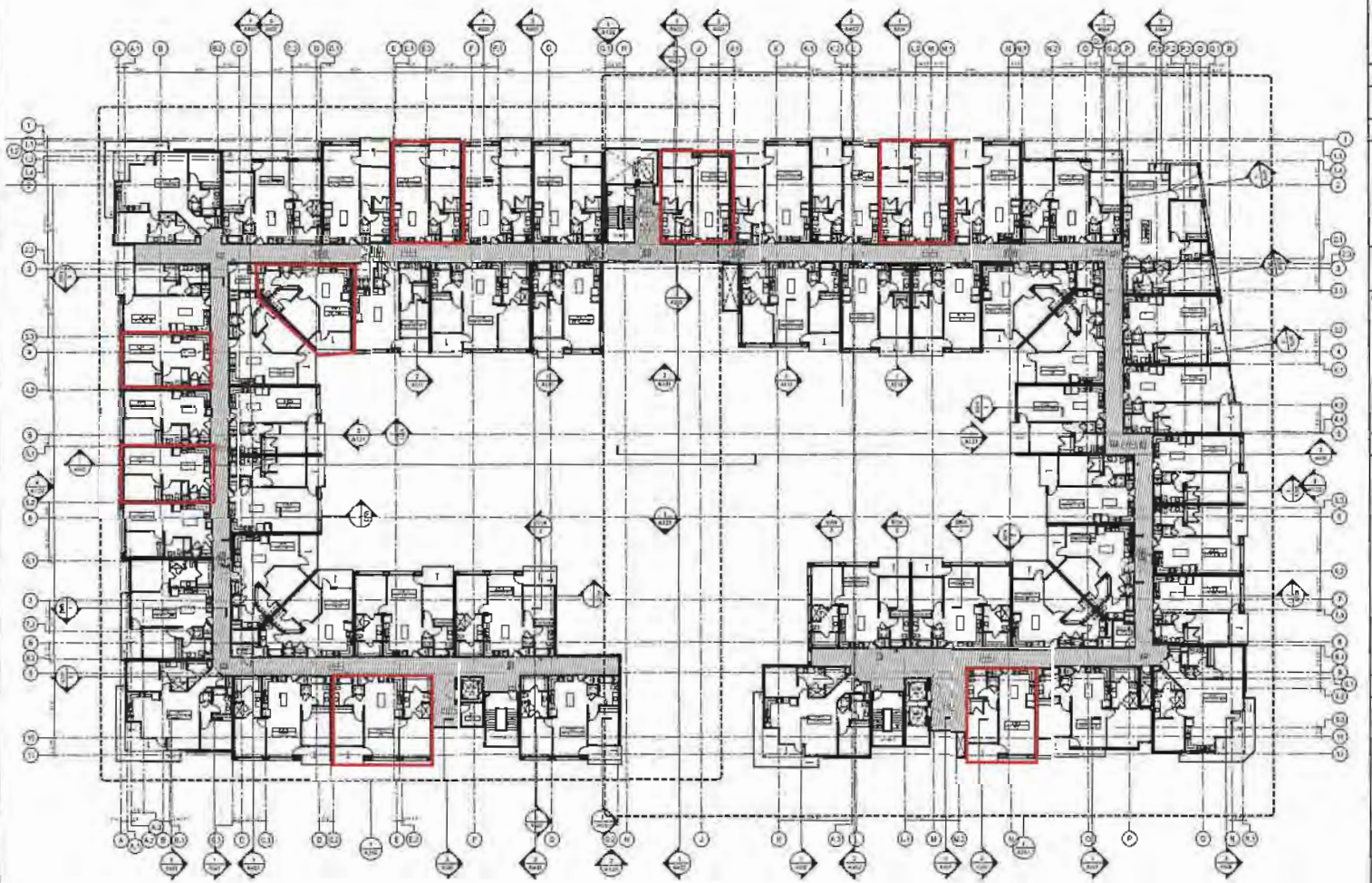
2017-07-21_CHECK SET

No.	Date	Description
	7/18/2016	PROGRESS SET
	7/22/2016	SD SUBMITTAL SET
	4/22/2016	25% DD PROGRESS SET
	9/30/2016	50% DD PROGRESS SET
	11/22/2016	75% DD PROGRESS SET
	12.21.2016	90% DD PT SUBMITTAL
	02/03/2017	100% DD SUBMITTAL
	3/23/2017	25% CD SUBMITTAL
	4/21/2017	50% CD SUBMITTAL
	6/14/2017	75% CD SUBMITTAL

License Stamp

R3 LEVEL - OVERALL PLAN

A114



R4 FLOOR PLAN | SCALE: 1/8"=1'-0" | 1

BLDG FLOOR COMP. NOTES

DIMENSION NOTE

LEGEND

EXIT SIGNS & FIRE EXTINGUISHERS

SYMBOL LEGEND

TACTILE EXIT SIGNS

KTGY Group, Inc.
12555 West Jefferson Blvd.
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.2603

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer

SOMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2483
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

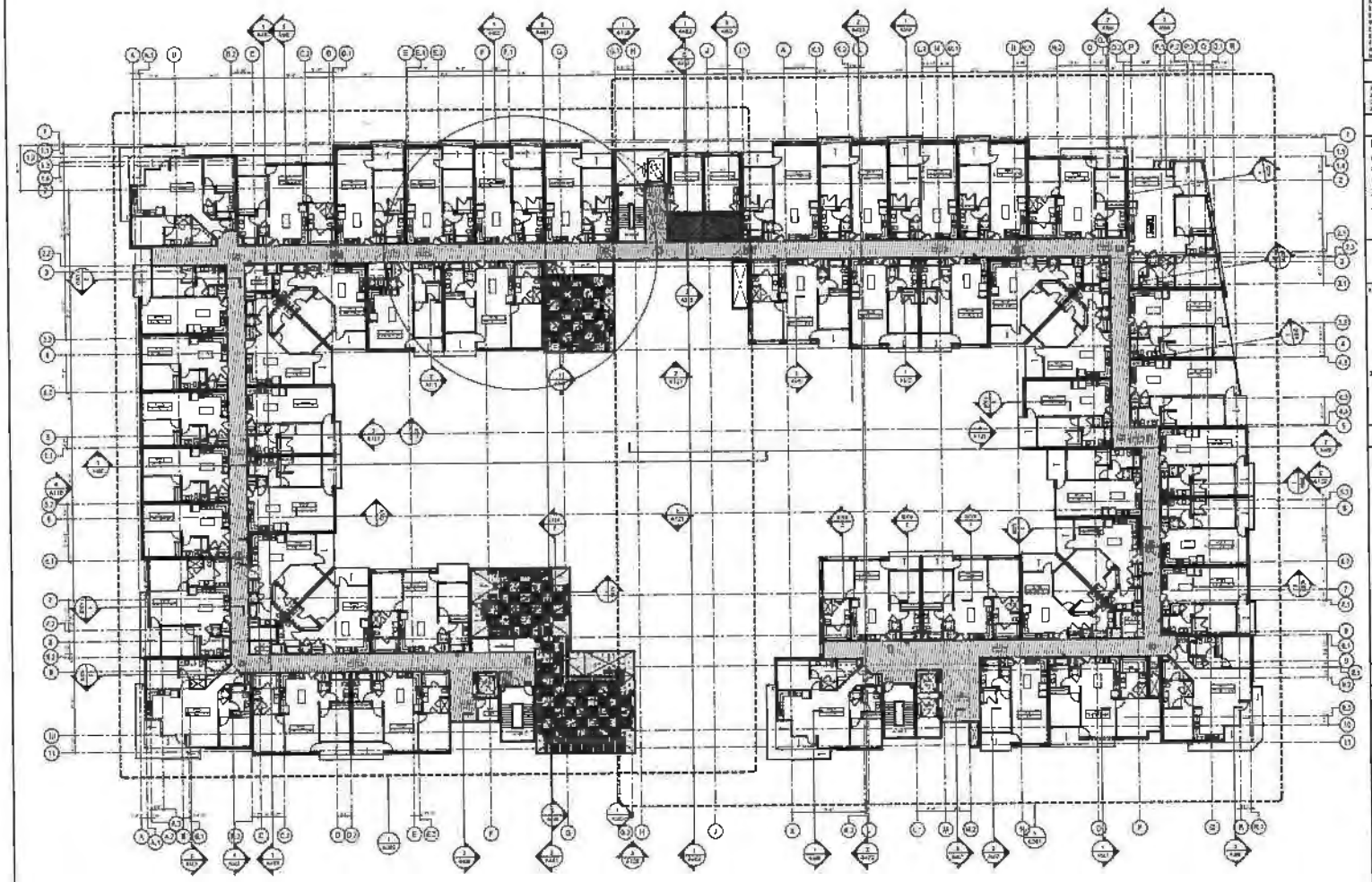
2017-07-21_CHECK SET

No.	Date	Description
	7/18/2016	PROGRESS SET
	7/12/2016	SD SUBMITTAL SET
	8/22/2016	25% DD PROGRESS SET
	9/22/2016	50% DD PROGRESS SET
	11/22/2016	75% DD PROGRESS SET
	12/21/2016	100% DD DEPT SUBMITTAL
	02/03/2017	100% DD SUBMITTAL
	3/17/2017	25% CD SUBMITTAL
	4/21/2017	50% CD SUBMITTAL
	6/14/2017	75% CD SUBMITTAL

