

## DDA EXHIBIT H

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Sunnyvale  
Housing Division  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: Director of Community Development

No fee for recording pursuant to  
Government Code Section 27383

(Space above for Recorder's Use)

APN(s): 165-130-74, 165-130-46, 165-130-68, 165-130-45, 165-130-73, 165-130-69

**AFFORDABLE HOUSING AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Block 15 Housing Project)**

This AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF SUNNYVALE, a municipal corporation (the "City"), and \_\_\_\_\_ HOUSING PARTNERS, L.P., a California limited partnership (the "Developer") (together the "Parties"), with reference to the following facts:

A. The City owns fee title to 1.44 acres of improved land located at 365-388 Charles Street (APN# 165-130-74), 396 Charles Street ( APN# 165-130-46), 397 South Mathilda Avenue (APN# 165-130-68), 402 Charles Street (APN# 165-130-45), 406 Charles Street (APN# 165-130-73), and 403 South Mathilda Avenue (APN# 165-130-69) in the City of Sunnyvale and legally described as Parcel A on Exhibit A attached to this Agreement (collectively, the "Property").

B. The City and the Developer have entered into a Disposition and Development Agreement (the "DDA") dated \_\_\_\_\_, 2018, pursuant to which the City will enter into a long-term ground lease with the Developer for the Property (the "Ground Lease") and provide a loan to the Developer (the "Loan") for the purpose of developing an affordable housing project on the Property (the "Project").

C. The Project shall provide eighty-nine (89) affordable rental housing units for Extremely Low, Forty-Five Percent, Very Low, and Low-Income households as each are defined below (collectively "Lower-Income Households") and one (1) manager's unit. In addition, twenty-five percent (25%) of the units shall be designated as Special Needs Units, as defined below.

D. The Loan is to be provided by the City with funds from its Housing Mitigation Fund. The City has agreed to lease the Property and make the Loan to the Developer on the

## DDA EXHIBIT H

condition that the Property be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance, as specified in this Agreement and the DDA.

E. As a further condition of leasing the Property and providing the Loan to the Developer, the City requires the Developer to execute this Agreement to regulate eighty nine (89) of the units in the Project as "Assisted Units", as more particularly described in Exhibit B of this Agreement, which is incorporated by this reference, to ensure that the units are occupied by and affordable to Lower-Income Households for the term of this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows. The Parties agree and acknowledge that the above recitals are true and accurate, and are incorporated into this Agreement by this reference.

**ARTICLE 1.  
DEFINITIONS AND EXHIBITS**

Section 1.1. Definitions. The following terms have the following meanings in this Agreement:

(a) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 92.203(b)(1), which incorporates 24 CFR 5.609.

(b) "Affordability Term" is the period that commences when the City issues an occupancy permit for or approves the final inspection of the Project, whichever occurs first, and that terminates between 57 and 67 years after such date.

(c) "Agreement" shall mean this Affordable Housing Agreement and Declaration of Restrictive Covenants.

(d) "Assisted Units" are defined in Recital E.

(e) "Assumed Household Size" shall mean, solely for the purposes of establishing maximum rent limits for the Assisted Units, a household size equal to the number of bedrooms in the Assisted Unit, plus one. For example, the Assumed Household Size for a two-bedroom Assisted Unit shall be a household of three. Assumed Household Size is not intended to be used as a maximum occupancy limit for the Assisted Units.

(f) "City" is defined in the first paragraph on page 1 of this Agreement.

(g) "DDA" is defined in Recital B of this Agreement.

(h) "Developer" is defined in the first paragraph on page 1 of this Agreement.

(i) "Director" means the Community Development Director of the City or successor position, or his or her designee.

## DDA EXHIBIT H

(j) "Extremely Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for extremely low-income households in Santa Clara County, as published by the State of California Department of Housing and Community Development ("HCD"), which generally do not exceed thirty percent (30%) of area Median Income.

(k) "Extremely Low Income Rent" shall mean the maximum allowable rent for an Extremely Low Income Household pursuant to Section 2.2(d) below.

(l) "Forty-Five Percent Income Household" shall mean a household with an Adjusted Income that does not exceed forty-five percent (45%) of area Median Income.

(m) "Forty-Five Percent Income Rent" shall mean the maximum allowable rent for Forty-Five Percent Income Household pursuant to Section 2.2(c) below.