License Stamp

R4 LEVEL - OVERALL PLAN

A115



R5 FLOOR PLAN | SCALE: 1/8"=1'-0" | 1

BLDG FLOOR COMP. NOTES

1. AUTOMATIC FIRE SPRINKLER SYSTEM
THIS BUILDING SHALL BE PROTECTED WITH AN APPROVED AUTOMATIC SPRINKLER SYSTEM. REFER TO FIRE SPRINKLER DRAWINGS BY OWNER'S PLANS FOR ALL RESIDENTIAL PROTECTION COMPONENT INFO. TO BE SUBMITTED TO THE FIRE MARSHALL FOR APPROVAL PRIOR TO INSTALLATION.
2. FIRE ALARM SYSTEM
THE BUILDING SHALL HAVE AN APPROVED MANUAL AND AUTOMATIC FIRE ALARM SYSTEM DESIGNED TO WARN THE OCCUPANTS OF THE BUILDING IN THE EVENT OF A FIRE. SEE SECTIONS 902.2, 907.2.8, 907.2.9.1 AND NFPA 72.
WHEN DEFERRED SMOKE TUBE AND SPRINKLER HEADS, AUTOMATIC SPRINKLER SYSTEMS SHALL BE SUPERVISED BY AN APPROVED EVAL. CERTIFIED CENTRAL PROPRIETARY OR REMOTE STATION SERVICE IN ACCORDANCE WITH 2013 CBC SEC. 907.2.9. OR SHALL BE PROVIDED WITH A LOCAL ALARM WHICH WILL SOUND AND AUDIBLE SIGNAL AT A CONSTANTLY ATTENDED LOCATION.
3. SMOKE DETECTORS
EACH DWELLING UNIT SHALL HAVE PERMANENTLY WIRED SMOKE DETECTORS WITH BATTERY BACKUP INSIDE EACH BEDROOM AND CENTRALLY LOCATED IN THE CORRIDOR OR AREA GIVING ACCESS TO SLEEPING AREAS. DETECTORS SHALL SOUND AN ALARM AUDIBLE IN ALL SLEEPING AREAS OF THE UNIT. ALL APPLICABLE PROVISIONS PER 2013 CBC SECTIONS 907.2.10 AND 907.2.11 (SEC. 4603.7.3 SHALL BE MET.
4. INTERIOR FINISHES SHALL COMPLY WITH C.B.C. CHAPTER 8. REFER TO INTERIOR DESIGNER'S DRAWINGS FOR LOCATIONS & SPECIFICATIONS OF ALL INTERIOR FINISHES.
5. AND FIN FOR TOILETS WHICH ARE ADJACENT BEDROOM CABINETS, FIRE EXTINGUISHER CABINETS AND ELECTRICAL OUTLET TAKES EXCEEDING 16 SQUARE INCHES IN AREA AS WELL AS BEHIND BATHTUB AND SHOWER ENCLOSURES SHALL BE RATED. SEC. TABLE OR TABLE.
6. ACCESSIBILITY DETAILS REFER TO SHEETS A0.1 TO A0.7
7. THE EXTERIOR WALLS TO HOUSE KITCHEN FRAMING SHALL BE USED AT ALL TYPE B DWELLING UNITS (COLLECTION SEC. 1. AND COMPLY WITH CBC SECTION 1003.3. REFER TO WALL TYPES AND DETAILS.

DIMENSION NOTE

ALL MINIMUM CLEAR DIMENSIONS ARE TO FINISH MATERIAL.
ALL WALL DIMENSIONS ARE SHOWN TO FACE OF FRAMING FOR SHEETS CONCRETE WALLS. DIMENSIONS ARE SHOWN TO FACE OF BLOCK OR CONCRETE SURFACE.

LEGEND

- WALL TYPE: REFER TO SHEETS A0.0 AND A0.1 A-001
- 1HR RATING
- 2HR RATING
- 3HR RATING
- REINFORCED 8 HR WALL (PER STRUCTURAL)
- 20G/METAL FRAMING WALL (PER DETAIL 10/A-001)
- FOR FORCED CONCRETE WALL (SEE STRUCTURAL FOR SHEAR WALL LOCATION AND ADDITIONAL INFORMATION)

EXIT SIGNS & FIRE EXTINGUISHERS

1. ANGLE OF ROUTES (EXITS) ALERT
A. PROVIDE INTERNALLY ILLUMINATED EXIT SIGNS IN CONFORMANCE WITH C.B.C. SECTION 1011.4
B. AVAILABLE PLAIN LEVEL EXIT SIGNS MAY APPLICABLE PATH ARRANGED IN CONFORMANCE WITH C.B.C. SECTION 1011.3 & 1013.3
C. EXIT SIGNS SHALL BE ILLUMINATED AT ALL TIMES. PROVIDE BACKUP POWER INCLUDE OF PRIMARY POWER LOSS IN CONFORMANCE WITH C.B.C. SECTION 1011.5.3
D. ADDITIONAL EXIT SIGNS MAY BE REQUIRED AND LOCATIONS ARE SUBJECT TO CHANGE DURING FINAL INSPECTION.
E. EXIT ARROWS TO MEET THE MINIMUM 1 FOOT CANDLE AT FLOOR LEVEL
2. FIRE EXTINGUISHERS
A. PROVIDE A MINIMUM OF ONE 5A:10B:C CLASSIFICATION FIRE EXTINGUISHER WITHIN 75 FEET TRAVEL DISTANCE FOR EACH 5000 SQUARE FEET OF HORIZONTAL DIMENSION OVERALL PLANS. (SEE CBC 906.3 AND NFPA 10 CHAPTER 5)
B. ADDITIONAL FIRE EXTINGUISHERS MAY BE REQUIRED AND LOCATIONS ARE SUBJECT TO CHANGE DURING FINAL INSPECTION.

SYMBOL LEGEND

- FE — SEMI-RECESSED FIRE EXTINGUISHER CABINET (REFER TO NOTE AT RIGHT) — 2 / A001
- SFE — SURFACE MOUNTED FIRE EXTINGUISHER CABINET (REFER TO NOTE AT RIGHT)
- FH/HB — SEMI-RECESSED STANDPIPE/HOSE VALVE (REFER TO NOTE AT RIGHT) (NOTE: Manual Pull Required Conditional)
- FA — SEMI-RECESSED OR SURFACE MOUNTED FIRE ALARM ANNUNCIATOR (NOTE: SEPARATE PERMIT)
- FACP — SEMI-RECESSED OR SURFACE MOUNTED FIRE ALARM CONTROL PANEL (NOTE: SEPARATE PERMIT)
- EXIT — EXIT SIGN - ILLUMINATED, CEILING MOUNTED (NOTE: SEMI-DIRECTIONAL ARROWHEAD REQUIRED LOWEST PART MIN 7'-6" ABOVE FLOOR
- ADA ACCESSIBLE PATH OF TRAVEL
- NEW 6" THICK CONCRETE WALKWAYS TO HAVE A SLOPE LESS THAN 5%, AND AT MORE THAN 2% CUT CONTROL JOINT PER SIDEWALK
- DOOR NUMBER — WINDOW NUMBER
- NEW RATED CMP. NO SOFFIT BELOW WALKED FLOOR CEILING ASSEMBLY PROVIDE NON-COMBUSTIBLE FRAMING/SET-OUT CONSTR.
- BUFFER ZONE REQUIREMENT AT R.W.U.R.D.

TACTILE EXIT SIGNS

* REFER TO DETAIL 1/A0.0 FOR SPECIFIC DETAIL REQUIREMENTS AND REQUIREMENTS. TACTILE EXIT SIGNS SHALL BE PROVIDED AT THE FOLLOWING LOCATIONS:
A. EACH GRADE LEVEL EXIT DOOR SHALL BE IDENTIFIED WITH WORD SIGN.
B. EACH DOOR THAT LEADS DIRECTLY TO A GRADE LEVEL EXTERIOR EXIT IN THE MEANS OF AN EXIT STAIR SHALL BE IDENTIFIED WITH THE WORDS "EXIT STAIR DOWN" OR "EXIT STAIR UP" BASED ON APPROPRIATE DIRECTION.
C. EACH EXIT DOOR THAT LEADS DIRECTLY TO A GRADE LEVEL EXTERIOR EXIT IN MEANS OF AN EXIT ENCLOSURE THAT DOES NOT UTILIZE A STAIR OR RAMP SHALL BE IDENTIFIED WITH THE WORDS "EXIT ROUTE".
D. EACH EXIT ACCESS DOOR FROM INTERIOR ROOM OR AREA THAT IS REQUIRED TO HAVE A VISUAL EXIT SIGN SHALL BE IDENTIFIED WITH THE WORDS "EXIT ROUTE".

KTGY Group, Inc.
12555 West Jefferson Blvd.,
Suite 100
Los Angeles, California 90066
ktgy.com
310.394.3623

KTGY Project No: 20150004

Project Contact: Anabel Martinez
Email: amartinez@ktgy.com

Principal: Manny Gonzalez
Project Designer: Project Designer

Developer:

SUMMERHILL HOUSING GROUP
777 S. CALIFORNIA AVENUE
PALO ALTO, CA
PHONE NO. 650-842-2403
FAX NO.

LAWRENCE STATION - BUILDING A

SANTA CLARA, CA

2017-07-21_CHECK SET

No.	Date	Description
	7/1/2016	PROGRESS SET
	7/27/2015	SD SUBMITTAL SET
	8/28/2018	25% DD PROGRESS SET
	9/28/2018	50% DD PROGRESS SET
	11/28/2018	75% DD PROGRESS SET
	12/21/2018	90 DD DEPT SUBMITTAL
	02/05/2017	100% DD SUBMITTA
	3/28/2017	25% CD SUBMITTAL
	4/7/2017	50% CD SUBMITTAL
	5/14/2017	75% CD SUBMITTAL

License Stamp

R5 LEVEL - OVERALL PLAN

A116

ATTACHMENT NO. 4
AFFORDABLE HOUSING AGREEMENT

BELOW MARKET PURCHASE PROGRAM
COVENANTS, RESTRICTIONS
AND OPTION TO PURCHASE
AND
BELOW MARKET PURCHASE PROGRAM POLICIES AND PROCEDURES
GUIDELINES
[behind this page]

City of Santa Clara

Housing and Community Service
1500 Warburton Ave
Santa Clara, CA 95050
(408) 615 2490

Below Market Purchase (BMP) Program

Policies and Procedures Manual

February 9, 2016

Updated July 2018

(Updated 2018 Income Level Table, Updated Attachment I)

Table of Contents

I. Introduction 3
II. BMP Requirements for Homeownership Projects 4
III. Below Market Purchase Program 7
IV. Guidelines for Program Eligibility 8
V. Homebuyer Selection 10
VI. Financing the Home Purchase 12
VII. Post-Closing Activities 14
Attachments and Exhibits 15

I. Introduction

The City of Santa Clara (City) has operated a Below-Market Price Purchase Program (BMP) since 1995 to help low- and moderate-income families achieve the goal of homeownership and to fulfill State mandates for the production of housing for all income levels.

The City updated its Housing Element in December, 2014, and the California Department of Housing and Community Development determined that the Housing Element complies with state law in February, 2015. The Housing Element includes an affordable housing policy that requires "developers of residential developments of 10 or more units to provide at least 10 percent of their units at prices affordable to very low, low and moderate-income households." Specifically, for-sale housing developers are required to designate at least ten percent of the total units in an approved project as BMP units to be sold to qualified buyers.

In 2006, the City Council adopted significant enhancements to the original BMP program. To maintain long-term affordability, a twenty (20) year restrictive resale covenant (Covenant) is enforced and recorded against the property. The resale restrictions within the Covenant include:

1. If home is sold within 5 years of acquisition, the homeowner must sell the BMP unit to another income-eligible homebuyer.
2. After 5 years of ownership, the homeowner can resell the home at market price; however the City and the homeowner will share in the appreciation of the home (Appreciation Amount). The homeowner's share of any appreciation beyond the Initial Market Value (IMV) will increase by five percent per year for twenty years.
3. After the Covenant expires in twenty years, the equity sharing requirements is exhausted and the homeowner will realize full gain beyond the IMV.