(n) "Household Income" means the combined gross, pre-tax income of all adult occupants of the applicant household, as calculated using the guidelines provided in California Code of Regulations, Title 25, Section 6914.

(o) "Household Size" shall mean the actual number of persons in the applicable household.

(p) "Loan" is defined in Recital B of this Agreement.

(q) "Loan Documents" means the DDA, the City subordinate Loan Note evidencing all or any part of the Loan, and the deed of trust to the City on the Developer's leasehold interest in the Property which secures repayment of the Loan and the performance of terms of the City Subordinate Loan Note, the DDA, and this Agreement.

(r) "Lower Income Households" is defined in Recital C of this Agreement.

(s) "Low Income Household" shall mean a household whose Adjusted Income is 80 percent (80%) or less of the area Median Income as determined by HCD.

(t) "Low Income Rent" shall mean the maximum allowable rent for a Low Income household pursuant to Section 2.2(a) below.

(u) "Median Income" shall mean the median gross yearly Household Income, adjusted for Household Size, in Santa Clara County, California, as published from time to time by HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(v) "Parties" are defined in the first paragraph on page 1 of this Agreement.

(w) "Project" is defined in Recital B.

## DDA EXHIBIT H

(x) "Property" is defined in Recital A.

(y) "Rent" shall mean the total of monthly payments by the Tenant of an Assisted Unit for the following: use and occupancy of the Assisted Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities individually metered and/or paid for separately by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, cable TV, or internet service; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the Tenant.

(z) "Special Needs Unit(s)" shall mean a unit(s) reserved for Tenants who are adults with development disabilities, consistent with the approved Tenant Selection Plan.

(aa) "Tenant" is a household occupying an Assisted Unit.

(bb) "Tenant Selection Plan" is defined in Section 4.2 of this Agreement.

(cc) "Unit" for leasing and management purposes shall mean one of the 90 apartments in the Property, excluding the manager's unit, which pursuant to Section 2.1(a) below, are required to be occupied by, or if vacant available for occupancy by, Lower-Income Households.

(dd) "Very Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, as published by HCD, which generally do not exceed fifty percent (50%) of area Median Income.

(ee) "Very Low Income Rent" shall mean the maximum allowable rent for a Very Low Income Household pursuant to Section 2.2(b) below.

Section 1.2. Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

Exhibit A      Legal Description of the Property

Exhibit B      Schedule of Assisted Units

## **ARTICLE 2. AFFORDABILITY AND OCCUPANCY COVENANTS**

Section 2.1. Occupancy Requirements. The Developer shall cause all eighty-nine (89) Assisted Units to be rented to and occupied by or, if vacant, available for occupancy by Lower-Income Households, and shall reserve twenty-five percent (25%) of the Assisted Units as Special Needs Units, all in accordance with the Schedule of Assisted Units set forth in Exhibit B.

## DDA EXHIBIT H

Section 2.2. Allowable Rent.

(a) Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units in a Low Income Household shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Median Income limit for Santa Clara County, as published by HCD, and adjusted for Assumed Household Size.

(b) Very Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units in a Very Low Income Household shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income limit for Santa Clara County, as published by HCD, adjusted for Assumed Household Size.

(c) Forty-Five Percent Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units in a Forty-Five Percent Income Household shall not exceed one-twelfth (1/12) of thirty percent (30%) of forty-five percent (45%) of Median Income limit for Santa Clara County, as published by HCD, adjusted for Assumed Household Size.

(d) Extremely Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units in an Extremely Low Income Household shall not exceed one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of Median Income limit for Santa Clara County, as published by HCD, adjusted for Assumed Household Size.

(e) City Approval of Rents. Initial Rents for all Assisted Units shall be approved by the City prior to occupancy. Any subsequent rent increases shall also be subject to the maximum rent limits defined above. The City shall provide the Developer with a schedule of maximum permissible rents for the Assisted Units annually based on the formulas described in Section 2.2 above. The Rent limits are adjusted annually by the City following the annual release of county area median income statistics by HCD, or in the event such statistics are no longer provided by HCD, comparable statistics available from another reliable source, such as the U.S. Department of Housing and Urban Development or the U.S. Census Bureau.

Section 2.3. Increased Income of Tenants.