In addition to the 20-year Covenant, the homebuyer must also execute a promissory note and Deed of Trust for the difference between the original BMP Affordable Sales Price (ASP) as determined by the City, and the IMV (City Loan) as defined in Section II.F.3.a. below. IMV is defined as the unit's unrestricted initial market value as shown in Section II.B. The calculation for determining the seller's pay-off obligation to the City is explained in Section II.F.3.

The intent of these changes is to further the City's strong commitment to producing and maintaining affordable housing while increasing the level of interest among prospective homebuyers in the BMP Program.

The BMP Program is administered by the City of Santa Clara Housing and Community Services Division, with certain functions delegated under a service contract to Housing Trust Silicon Valley (HTSV). The Division administers the City's approval process for each proposed housing development, the Developer Affordable Housing Agreement (AHA), and the agreement between the buyer and developer to purchase the unit at an affordable price according to the Covenant. HTSV is the City's exclusive marketing agent for sale of the BMP units. HTSV also manages the homebuyer eligibility,

qualification and selection process as well as facilitates the sale of the BMP units. HTSV has ongoing responsibilities for monitoring developer and homebuyer compliance with the BMP Program terms and for managing resale of the BMP units.

The Policies and Procedures describe:
The BMP Program requirements for developers of single-family, townhome, and condominium residential projects
The BMP Program requirements for homebuyers of BMP units
The procedures for administration of the BMP Program and the roles of each participant in the BMP Program
The BMP Program's documents and other useful reference material

For further information, please contact:
City of Santa Clara Housing & Community Services Division
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: (408) 615-2490

Adopted by Santa Clara City Council on: February 9, 2016; Updated July 2018

II. BMP Requirements for Homeownership Projects

A. General
The BMP Program applies to any housing project of ten or more units for which an AHA was executed after July 18, 2006. Such projects include proposed new single-family detached, townhouse, or condominium developments as well as any proposed conversion of existing structures to condominiums. Each developer is required to enter into an AHA with the City.
The AHA describes the project and states current applicable zoning and land use requirements. It provides the ASP for each unit as discussed below. The AHA requires that BMP units shall be sold to eligible households whose incomes are at or below 120% of current Area Median Income.

B. Initial Market Value (IMV)
For each BMP unit, the City sets an IMV based upon an independent appraisal prior to the initial sale. The IMV reflects each unit's unrestricted initial market value. The IMV is used to establish the difference between the market value and the ASP for which the BMP unit will be sold. The IMV provides the basis for computing:

1. What the developer would owe the City if the developer chooses to pay an in-lieu fee for a fractional unit, as discussed below, and
2. The amounts that the homebuyer would owe the City if the home is resold at an unrestricted resale price, as discussed in **Section II.F.3**.

C. Affordable Sales Price (ASP)
For each BMP unit in a project, the City establishes an Affordable Sales Price (ASP), which is a discounted sales price that is primarily determined by household size and income. The ASP is calculated as follows: (See Attachment #1 Illustrative

Calculation of Affordable Sales Price)

1. Calculate the assumed household size by counting the number of bedrooms in the subject BMP unit and adding one. For example, if the unit is a two-bedroom unit, the assumed household size is three persons.
2. Ascertain the current Area Median Income (AMI) for the assumed household size based on data set annually by the U.S. Department of Housing and Urban Development and the California Department of Housing and Community Development.
3. Multiply the applicable AMI by 35% and divides the product by 12 to derive a maximum monthly Affordable Housing Cost (AHC).
4. Convert the AHC to an ASP as follows:
    a) Obtain the estimated amount available for first mortgage principal and interest payment by subtracting from the AHC the estimated cost of property taxes, insurance, homeowner association dues (if any), mortgage insurance, and allowances for utilities, maintenance and repairs.
    b) Utilizing the amount available for principal and interest, calculate the maximum principal amount of the first mortgage loan that can be borrowed, assuming the interest rate for a 30-year fixed-rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
    c) Set the maximum sales price by dividing the first mortgage loan amount by one hundred percent minus the assumed percentage of the first mortgage that will be provided by the homebuyer as down payment. For example, if a ten percent down payment is assumed, then the mortgage loan amount is divided by 90%.

In setting the ASP, the City will also consider the following:

1. Housing characteristics: Age of unit (new construction/conversion); type of unit (single-family detached/townhouse/condominium) using a factor of 70 to 90% (percent) of the single family sales price, based upon research of available comparable cost and sales price information.
2. Whether the developer will sustain a documented financial loss for basic production costs, based upon the *pro forma* that the developer has submitted to financial institutions for project financing purposes.
3. Whether the ASP exceeds the maximum sales price published by the California Housing Finance Agency.

D. In-Lieu Fee for a Fractional Unit

If the City determines that the required number of BMP units includes a fraction, the developer may either round up and provide an additional BMP unit within the project or pay an in-lieu fee for the fractional unit. The fee is determined by multiplying the fractional unit percentage (rounded to the nearest 1/10) by the difference between the initial Market Value (IMV) and the Affordable Sales Price (ASP).

For example, a developer of a 16-unit project would be required to provide 1.6 BMP units. The developer may either:

1. Round up and provide two BMP units and pay no in-lieu fee, or
2. Provide one unit and pay an in-lieu fee for the 0.6 units (0.6 X (IMV-ASP)).

E. Developer and City Actions

The City imposes the BMP program requirements as a condition of approval for projects receiving new land use or subdivision entitlements. Prior to the City issuing building permits for a given project the developer and the City shall have fully executed the Affordable Housing Agreement (AHA). Effective July 2018, an administrative fee will be collected by the City of Santa Clara from the developer at the time discussion of the AHA is initiated. The fee will be billed to the developer and may be amended every fiscal year by City Council and published on the City's website. At the time of project approval, the City will issue a preliminary notice to HTSV. This notice will provide an estimated date for the delivery of the BMP units. It will also provide the location, size, bedroom mix, unit type (single-family, townhouse, condominium), amenities, and targeted income groups.

The Developer shall notify both the City and HTSV no less than one hundred eighty (180) days prior to the estimated occupancy of the BMP units, to enable the start of marketing and homebuyer selection process. The developer shall provide current project and unit descriptive information as a basis for preparation of marketing materials.

At least 30 days prior to start of BMP unit sales, the City shall have set the IMV based upon an independent appraisal.

F. BMP Requirements and Obligations for Homeownership

Each BMP unit is subject to a twenty-year Covenant on the unit as follows: (See form legal documents attached as **Exhibits A-C**).

1. The unit must be owned and occupied by the homeowner as their principal residence and for no other purpose. The unit, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity.
2. If the initial BMP homebuyer sells their unit during the first five years after the close of escrow, the homeowner must sell to a BMP qualified new homebuyer whose income does not exceed 120% of AMI as required by the City, at a newly established Restricted Resale Price (RSP). The RSP shall be the ASP adjusted by any percent change in the AMI from the date of the original BMP home purchase. The City may increase the RSP to account for any individual capital improvements valued at greater than $2,000. No amounts are owed by the homeowner to the City if the home is sold at the RSP. **Section II.C.** above indicates the method for deriving the ASP. The homebuyer executes a note and deed of trust in favor of the City, which represents the difference between the ASP and the IMV. The City sets the IMV based upon an appraisal prior to the sale. The homebuyer executes a 20 year Covenant Restriction Agreement with the City.
3. After the five-year resale restriction period ends, the homeowner may sell the home at market rate, subject to the following conditions, through Year Twenty at which time the restriction expires:
    a) The homeowner shall first pay-off the City Promissory Note held by the City. The City Promissory Note represents the difference between the ASP and the IMV that the City sets when the home is initially sold.
    b) The homeowner will also pay the City the lesser of:
        i. A decreasing portion of the Appreciation Amount gained during

the time of ownership. The Appreciation Amount is calculated as the difference between the IMV and the current market price at the time of resale (Unrestricted Resale Price). The homeowner pays the City a proportionate share of the Appreciation Amount that decreases at the rate of 5% per year during the 20-year term of the Note. The homeowner's share of the Appreciation Amount will increase 5% for each year the BMP unit is owned. After twenty years, the homeowner realizes the full, unrestricted appreciation amount of any equity gain in the market value of the unit, or

ii. Seven percent (7%) simple interest per year on the City Loan as defined above in Section II .F. 3.a.

Attachment #3 (Loan Payoff and Equity Share Illustration) illustrates and compares how the amounts received by the City and the homeowner would be calculated under the shared appreciation or simple interest payment alternatives.
Attachment #5 (Calculation of Interest on City Loan) illustrates the procedure for computing interest on the City Loan.

4. The owner may not refinance the first mortgage or encumber the unit without prior approval from the City. Any attempt to refinance or encumber without such approval will be considered as a breach of contract as outlined in the Promissory Note. The City, at its sole discretion, may consent to a refinancing of the first mortgage or encumbrance of the unit in hardship situations or to allow the homeowner to access lower interest rates. Any such new first mortgage must be a fixed rate mortgage with no negative amortization; the new loan amount cannot exceed the current principal payoff amount plus closing costs; the new loan must not contain balloon payments or pre-payment penalties; and the borrower shall not receive any cash out.

III. Below Market Purchase Program

A. Administration
The City has contracted with Housing Trust Silicon Valley (HTSV) to administer the BMP Program. The scope of services includes administering eligibility applications, evaluating applicants during the selection processes, providing a BMP orientation and application workshop, pre-purchase counseling, and facilitating communication between buyer and developer to ensure that sale of the BMP unit is completed. HTSV also provides on-going monitoring of units and unit resale services to the City. Housing Trust Silicon Valley can be reached at:

75 E. Santa Clara Street, Suite 1350
San Jose, CA 95113
(408) 436-3450
www.housingtrustsv.org

B. Marketing
HTSV shall be responsible for preparing and implementing the BMP unit marketing plan for newly constructed and resale homes.

C. Initial Inquiries
HTSV will respond to inquiries from prospective homebuyers by providing a summary of the BMP Program, which will include the program's requirements and contact information. Housing Trust Silicon Valley will invite prospective homebuyers who express an interest in a BMP unit to complete an intake over the phone and register for the HUD Approved 8 Hour Homebuyer Education classes, the Orientation and Application Workshop, and (if needed) offer pre-purchase counseling.

The purpose of the intake form is to conduct a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. HTSV shall insure that interested persons receive information regarding the steps to BMP homeownership and other program materials within a reasonable time after initial contact. Interested applicants will be placed on a general interest list to receive program updates.

HTSV shall serve as exclusive marketing agent for the City. HTSV will select the buyers in accordance with the City's policies and procedures, and will facilitate in the execution of the purchase agreement between the buyer and the developer. HTSV will facilitate the close of escrow. It will perform these functions in coordination with the Developer's project sales team.

D. Verifications/Selection Process
Interested buyers will be provided an eligibility application and a copy of the deed restrictions, written description of the selection process with submittal deadlines, a flyer from the developer describing the unit, sale price, and amenities. Applicants shall be given at least a two-week period to file applications prior to any established submittal deadline. In the event there is not a qualified list of applicants, HTSV has the discretion to implement an open application process as needed by project/development.

Upon receipt of an eligibility application for the BMP Program, HTSV will meet with each prospective homebuyer to check for completeness of application and required documentation. Any missing documentation or information will result in rendering application incomplete and may not be accepted. Homebuyers are required to submit any missing documentation within 7 calendar days.

HTSV will follow the Homebuyer Selection Process outlined in Section V.

IV. Guidelines for Program Eligibility

A. Eligibility
To be eligible for the BMP Program, the household must meet all of the following criteria:

1. Have a gross household income of not more than 120% of the AMI,

adjusted for household size. The maximum amount of this income for Santa Clara County is set by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development in *Title 25 California Code of Regulations Section* 6930. The AMI limits are updated and published annually. **Attachment # 2** (Income and Asset Definitions) lists the types of income that are included or excluded from gross household income.

Maximum Allowable Household Income Levels for 2018

Household	**1**	**2**	**3**	**4**	**5**	**6**
100% AMI	$87,650	$100,150	$112,700	$125,200	$135,200	$145,250
120% AMI	$105,200	$120,200	$135,250	$150,250	$162,250	$174,300

Source: California Department of Housing and Community Development, Division of Housing Policy Development, May 2018.

2. Be a first-time homebuyer, defined as an individual or individuals who meets any one of the following criteria:

   a) An individual who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property.

   b) An individual who is a displaced homemaker. Displaced homemaker means:
      i. Is an adult; and
      ii. Has not worked full-time in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
      iii. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

   c) An individual who has only owned a principal residence not permanently affixed to a permanent foundation.
   d) Qualify to purchase a BMP unit with a fixed-rate, thirty-year conventional loan, applying prudent debt-to-income ratios for principal, interest, taxes, insurance and HOA and total debt.
   e) Borrowers must have a minimum 640 middle FICO score.
   f) Attend an in-person HUD approved 8-Hour Homebuyer Education Class from a designated HUD certified agency and obtain a Homebuyer Education Certificate that is less than 2 years old from the date of anticipated closing.
   g) Attend an Orientation and Application Workshop for the BMP program, a one-on-one counseling session with Housing Trust Silicon Valley, and complete the BMP Program test.
   h) Have less than $100,000 in financial assets (post closing liquid and non-liquid assets). Assets accumulated under a certified down payment assistance program are excluded from this limit. **Attachment #2** (Income

and Asset Definitions) defines those assets that are required to be included and those that may be excluded.

i) Agree to contribute a minimum of 3% of liquid or non-liquid assets to the purchase transaction.

3. Requests for approval of exceptions to eligibility criteria will be sent to the Housing and Community Services Division Manager in the form of a memorandum with supporting documents.

V. Homebuyer Selection

A. Qualifications

To be considered for a BMP unit, the prospective homebuyer must complete and submit a BMP eligibility application along with all required documentation. HTSV will verify compliance with all BMP program homebuyer requirements established by the City, to ensure applicant meets all applicable eligibility criteria.

HTSV will also verify the applicant's residency and employment for purposes of ranking the applicant according to the City's Priority Criteria. An applicant is required to submit to HTSV sufficient verification of residency (e.g. lease agreement, cancelled checks, utility bills, verification of rent and/or landlord affidavits). In addition, the applicant must provide HTSV with verification of employment or evidence of self-employment (E.g. copies of current paycheck stubs, complete tax returns including W2s and/or 1099s, and all schedules.) Self-employed individuals must submit year-to-date Profit &Loss Statements and a copy of an active Business license. The documents submitted will be for the time period from the eligibility application and cannot be more than 90 days old at the date of closing.

After determination of Prequalification for the BMP Program, the applicants must apply and receive a loan pre-approval determination for a first mortgage loan from an approved BMP lender. Once the household has been determined as program eligible, the household will be considered for selection of a BMP unit in accordance with the Priority Criteria and Process specified in Section IV.B. The household will receive a letter indicating program eligibility, verified priority level and minimum/maximum bedroom per household size allowed for unit purchased. The minimum/maximum bedroom per household size is determined by the Occupancy Standards. **(Attachment #8)**

B. Priority Criteria

The City Council has established the following Priority Criteria for the allocation of the BMP units as they become available to the community:

1st Priority Level	At least one household member who both lives within the City Limits of the City of Santa Clara *and* operates a business or is employed by a business or a public or quasi-public agency in the City of Santa Clara.
2nd Priority Level	At least one household member lives within the City Limits of the City of Santa Clara.
3rd Priority Level	At least one household member operates a business or is employed by a business or a public or quasi-public agency in the City of Santa Clara.
4th Priority Level	Any other qualified applicant household without regard to residency or employment.
Note:	*The qualifying household member must be the person or a dependent of a person whose name will appear on title and who will use the unit as their primary residence.*

HTSV will verify residency and employment of each applicant. HTSV will apply the above-described Priority Criteria to rank BMP Program applicants. Those selected for the highest priority level will be screened first and selected either through a lottery selection, if necessary, or without a lottery if the number of candidates in the priority level is less than or equal to the number of units available.

Applicant(s) must provide Valid Third-Party Documentation as described in the Eligibility Applications to support their request for the applicable Priority level. The list of program eligible buyers in a higher priority category must be exhausted before a BMP unit will be offered to someone who in the next priority level. BMP Program Guidelines Handbook provides additional information on the selection process.

C. Lottery Policy

At the time a BMP unit within any given project is near completion, the City, directly and/or through HTSV, will advertise availability. Prospective qualified homebuyers, who indicate an interest in buying a BMP unit, will be pooled according to the priorities set forth below. If the number of interested and qualified prospective homebuyers is greater than the number of units available in any one project, a lottery will be held, administered by HTSV, to determine who will have the first opportunity to purchase.

1. Housing Trust Silicon Valley will select by lottery a "Designated Buyer" and two "Alternate Buyers" for each available unit. All "Designated Buyers" shall be selected first, followed by all First "Alternate Buyers" and then by all Second "Alternate Buyers."
    a) If a Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet program requirements to purchase the BMP unit, the next highest ranked "Alternate Buyer' will be offered the unit.

    b) In the event that the "Alternate Buyer" is unable to purchase the BMP unit, the second highest ranked Alternate Buyer" will be offered the unit.

c) If no qualified applicants are able to purchase the BMP unit from the initial advertisement or notice, Housing Trust Silicon Valley will re-advertise the unit

2. Having one's name drawn in the lottery is not a guarantee by the City, Housing Trust Silicon Valley, or the BMP unit developer that the selected household will be able to avail itself of the opportunity to purchase a BMP unit. The prospective homebuyer must successfully complete his or her responsibilities under the purchase agreement, and, within the time constraints of the purchase agreement and the BMP Program, must obtain all financing needed to close the transaction.
3. Failure of the homebuyer to perform such requirements shall result in disqualification from the program. Application and qualification for a BMP unit in one housing development are not transferable to another housing development. A new application must be submitted for each development in accordance with the time constraints and application procedures as published for each development by the City and/or Housing Trust Silicon Valley.

Prior to any selection, HTSV may, if requested, review with City staff any application that was disqualified.

VI. Financing the Home Purchase

Each homebuyer is responsible for arranging and qualifying for the mortgage financing that is required to purchase the BMP unit. The first mortgage must be a thirty year fixed-rate mortgage.
The proposed financing package is subject to review by HTSV. Such package may include first-time homebuyer loan assistance, other subordinate financing offered by other public agencies and/or nonprofit entities. **Attachment #4** (Purchase Application) indicates the documents that must be submitted for review.

A. Approved BMP Lenders
The City has designated lenders as BMP Approved Lenders. This list is provided as a courtesy by the City of Santa Clara's Housing and Community Services Division. The City does not limit participation in its BMP program to the lenders on this list.

1. Homebuyers are free to select any lender they choose. Non- approved lenders must obtain participation approval from the City of Santa Clara and Housing Trust Silicon Valley prior to the acceptance of a non-approved lender pre-approval letter.
2. Pre-approval letters from non-approved lenders will not be accepted until the lender has acknowledged receipt and review of all BMP documents (Below Market Purchase Program Promissory Note, Below Market Purchase Program Deed of Trust and Security Agreement, Below Market Purchase Program Covenants, Restrictions and Options to Purchase, Lender Instructions to Escrow, and the BMP Policies and Procedures, BMP Program Guidelines Handbook) by the company's legal and underwriting departments.
3. Lender must submit a letter on company letterhead that confirms their review

and acceptance of all the BMP documents for full loan approval and requests participation in the Program, to Housing Trust Silicon Valley, 75 E. Santa Clara Street, Suite 1350, San Jose, CA 95113.

B. Financing Requirements

The following financing requirements apply both at the time of home purchase, and to any subsequent refinance:

1. Total encumbrances (liens, mortgages, loans or debts of any kind secured by the home) may not amount to more than 97% of the home's maximum (restricted) BMP home price, or actual appraised value, if less than the BMP price, at the time the encumbrance is incurred (when the loan is made to home buyer/owner). Therefore, the combined loan-to-value (CLTV) ratio on a BMP home may not exceed 97% of the then-current BMP home price as determined by HTSV. Liens include tax liens, court judgments, and other non-voluntary liens imposed by any party.

   a) No mortgage or other residential loan secured by a BMP home (including home equity loans or lines of credit, etc.) may include any of the following terms or rates; prepayment penalty, balloon payments, negative amortization (such as interest-only payments, etc.), and/or adjustable and/or non-prime interest rate.

2. Home equity lines of credit (HELOCs) are prohibited

3. Front and back ratios may not exceed the limits set forth above in the Affordability Standards subsection of the BMP Program Guidelines Handbook, using the ratios corresponding to the borrower's actual income level at time of loan application.
4. All first mortgage loans must be provided by a conventional residential lender with standard underwriting and loan servicing capabilities.