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Assisted Unit, the Developer determines that

(i) A former Extremely Low Income Household's Adjusted Income has increased and exceeds the income limit for an Extremely Low Income Household as defined above but does not exceed the income limit for a Forty-Five Percent Income Household, such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease such Tenant's Rent shall be increased to the Forty-Five Percent Income Rent Limit, upon sixty (60) days' written notice to Tenant, and the next available Forty-Five Percent Income Unit shall be rented to an Extremely Low Income Household in compliance with Exhibit B; and/or

(ii) A former Extremely Low Income or Forty-Five Percent Household's Adjusted Income has increased and exceeds the income limit for a Forty-Five Percent Income Household as defined above but does not exceed the income limit for a Very

## DDA EXHIBIT H

Low Income Household, such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease such Tenant's Rent shall be increased to the Very Low Income Rent Limit, upon sixty (60) days' written notice to Tenant, and the next available Very Low Income Unit shall be rented to an Extremely Low or Forty-Five Percent Income Household in compliance with Exhibit B; and/or

(iii) A former Extremely Low, Forty-Five Percent, or Very Low Income Household's Adjusted Income has increased and exceeds the income limit for a Very Low Income Household as defined above but does not exceed the income limit for a Low Income Household, such Tenant's rent shall be increased to the Low Income Rent Limit, upon sixty (60) days' written notice to Tenant, and the next available Low Income Unit shall be rented to an Extremely Low, Forty-Five Percent, or Very Low Income Household in compliance with Exhibit B; and/or

(iv) A former Extremely Low Income, Forty-Five Percent, Very Low Income, or Low Income Household's Adjusted Income has increased and exceeds the income limit for a Low Income Household as defined above, upon sixty (60) days' written notice to Tenant, such Tenant's rent shall be increased to 30% of the Tenant's actual monthly Household Income and the next available Unit shall be rented to an Extremely Low, Forty-Five Percent, Very Low, or Low Income Household in compliance with Exhibit B. If such an increase is expressly prohibited under a deed restriction of a lienholder senior to the City lien, or federal IRS tax credit regulations applicable to the Project at the time or the regulations of the California Tax Credit Allocation Committee, the rent shall remain at the then-current Low Income Limit, and the number of Low Income Units occupied by Tenants with incomes over the Low Income limit shall be reported to the City on an annual basis in Developer's annual reports to the City as required under this Agreement.

(b) Termination of Occupancy. Upon termination of occupancy of an Assisted Unit by a Tenant, such Assisted Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the status of the Unit shall be determined based on the income level of the new Tenant.

(c) Lease Provisions. The Developer shall use a form of Tenant lease approved by the City for the Assisted Units. The Tenant lease form shall, among other matters:

(i) provide for termination of the lease for failure: (1) to provide any information required under this Agreement or reasonably requested by the Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Assisted Units in accordance with this Agreement, or (2) to qualify as a Lower Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(ii) provide that the Rent may not be raised more often than once every twelve (12) months. The Developer will provide each Tenant with at least thirty (30) days written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by this Section;

## DDA EXHIBIT H

(iii) prohibit subleasing of the Assisted Unit or any portion of the unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(iv) include reasonable rules of conduct consistent with California law;  
and

(v) allow termination of the tenancy only for good cause, including violation of the terms and conditions of the lease, violations of applicable federal, state, or local law, or other good cause.

Section 2.4. Adjustments to Affordability and Occupancy Covenants.

(a) TCAC Provisions. Notwithstanding anything contained in this Agreement to the contrary, if and when the Assisted Units are subject to the requirements of the California and/or Federal Low-Income Housing Tax Credit Program under the provisions of Section 42 of the Code and/or Section 23610.5 of the California Revenue and Taxation Code, as applicable and the terms of any extended use agreement (collectively, the "Tax Credit Program") and subject to a recorded regulatory agreement that meets standards established by the California Tax Credit Allocation Committee ("TCAC"), if the applicable Tax Credit Program rents, income levels, or household sizes approved by TCAC conflict with the requirements of this Agreement, then Developer may apply the Tax Credit Program requirements for rents, income levels, and household sizes.