5. For purchase transactions, the first mortgage loan cannot be below 70% loan-to-value.

C. Execution of BMP Home Purchase Agreement

Upon completion of the selection process, HTSV will arrange for execution of a Purchase Agreement between the developer and the approved buyer. The Purchase Agreement will be subject to the buyer completing the arrangements for financing the home purchase, and the sale price shall be the ASP set by the City. The Purchase Agreement shall also reference IMV and the amount of the City Promissory Note. The Purchase Agreement shall be accompanied by a Purchase Application **(Attachment #4)** and the Affirmative Buyer Disclosure & Acknowledgment of Below Market Purchase Unit (**Attachment #6**), signed by the buyer, disclosing the Covenant and the amount and terms of the City Promissory Note. Prior to proceeding with close of escrow, HTSV must review the proposed financing package. **Attachment #4** (Purchase Application) indicates the financing documents that must be submitted for review.

D. One-on-One Counseling
Applicants must attend an in-person BMP Homebuyer One-on-One Counseling session at the office of Housing Trust Silicon Valley (HTSV), at which the Below Market Purchase (BMP) Program is explained and the applicants have an opportunity to ask any questions.

The applicants will receive and review sample copies of Promissory Note, Deed of Trust, and the Below Market Purchase Program Covenants, Restrictions and Option to Purchase collectively forming the BMP Program Loan Documents. Applicants will also complete the Verification of Homebuyer Awareness and Comprehension of the City of Santa Clara Below Market Purchase (BMP) Program Resale, Refinancing, and Affordability Restrictions.

Applicant will acknowledge that completion of the BMP Homebuyer One-on-One Counseling session is not a guarantee of final program approval.

E. Close of Escrow
HTSV is responsible for coordinating the close of escrow with the title company, the developer, the City, the lender(s), and the homebuyer. The City shall provide HTSV with Escrow Instructions to transmit to the Title Company. HTSV will ensure that real estate purchase and financing documents are executed correctly and are recorded in the following order of priority:

1. First Deed of Trust for first mortgage lender
2. Second Deed of Trust for a down-payment assistance loan or other subordinate financing offered by other public agencies and/or non-profit entities, if applicable
3. Covenants, Restrictions, and City Option to Purchase
4. Deed of Trust securing the City's Promissory Note
5. Deed(s) of Trust securing other secondary financing, if applicable
6. Requests for Notice on the City loan(s)

VII. Post-Closing Activities

A. Reports to County Assessor
The County Assessor has indicated that the base year value for real property tax purposes shall be the restricted price established by the government agency (the ASP for homes purchased under the City of Santa Clara's BMP Program). No later than May 1 of each year, HTSV shall prepare and provide to the City and the County Assessor an annual BMP report. This report will indicate for each BMP unit transaction recorded during the previous 12 month period, the APN and property address, the buyer(s) name, the ASP amount, and the terms and restrictions of the transactions. The Escrow Officer shall provide the County Assessor with a change of ownership form with each sale or resale of a BMP unit.

B. Post Purchase Counseling and Compliance Monitoring
HTSV shall provide post purchase counseling services for each homebuyer. HTSV is

also responsible for ongoing administration of the BMP Program, including:

1. Facilitating resale of BMP units to eligible households at a RSP during the five-year resale restriction period;
2. Monitoring compliance with BMP requirements;
3. Reviewing requests for refinancing of the BMP units; and
4. Calculating payoff demands for any BMP unit that is to be resold at market value, after expiration of the resale restriction period and until the twenty-year restriction period expires.

Attachments and Exhibits

Attachments:

1. Illustrative Calculation of Affordable Sales Price
2. Income and Asset Definitions
3. Loan Payoff/Equity Share Illustration
4. Purchase Application
5. Calculation of Interest on City Loan
6. Affirmative Buyer Disclosure and Acknowledgment of Below Market Purchase Unit
7. Verification of Homebuyer Awareness and Comprehension of the City of Santa Clara Below Market Purchase (BMP) Program Resale, Refinancing and Affordability Restrictions
8. Occupancy Standards
9. Document Checklist

Exhibits:

A. Covenants, Restrictions and Option to Purchase
B. City Promissory Note
C. Deed of Trust and Security Agreement
D. Request for Notice
E. Escrow Instructions

Attachment #1
Illustrative Calculation of Affordable Sales Price
(Behind this page)

Attachment #1

Illustrative Calculation of the Affordable Sales Price
(Please note that these are illustrative only, and may not represent the actual costs, fees or mortgage rates actually applied to a particular unit or project.)

The calculation in this Attachment is based on the following definition of household size: The defined household size is equal to one person greater than the number of bedrooms in the unit

Assumptions for calculating the Affordable Sales Price (ASP):

1. Unit Size = _____

2. Family Size = _____

3. Interest Rate* = _____

4. Property taxes and assessments (per month) =_____
(based on actual tax rate with value based on the Affordable Sales Price (ASP) of the unit)

5. Actual insurance premiums (per month) = ___ (if not included in homeowners' association dues)

6. Property maintenance and repair (per month) ** = __ (if not included in homeowners' association dues)

7. Project's budgeted homeowners' association dues (per month) =_____

8. Utility allowance (per month)*** =_____

9. Mortgage insurance premium, if any =_

*The interest rate shall be based upon a 10% down, 30-year, fully amortizing fixed rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
** Amount is obtained from the City's Community Development Department, Planning Division.
*** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities by unit size.

Attachment #1 (cont.)

Illustrative Calculation of the Affordable Sales Price
(This is only an example and may not be reflective of the home you select. This is used for illustrative purposes only.)

I. Calculate monthly Affordable Housing Cost:

125,200 ((100% of Area Median Income adjusted for family size (4 person household /3 bedroom unit))

X .35 (Affordable Housing Cost cannot exceed 35% times 100% of
$43,820 Area Median Income)

divided by 12 (To calculate the monthly Affordable Housing Cost)

$3,652 (As this hypothetical illustrates, no family with an income of 110% of Area Median Income with a family size of 4 shall spend more than $3,410 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost).

II. Calculation of the maximum amount to be spent on principal and interest of all mortgage loans:

A. **$3,652** (Maximum monthly Affordable Housing Cost) *less:*
B. (- 451) Property taxes and assessments (per month)
C. (-100) Insurance premiums (per month)
D. (-309) Utility allowance (per month)
E. (-169) Mortgage insurance premiums (per month)
F. (-150) Property maintenance and repair (per month)
G. (-300) Homeowners' association dues (per month) *equals:*
H. **$2,173**_____Maximum Monthly Mortgage Payment

III. Calculation of Affordable Sales Price: The ASP is calculated by adding the Maximum Monthly Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based upon a 10% down, 30-year, fully amortizing fixed rate mortgage at an interest rate that would be reasonable for the City's housing program client base (typically first- time homebuyers). The calculation is as follows:

1. At a **5.25**% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of $__**2,173** will allow a Maximum Mortgage Amount of $389,580.
   (Note: The above step requires the use of a financial calculator.)

2. The Maximum Mortgage Amount of $ 389,580 divided by .90 (for an assumed 10% down payment) equals the (ASP) Affordable Sales Price of $**433,000** (rounded $432,857 figure) for a 3 bedroom single family home.

3. ASP of **$433,000**_ adjusted for townhouse/condominium/conversion using a factor of 90%, 80% or 70% equals **$390,000** ASP for a townhouse.

Attachment #2
Income and Asset Definitions
(Behind this page)

Attachment #2

Income and Asset Definitions

Determine Gross Income:

1. In calculating gross income, the applicant shall present evidence of all household income including that of the applicant, and other individuals who have and will share the same dwelling unit or will share in ownership of the unit. All household income shall be considered as set forth below:
   a. Gross pay in the case of an employee, as determined by the employer before any payroll tax or other deductions are taken, whether voluntary or involuntary; and including salaries, overtime pay, commissions, fees, tips, and bonuses; and/or
   b. Net income from the operation of a professional business, the production and/or sale of goods, or the provision of a service as determined by calculating the average net income as reflected in the venture's federal income-tax return for the past three years; and/or
   c. Interest, dividends, and other net income derived from any kind from real or personal property; and/or
   d. The full amount of periodic payments actually received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment in lieu of a periodic payment; and/or
   e. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the BMP Program; and/or
   f. Periodic and determinable allowances such as alimony and child support payments, regular contributions or gifts received from persons not residing in the home; to the extent that such payments are reasonably expected to continue; and/or
   g. All regular pay, special pay and allowances due to an applicant or other household resident as a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and/or
   h. Any earned income tax credit to the extent it exceeds income tax liability; and/or
   i. Any other income that must be reported for federal and State Income tax purposes.

2. The following household income shall not be counted in the determination of gross household income:
   a. Payments received for the care of foster children;
   b. Amounts specifically excluded by any federal or state statute from consideration as income;
   c. Casual, sporadic, or irregular gifts;
   d. Amounts that are paid specifically for meeting medical expenses or are reimbursements for medical costs incurred;

e. Lump-sum supplements to family assets such as an inheritance, insurance payment (including payments under health care or accident insurance and Worker's Compensation); and settlement payments for personal injury or property losses.
Note: *Although not considered income, these payments will be considered in estimating total household assets, and may result in a determination that total assets exceed qualifying limits.*

f. Payments for educational scholarships made directly to the student or to the educational institution, including amounts paid by the government to veterans to cover the cost of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and State income-tax returns for the prior three years and verification of current income in order to establish eligibility for the program.

Determine Assets:
The applicant shall not possess liquid or non-liquid assets in excess of $100,000, excluding assets accumulated under a certified down payment assistance program.

1. For purposes of the BMP program, the following types of assets shall be considered in determining eligibility:
   a. Cash savings:
   b. Marketable securities, stocks, bonds, and other forms of capital investment, including tax-exempt securities *other than individual, tax-deferred retirement accounts;*
   c. Inheritance or lump-sum insurance payments already received;
   d. Settlements for personal or property damage already received;
   e. Equity in real estate, except as stated below; and
   f. Personal property that is readily convertible to cash.

2. The following are *not* considered assets:
   a. Ordinary household effects, including furniture, fixtures, and personal property;
   b. Automobiles used for personal use;
   c. Depreciable property used in a business that generates a significant portion of household income; and
   d. Individual tax-deferred retirement accounts.

Attachment #3
Loan Payoff/Equity Share Illustration
(Behind this page)

Attachment # 3

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale equals Principal amount of City Note	$385,000 $115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

Year Resale Occurs	6	10	15
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share) (Seller gets 5%/yr increase in shared Appreciation Amount)	*$28,500*	*$83, 750*	*$180,000*

OR

7% Simple Interest Illustration*:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46, 700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

*Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.
It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Attachment #4
Purchase Application
(Behind this page)

Attachment #4

City of Santa Clara
Below Market Purchase Program
Purchase Application

Please complete and submit this form to Housing Trust Silicon Valley within 10 days of making an offer to purchase a BMP home with all listed documents below.

Applicant Name:_____
Applicant Phone#: _____
Email:_____

Lender Name:_____ Company:_____

Phone #_____Fax#_____ E-mail _____

Title Company Name_____Escrow Officer Name:_____

Escrow#: _____Phone#:_____

Home Information Purchase Price $_____

Developer/Seller: _____ Date Purchase Contract signed:_____

The following documentation must be attached:

- _____ Signed Purchase Application
- _____ Signed Buyer/Seller accepted Purchase and Sale agreement
- _____ 1003 Fannie Mae Form/Freddie Mac Form 65 (Uniform Residential Loan Application) /
- _____ 1008 Fannie Mae Form/Freddie Mac Form 1077 (Uniform Underwriting Transmittal Summary)
- _____ Senior Lender loan commitment letter or equivalent
- _____ Evidence of other proposed Non-City subordinate financing (CalHFA, Teacher or MCC, etc.) **if applicable**
- _____ Copy of Property Appraisal
- _____ Preliminary Title Report (no more than 60 days old)
- _____ Signed Affirmative Buyer Disclosure & Acknowledgment of Below Market Purchase Unit
- _____ Wiring Instructions from Title Company
- _____ $500 Non-Refundable check or money order made out to Housing Trust Silicon Valley

_____ _____
Primary Applicant Signature Date

Please submit to Housing Trust Silicon Valley
75 E. Santa Clara Street, Suite 1350, San Jose CA 95113
408.436.3450 Homeownership Program Department

Attachment #5
Calculation of Interest on City Loan
(Behind this page)

Attachment #5
Calculation of Interest on City Loan

The method for calculating interest on the City BMP Program Loan is as follows:

Step 1 -- Multiply the City loan amount by the annual interest amount and by the number of whole calendar years during the period that the loan is outstanding.

Step 2 -- For each fractional year during the loan period, divide the number of partial year days by 360, then multiply the result by the loan amount times the annual interest rate.

Step 3–Add *Step 1* and *Step 2* totals to obtain total interest that the borrower(s) owe the City.

Example -Loan that closes March 31, 2015 and is repaid June 30, 2025

Step 1 - $40,000 loan amount x 7% x 9 calendar years (2016-2024)	=$25,200
Step 2 - For Fractional Year 2015 – (270 days/360) x $40,000 x 7%	=$2,100
For Fractional Year 2024 - (180 days/360) x $40,000 x 7%	=$1,400
Step 3 - Total of Step 2 and Step 3 Amounts	**=$28,700**

Attachment #6
Affirmative Buyer Disclosure & Acknowledgement
of Below Market Purchase Unit
(behind this page)

Attachment #6

AFFIRMATIVE BUYER DISCLOSURE & ACKNOWLEDGEMENT OF BELOW MARKET PURCHASE UNIT

RESALE, REFINANCING & AFFORDABILITY RESTRICTIONS PRIOR TO PURCHASE

RECITALS

I/We *Mr. Jose S. Public* and *Mrs. Clara S. Public*
Currently residing at *1156 N. Fourth Street, San Jose, CA 95112-4944*
the ("DESIGNATED BUYER(S)") who have been allowed an opportunity by the City of Santa Clara, ("CITY") to qualify to purchase the dwelling located at *1500 Civic Center Drive, Santa Clara, CA 95050* which has been designated by the CITY as a Below Market Purchase Unit (the "BMP UNIT").

I/We have been informed by the CITY and their non-profit administrator, Housing Trust Silicon Valley (HTSV) that the City has required the developer of the development project ("the DEVELOPER") to provide this dwelling (the BMP UNIT) at a sales price that is significantly lower than the other market rate units in the development.

I/We fully understand that without the CITY'S assistance, I/we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY.

I/We fully understand and have been informed by the CITY and Housing Trust Silicon Valley of the following facts related to the opportunity provided to purchase the dwelling (the BMP UNIT):

1. The unrestricted Initial Market Value (IMV) of the dwelling based on a recent appraisal is *$425,000*

2. I/We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price *of $385,000* (the "Affordable Sales Price recorded as the official transaction price)

3. This represents a reduction *of $ 40,000* from the Initial Market Value;

4. I/ We will sign a Promissory Note payable to the City for this amount *($40,000)* and it will become a separate subordinate loan obligation and must be paid to the CITY with interest, if the dwelling (the BMP UNIT) is sold for a price higher than an Affordable Sales Price after the five-year resale restriction period (discussed in Item 8 below) expires.

5. The Appreciation Amount of the dwelling (the BMP UNIT) after 5 years of ownership is the difference of the Initial Market Value (IMV) appraised at
   a. ***$425,000*** and the future unrestricted market value determined at the time of resale.

6. The interest that must be paid to the City based on the City Promissory Note is the lesser of either 7% simple interest or a decreasing share of the Appreciation Amount due to the City calculated at a rate of -5% per year of ownership.

   Example A: In addition to the Promissory Note Value of *$* ***40,000*** after 6 years the City could receive interest equal to 70% of the Appreciation Amount gained above the Unrestricted Initial Market Value [100% of the equity - (6 years X 5%/year) = 70%) or 7% simple interest $ ***16,800*** , whichever is less.

   Example B: After 20 years, the City would receive only the Promissory Note Value *of $* ***40,000***, because the equity share would be less than 7% simple interest. [100% of the equity - (20 years X 5%/year) = 0%]

7. I/We fully understand if I/we sell the dwelling (the BMP UNIT) during the first 5 years that I/we will not be able to sell the unit at a full market price because the Resale, Refinance, and Affordability Restrictions I/we will be signing give the City a right to buy the BMP UNIT (or designate another qualified buyer to buy the BMP UNIT) at a reduced purchase price that equals the Affordable Sales Price I/we paid adjusted overtime in accordance with the City's BMP Procedures. If the City or another designated buyer purchases the unit at the Affordable Sales Price, the City will forgive the City Promissory Note and I/we will not have to pay the *$* ***40,000*** to the City.

8. I/ We fully understand that only improvements that are consistent with the City's BMP Procedures and of at least $ ***2,000*** in value will be eligible to increase the Affordable Sales Price of dwelling (the BMP UNIT) during the first 5 years of ownership.

9. I/ We fully understand that the original primary mortgage loan *of $* ***300,000*** used to purchase this property may not be refinanced without prior written approval from the City and that it may only be replaced with a loan of equal or lesser value.

10. I/We fully understand that I/we must live in the dwelling (the BMP UNIT) until the end of the Resale, Refinancing, and Affordability Restrictions (i.e. 20 years from the date of purchase) or the property is sold, whichever comes first.

Attachment #6 (cont.)

11. I/We fully understand that the Santa Clara County Tax Assessor will use the restricted value of the dwelling (the BMP UNIT) as represented in the Affordable Sales Price *of* ***$385,000*** to calculate property taxes for the property and that this amount may be adjusted by the Santa Clara County Tax Assessor as allowed by California Law.

Prior to close of escrow, I/we acknowledge that I/we have read and fully understand and comprehend this disclosure and the buyer documents provided by the CITY and Housing Trust Silicon Valley (Attachments_____ thru _____). I/We have no reservations regarding the terms or conditions that limit our use and ability to resell or refinance the dwelling during the effective 20 year term of the Resale, Refinancing and Affordability Restrictions. I/We accept the terms and conditions noted in these documents.

Accepted: 1500 Civic Center Drive Designated Buyer(s)

Jose S. Public	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
Clara S. Public	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

Return Original to HTSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara with Copies of all Attachments

Attachment #7
Verification of Homebuyer Awareness & Comprehension of the City of Santa Clara Below Market Purchase (BMP) Program Resale, Refinancing, & Affordability Restrictions

(Behind this page)

Attachment #7

Verification of Homebuyer Awareness & Comprehension of the City of Santa Clara Below Market Price Program Resale, Refinancing, and Affordability Restrictions

This is a test of your understanding of the City of Santa Clara (CITY) Below Market Purchase (BMP) Program and the Resale, Refinancing, & Affordability Restrictions that will apply to the dwelling you may be given the opportunity to purchase. You must understand the concepts noted in each question and be able to answer all the questions correctly or you will not be allowed to purchase the designated BMP Unit.

1. What is the address of the dwelling (the BMP UNIT) that I may be given the opportunity to purchase? _____.

2. Given my/our current financial circumstances, I/we would not otherwise have the ability to purchase the BMP UNIT with the same favorable terms or at the Affordable Sales Price (ASP) noted by the CITY. True or False? _____.

3. The Initial Market Value (IMV) of the dwelling without the CITY's Resale, Refinancing, and Affordability Restrictions based on an appraisal is $ _____.

4. I/We are being allowed the opportunity to qualify to purchase the BMP UNIT at the reduced sales price of $_____ which is also referred to as the ASP and this is the official recorded transaction price.

5. The difference between the Initial Market Value and the Affordable Sales Prices is $_____.

6. The eventual buyer of the BMP UNIT will record a second Promissory Note payable to the CITY and it will become a separate loan from the primary mortgage loan used to purchase the unit and must be paid to the CITY with interest, if after the five-year resale restriction expires, the dwelling is sold for a price higher than the allowed Affordable Sales Price. What is the amount that will be on the City Promissory Note and when must it be paid to the CITY with interest? _____.

7. What is the Affordable Sales Price? $ _____.

8. In addition to the value on the City Promissory Note, what is the interest that must be paid to the CITY if the he BMP UNIT is sold for a price higher than the Affordable Sales Price? _____.

9. Can improvements made to the BMP UNIT during the first 5 years of ownership be used to adjust the Affordable Sales Price? If so what is the minimum value of the improvements eligible? _____.

10. Can the original mortgage loan used to purchase this property be refinanced and if so for what amount?_____.

11. Can I rent out the dwelling (the BMP UNIT)? _____.

Attachment #7 (cont.)

12. What is the transaction price used by the Santa Clara County Tax Assessor to calculate property taxes for this property? _____.

COMPLETED BY:

_____	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
_____	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

HOUSING TRUST SILICON VALLEY VERIFICATION OF HOMEBUYER COMPREHENSION OF THE SANTA CLARA BMP PROGRAMRESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

_____	_____	_____
HTSV Representative	Signature	Date:

Return Original to HTSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

Attachment #8
Occupancy Standards
(Behind this page)

Attachment #8

Occupancy Standards

To determine the size of BMP home (number of bedrooms) an Applicant may be eligible to purchase, the number of people in his/her household, and their age, gender and familial relationships (siblings, couples/spouses, parent, child, etc.) are considered.

The maximum occupancy allowed in a BMP home is two people per bedroom, plus one additional person. The minimum allowed is no less than one person per bedroom, however couples and/or household members (particularly young siblings) of similar age and same gender may be required to share a bedroom. Reasonable accommodations to these standards may be requested in the case of medical or disability needs, and will be considered on a case-by-case basis.

Number of Bedrooms in BMP Home	Minimum Household Size	Maximum Household Size
One	1	3
Two	2	5
Three	3	7
Four	4	9
Five	5	11

Some households may qualify for a range of bedroom sizes (e.g., a 3-person household may qualify for a 1-, 2- or 3-bedroom home), depending on specific household characteristics, and may choose to buy whichever sized home they prefer, among those for which they qualify, assuming they can afford the home's price. Program staff will review household composition details provided in Eligibility Applications and notify Applicants in their initial Eligibility Determination letter what home sizes they are eligible to buy.

If Applicant's household size and/or composition changes between date of Eligibility Application and date of Application to Purchase (according to information provided in Applications), Applicant may be determined to qualify for a different home size(s) than that stated in initial Eligibility Determination Letter.

Attachment #9
Document Checklist
(Behind this page)

Attachment #9

Document Transmittal Checklist

Lender/Mortgage Broker Name_____ **Contact**_____

Phone #_____ **Fax#**_____ **E-mail**_____

Title Company Name_____ **Escrow Officer Name**_____

Phone #_____ **Purchase Price**_____

Items Required for BMP Program or First-Time Homebuyer Program Commitment, Funding and Close of Escrow

1. Signed original of Homebuyer Program Application
2. Two current pay stubs
3. Signed purchase and sale agreement
4. Current appraisal*
5. Preliminary title report (no more than 45 days old)
6. Freddie Mac Form 65/Fannie Mae Form 1003 (Uniform Residential Loan Application)
7. Freddie Mac Form 1077/Fannie Mae Form1008 (Uniform Underwriting Transmittal Summary)
8. Federal income tax returns for past three years
9. Senior lender loan commitment letter or equivalent
10. Evidence of other proposed non-City financial commitments (CalHFA, Teacher MCC, regular MCC, HTSCC $6,500, HomeVenture Fund, etc.) if applicable
11. Statement indicating vesting, correct corporate name of beneficiary and trustee (page 1 of 1st deed of trust, if available), and estimated close of escrow date
12. Certificate of completion of homebuyer training course
13. Wiring Instructions (First-Time Homebuyer Program Only)

*May be submitted after FTHB loan commitment is issued but at least 7 days before close of escrow.

Exhibits

Exhibits:
A. Covenants, Restrictions and Option to Purchase
B. City Promissory Note
C. Deed of Trust and Security Agreement
D. Request for Notice
E. Escrow Instructions

Exhibit A

Covenants, Restrictions and Option to Purchase

(Behind this page)

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by and
When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM
COVENANTS, RESTRICTIONS
AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE, by and between the City of Santa Clara (the "City") and OWNER (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households, and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households, and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and DEVELOPER dated DATE OF THE AGREEMENT. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an

Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City, the Owner and the City agree, as follows:

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

"Affordable Housing Cost" shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

"Affordable Sales Price" shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner's "capital improvements" as this term is defined in these City Covenants, and which is approved by the City.

"City Covenants" shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

"City Lien Documents" shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

"City Manager" shall mean the City Manager of the City of Santa Clara or his/her designee.

"City Note" shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 120% of the Area Median Income.

"Fair Market Value" shall be determined by an appraisal of the Residence as provided hereunder.

"First Mortgage Deed of Trust" shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

"First Mortgage Lender" shall mean LENDER, its successors and assigns.

"First Mortgage Loan" shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

"Initial Market Value" shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

"Area Median Income" shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

"Notice of Intended Transfer" shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Purchase Option" shall have the meaning ascribed thereto under Section 7 below.

"Resale Restriction Period" shall mean five years from the date of these City Covenants.

"Residence" shall mean the housing unit commonly known as ADDRESS, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

"Restricted Resale Price"- see Section 6.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Owner.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Transfer" shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties.** The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire, housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for

vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence ("Restricted Resale Price") shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) Increased Base Price. The "Increased Base Price" means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the "Value of Capital Improvements". The "Value of Capital Improvements" shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars ($2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) Fair Market Value. The "Fair Market Value" of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on the sales prices of comparable properties sold in the market area during the preceding three (3) month period. The cost of the appraisal shall be borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars ($2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the

Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. **Purchase Option.**

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender's rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the "Purchase Option"); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the "Escrow Agent") and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case maybe) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) Priority of Option. The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the exercise of, or the failure to exercise the Purchase Option.

8. **Appraisal; Fair Market Value.** Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. **Transfer by Owner at an Unrestricted Resale Price.** If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____

To Senior Lenders: _____
_____
_____
_____

To City The City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns.** Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

(a) The end of twenty (20) years from the date hereof;

(b) The exercise by the City of the Purchase Option granted herein;

(c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);

(d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;

(e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, these City Covenants is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Refinance of First Lender Loan; Subordinate Loans**

(a) **City Consent Required.** The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Home without obtaining prior written consent of

the City. In the event the Owner desires to refinance the First Lender Loan, the Owner shall submit in writing to the City a Request to Refinance.

(b) **Refinance of First Lender Loan.** The City, at its sole discretion, may consent to a prepayment and refinance of the First Lender Loan and may agree to subordinate this Agreement and the City Deed of Trust to the refinanced First Lender Loan provided that the proposed refinance meets all of the requirements listed in the then-current version of the City's Below Market Purchase Program Policies and Procedures.

17. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien) or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

18. **Invalid Provisions.** If any one or more of the provisions contained in these City Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

20. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

_____
BRIAN DOYLE
City Attorney

_____
DEANNA J. SANTANA
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-677

"City"

By:_____
Name:_____

By:_____
Name:_____

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

[To be added]

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

Exhibit B

City Promissory Note

(Behind this page)

NOTICE TO BORROWER:
This document contains provisions restricting resales and assumptions.

BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE
Secured by City Subordinate Deed of Trust

Note Amount: $**XX**,000.00 Santa Clara, California
Loan Date: DATE

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the CITY OF SANTA CLARA ("City") at such place as the City may designate from time to time in writing, the principal sum of $**XX**,000.00 All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions**. The terms set forth in this section shall have the following meanings in this Note.

"Affordable Housing Cost" shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty-five percent (25%) of the Borrower's actual gross income.

"Affordable Sales Price" shall mean a below-market sales price for a Residence, as **ADDRESS** determined by the City as of the date of the City Covenant.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower's "capital improvements" as this term is defined in the City Covenants and approved by the City).

"City Covenants" shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

"City Lien Documents" shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

"City Note" or "Note" shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program's household income and liquid assets requirements.

"Initial Market Value" shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

"Notice of Intended Transfer" shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Resale Restriction Period" shall mean five years from the date of the City Covenants.

"Restricted Resale Price" shall mean that price determined by the City in accordance with the provisions in the City Covenants.

"Residence" shall mean the housing unit commonly known as **ADDRESS**, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Borrower.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Term" shall mean the twenty (20) year period commencing upon the date of this Note.

"Transfer" shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Residence is transferred and Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City's Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:

   (a) The City Subordinate Deed of Trust that secures this Note; and
   (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.

3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender's policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.

4. **Repayment.**

   (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:

      (i) a default by Borrower under the City Lien Documents;

      (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;

      (iii) payment in full of the First Mortgage Loan;

(iv) Borrower refinances all, or any part of, the First Mortgage Loan without first obtaining the written consent of the City to the proposed refinancing. City may approve or deny the proposed refinancing at its sole discretion, depending on whether the proposed refinancing would meet all the requirements listed in the then-current version of the City's Below Market Purchase Program Policies and Procedures; or

(v) twenty (20) years from the date of this Note.

(b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A.**

c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.

5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

6. **Exception.** The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.

7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.

8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.

9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City

against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.

10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.

11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:

    (a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.

    (b) Borrower shall give written notice to City of any notice of default under any junior lien.

    (c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.

12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

    (a) Failure by Borrower to make timely payments as required under this Note; or

    (b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or

    (c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.

13. **Notice of Default; Cure Periods.**

    (a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must

immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.

(d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:

(a) To demand payment of amounts due (known as "presentment");

(b) To give notice that amounts due have not been paid (known as "notice of dishonor")

(c) To obtain an official certification of nonpayment (known as "protest").

15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.

16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.

17. **Attorney Fees and Costs.**

(a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the

collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

(b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.

20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: NAME
ADDRESS
Santa Clara, CA 9505X

To Senior Lender: JPMorgan Chase Home Loans
ADDRESS
CITY, CA XXXXX

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

By signing this document, Borrower agrees to all the terms and conditions stated in this Note.

By:_____
Name:_____

By:_____
Name:_____

"Owner"

Attachment A

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr. increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Exhibit C

Deed of Trust and Security Agreement

(Behind this page)

COMPLIMENTARY RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383

Recording Requested By
When Recorded Mail To:
The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEED OF TRUST CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS

BELOW MARKET PURCHASE PROGRAM DEED OF TRUST AND SECURITY AGREEMENT (CITY SUBORDINATE DEED OF TRUST)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this DATE, among the trustor, NAME ("Borrower") and in care of Housing Services, a division of Santa Clara ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: ADDRESS (the "Property").

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein collectively referred to as the "Security";

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of AMOUNT ($XXX,000.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. **Borrower's Estate**. Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by MetLife Home Loans, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Loan**. Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants**. Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens**. Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of

Trust; provided, that Borrower will not be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. **Hazard Insurance.** Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the First Mortgage Lender, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Mortgage Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay the City Note secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to repay the City Note.
If the Security is acquired by the City, all right, title and interest of Borrower in and to

any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition subject to the rights of the First Mortgage Lender.

6. **Preservation and Maintenance of Security.** Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

7. **Protection of the City's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the deed of trust securing the First Mortgage Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or a decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

8. **Inspection.** The City may make, or cause to be made, reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability**. All covenants and agreements of Borrower shall be joint and several.

13. **Notice**. In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner:	NAME ADDRESS Santa Clara, CA 9505X
To First Mortgage Lender:	NAME ADDRESS CITY, CA XXXXX
To Agency:	City of Santa Clara 1500 Warburton Avenue Santa Clara, California 95050 Fax: (408) 248-3381 (Or such other address as may be provided by the Agency)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law**. This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability**. In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City

Note are declared to be severable.

16. **Captions**. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Default**. The occurrence of any of the following shall be deemed a Default hereunder:

a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or

b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or

c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default**.

a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.

b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Borrower to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.

c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.

d) Notwithstanding the cure periods established in this Paragraph 18, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; Remedies.** Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option: (a) Declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;

(a) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the

remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable

Attorneys' fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.** Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon of satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

23. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

Notwithstanding any provision in this Deed of Trust to the contrary, all of the provisions of this Deed of Trust shall terminate and have no further force and effect upon the occurrence of one of the following events:

a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the First Mortgage Deed of Trust;

b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the date first written above.

_____

NAME OF BORROWER

_____

NAME OF BORROWER

EXHIBIT A

Property Description

State of)
)
County of Santa)

On_____, 20___, before me._____, a Notary Public, personally appeared_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (SEAL)

State of)
)
County of Santa)

On_____, 20 , before me,_____, a Notary Public, personally appeared_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (SEAL)

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the _____Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To_____, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of . $_____, and of all other indebtedness secured by City Subordinate Deed of Trust dated_____, 20 __, made by _____. Trustor, to_____, Trustee, and recorded on___, 20 , as Instrument No_____, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated:_____, 20__

CITY OF SANTA CLARA,
A chartered California municipal corporation

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Telephone: (408) 615-2210
Fax: (408) 241-6771

Mail Reconveyance to:

RECORDING REQUESTED BY:
_____ TITLE COMPANY

AND WHEN RECORDED MAIL TO:
Owners Name
Forwarding address
City, State, zip
And

Housing and Community Services
Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara CA 95050
APN: 000-00-000

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SUBSTITUTION OF TRUSTEE AND DEED OF RECONVEYANCE

The City of Santa Clara, as the present Beneficiary of the Deed of Trust dated Month 0, 0000, executed by Owners Name as Trustor, Trustee as indicated on Deed of Trust, is named as Trustee, and recorded in the Office of the County Recorder of Santa Clara County on Month 0, 0000, as Instrument No. 0000000 of the Official Records of Santa Clara County, hereby substitutes the City of Santa Clara as Trustee in lieu of the prior Trustee herein.

The City of Santa Clara hereby accepts such appointment as Trustee under the above Deed of Trust, and as Successor Trustee, and pursuant to the written request of Beneficiary and in accordance with the terms of such Deed of Trust, does hereby grant and reconvey to Trustor legally entitled thereto, without warranty, all of the estate and interest derived to the Trustee in and to the property described in Exhibit "A."

CITY OF SANTA CLARA,
A chartered California municipal corporation

APPROVED AS TO FORM:
_____
BRIAN DOYLE
City Attorney

Dated: _____
DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Telephone: (408) 615-2210
Fax: (408) 241-6771

Exhibit D

Request for Notice

(Behind this page)

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:
Housing and Community Services Division
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR NOTICE
Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any NOTICE OF DEFAULT and a copy of any NOTICE OF SALE under the _____dated as of __/__/ 20__ and recorded as Instrument No. _____, in the Official Records of Santa Clara County on _____, 20__ executed by _____ and _____ as Borrowers, for the benefit of the City of Santa Clara and describing the following real property, located in Santa Clara County, California:

[See Exhibit A attached hereto and incorporated herein.]

be mailed to THE CITY OF SANTA CLARA at the following address:

1500 Warburton Avenue
Santa Clara, California 95050

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

_____
BRIAN DOYLE
City Attorney

_____
DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____
_____,a Notary Public, personally appeared
_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

Exhibit A

Legal Description

[TO BE ATTACHED]

Exhibit E

Escrow Instructions

(Behind this page)

DATE

City of Santa Clara
The Center of What's Possible

VIII. Name of Title Company
IX. Address of Title Company
X. City, State Zip

Attention: **Name of Escrow Officer, Title**

Re: Escrow No. ##########-#######

Dear **Name of Escrow Officer**:

These escrow instructions are hereby submitted in connection with the sale of a residence (the "Unit") located at the following address in the City of Santa Clara:

Address of Unit: **Full Street Address of Unit**

Purchaser(s): **Name of Purchaser(s)**

Estimated Close of Escrow: **CLOSE OF ESCROW DATE**

A. BACKGROUND

1. THE CITY OF SANTA CLARA, a chartered municipal organization (the "City"), and **Name of Developer** (the "Developer") have entered into an Affordable Housing Agreement (the "Agreement") approved **Date of Agreement Meeting**.

2. Pursuant to the Agreement the Developer will construct **total number** dwelling units on property owned by Developer and located in the City of Santa Clara (the "Site").

3. The Agreement requires the Developer to sell exclusively to Moderate Income Households, at an affordable sales price, **number of BMP** dwelling units on the Site.

4. The Agreement also provides that the Developer agrees to record the attached affordability covenant.

5. The Developer proposes to sell the Unit to a Purchaser as a qualified moderate income household at an affordable sales price, and has provided separate escrow instructions to you in connection with such sale.

B. TRANSACTION

1. «First_Lender_Name». will make a «New_Loan_Amount_Written» ($«New_First_Loan_Text_amount»)

first loan to the Borrower, which will be evidenced by a promissory note in the amount of the First Lender Loan and secured by a deed of trust in first lien position on the Borrower's fee interest in the Property.

2. The Borrower will purchase that certain real property in Santa Clara County, more specifically described in the attached Exhibit A (the "Property").

C. DEPOSIT OF DOCUMENTS

Enclosed herewith, previously delivered to you, or to be delivered to you, are the following documents, executed in connection with the above-described escrow. Please inform Housing Trust Silicon Valley Homeownership Programs Department of the signing date at (408) 436-3450 ext 303 or 234 . They are Administrators of the Below Market Purchase (BMP) program and will need to be aware of the signing.

1. An original instrument entitled **"BELOW MARKET PURCHASE PROGRAM PROMISSORY NOTE Secured by City Subordinate Deed of Trust"** to be duly executed by the Purchaser (Borrower) and original to be returned to City.

2. An original instrument entitled "BELOW MARKET PURCHASE PROGRAM DEED OF TRUST AND SECURITY AGREEMENT (CITY SUBORDINATE DEED OF TRUST)" **to be duly executed by the Purchaser iu recordable form.**

3. An original instrument entitled "**REQUEST FOR NOTICE Under Section 2924b Civil Code**" executed by the City in recordable form. Please fill in date and recording number for senior lender deed of trust on form prior to submittal for recording.

4. An original document entitled "**BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE**" to be executed by the Purchaser in recordable form.

5. An original document entitled "**City of Santa Clara – Below Market Purchase (BMP) Program Lien Servicing Agreement**" to be executed by the Purchaser.

6. An original document entitled "**Preliminary Change of Ownership Report**" to be executed/is signed by the Purchaser and copy of BMP Acknowledgement signed by the Purchaser **and copy of Assessors email, all to be delivered to the County Assessor's Office.**

D. CLOSING PROCEDURES

In closing escrow, you will adhere to the procedures set forth below. All requirements with respect to closing shall be considered as having taken place simultaneously, and no delivery shall be considered as having been made until all deliveries and closing transactions have been accomplished. Do not record or deliver any of the documents described above, or the funds to be wired to you, unless all conditions to closing are satisfied. When and only when all conditions to closing are satisfied, you shall:

2. With respect to any documents which have not been dated (whether or not such documents are to

be recorded), fill in the date of recordation.

3. With respect to any other blanks in the documents or **[boldface]** notations to insert information, fill in the appropriate information (for example, recording information, lender name, loan amounts, document name or dates of other documents). If you have any questions regarding how to fill in any blanks, contact the undersigned immediately.

3. Upon receipt of each of the documents listed below, Housing Trust Silicon Valley will provide notification to Escrow to proceed with recording.

a. Certified copies of each of the documents # 1-6 described in paragraph C.
b. These escrow instructions signed and certified by the «Title_Company_Name» Title Company
c. Certified copies of the signed note and deed of trust for the First Mortgage Lien Holder
d. Certified copy of the Grant Deed signed by Sellers
e. Copy of the Master or Blanket Insurance Policy for the condominium project (if applicable)
f. A certificate of insurance (hazard) showing the City of Santa Clara in second position as second loss payee.(if applicable)
Our Mortgagee clause is the following:
City of Santa Clara-Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, CA 95050
BMP no.: «BMP_Loan_»
g. Certified copy of the Seller and Buyer's Closing Disclosures and estimated Settlement Statement from «Title_Company_Name» Title Company
h. Certified copies of City of Santa Clara estimated Settlement Statement from «Title_Company_Name» Title Company
i. Copy of the buyers closing funds and receipt from the «Title_Company_Name» Title Company
j. Copy of the Notice of Completion

4. Record, in the following order:

a. An Original of the grant deed conveying title to the Unit to the Purchaser
b. Senior Lender Loan Documents (As provided by Primary Lender under separate escrow instructions)
c. An Original of the City BMP Subordinate Deed of Trust
d. An Original of the City BMP Covenants, Restrictions and Option to Purchase
e. An Original of the City Request For Notice

5. The purchaser(s) shall be provided copies of all executed documents.

6. After the closing, deliver to **both** the City and Housing Trust Silicon Valley (HTSV) one conformed copy of each of the documents # 2-4 described in paragraph C, above (i.e. two copies are required of each document—one for HTSV and one for the City.) In addition to these documents, you are required to return to the City, the original executed City Promissory Note (document #1), original executed City Lien Servicing Agreement (document #5), original executed copy of these Escrow Instructions, copy of signed "Preliminary

Change of Ownership Report and a conformed copy of Notice of Completion.

7. Please bill the Purchaser(s) for any title or escrow charges associated with the foregoing documents and any other charges you incur. ALTA Title Insurance Policy for the benefit of the City shall be provided as part of the escrow closing with the cost paid by the Purchaser. Any documents signed by the City are entitled to free recording pursuant to California Government Code sec. 6103 and Government Code sec. 27383. If any of such documents do not contain a legend to that effect, please insert the legend in the upper left corner of such documents.

The City hereby reserves the right to withdraw all of the documents and money described herein prior to the closing of the transaction contemplated hereby.

If you have any questions, please do not hesitate to call the undersigned at (408) 615-2490 and/or Housing Trust Silicon Valley at (408) 436-3450.

Please immediately return an executed copy of these instructions to the undersigned.

Very truly yours,

THE CITY OF SANTA CLARA, CALIFORNIA

By: _____
Housing and Community Services Division Manager, or designee

The undersigned acknowledges receipt of the within escrow instructions and agrees to proceed in accordance therewith.

NAME OF TITLE COMPANY

By: _____