(b) Foreclosure Provisions. If title to the Ground Lease is transferred through foreclosure or deed in lieu of foreclosure under any Mortgage (as defined in the Ground Lease) then Developer may increase the Rent on one or more of the Assisted Units, to the Low Income Rent, subject to the following requirements:

(i) At the time Developer requests an increase in the Rent, Developer shall provide the City with an updated Pro Forma Budget (as defined in the Ground Lease) for the Development for the City's approval pursuant to Section 8.1 of the Ground Lease, showing the need for the increase;

(ii) The number of Units subject to the Rent increase and the level of rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Pro Forma Budget, and as is necessary to maintain the financial stability of the Project; and

(iii) Any such Rent increase must be pursuant to a transition plan approved by the City, consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to the Tax Credit Program.

Developer shall use good faith efforts to obtain sources of rental subsidies and shall provide the City with annual progress reports on efforts to obtain sources of rental subsidies that would allow the rents on the Units to be reduced back to the Rents set out in Section 2.2 of this Agreement. Upon receipt of any rental subsidies, Developer shall reduce the rents on the Units back to the

## DDA EXHIBIT H

Rents set out in Section 2.2 of this Agreement, to the extent that the rental subsidies provide sufficient income to cover the operating costs and debt service of the Project as shown on the Pro Forma Budget.

**ARTICLE 3.  
INCOME CERTIFICATION AND REPORTING.**

Section 3.1. Income Certification. The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Assisted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent three pay periods; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification, such as an affidavit signed by the applicant under penalty of perjury, a court order of support, or similar verification. Copies of Tenant income certifications shall be available to the City upon request. The initial Household Income certification shall be consistent with the "Part 5 Method" described in 24 CFR 5.609.

Section 3.2. Annual Report to the City. The Developer shall submit to the City (a) not later than the ninetieth (90th) day after the close of each fiscal year, or such other date as may be requested by the City but in no event earlier than the ninetieth (90th) day after the close of each fiscal year, a statistical report in a form acceptable to the City verifying compliance by Developer with the terms of this Agreement and certified as correct by the Developer under penalty of perjury. The annual report shall include without limitation the following information:

(a) Certifications of eligibility for all Tenants of Assisted Units at the time of initial occupancy and upon the yearly anniversary of their continuing tenancies. Such certification shall include copies of the income certifications required by subparagraph (a) of this Section for all Tenants renting any of the Assisted Units and the number of persons occupying each Assisted Unit.

(b) Certification of the amount of Rent charged for the year for all Assisted Units.

(c) Other information reasonably required by the City related directly to the income eligibility of a Tenant or the Rent charged for an Assisted Unit.

Section 3.3. Additional Information. Within thirty (30) days after receipt of a written request from the City, Developer shall provide any other information or completed forms reasonably requested by the City to ensure compliance with this Agreement. The City shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Project.



## DDA EXHIBIT H

Section 3.4. Records. The Developer shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income of Tenants. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Assisted Units for a period of at least five (5) years.

Section 3.5. On-site Inspection. The City shall have the right to perform an on-site inspection of the Project at least one time per year with adequate notice to Developer, of a minimum of thirty (30) days. The Developer agrees to cooperate in such inspection.

**ARTICLE 4.  
OPERATIONS AND PROPERTY MAINTENANCE.**

Section 4.1. Reserved.

Section 4.2. Marketing and Tenant Selection Plan. Developer shall provide for City review and approval, within 90 days of execution of this Agreement, a detailed plan for marketing the Assisted Units and a "Tenant Selection Plan" describing how Developer will select Tenants from all eligible prospective applicants. City will review and approve these plans within thirty (30) days after receipt. The marketing plan shall include a period of at least two weeks of marketing and outreach targeted primarily to Sunnyvale residents and workers. To the extent possible without conflicting with the non-discrimination provisions of this Agreement or with the requirements of other Project funding agencies and/or state or federal fair housing laws, the Tenant Selection Plan shall provide a local preference for Sunnyvale residents and those employed within Sunnyvale.

Section 4.3. Management Responsibilities. The Developer is responsible for all management functions with respect to the Project, including, without limitation, the annual certification and recertification of Household Size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project. The Developer shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder, unless the City approves self-management by the Developer. A resident manager shall also be required. The City hereby approves Related Management Company as the property management company.

(a) Accounting Records. In a manner subject to City approval, the Developer shall maintain, on an accrual or modified accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project, and shall cause to be prepared an annual independent fiscal audit conducted in accordance with generally accepted accounting principles. All records and books relating to this system shall be kept for a period of at least seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit upon reasonable notice.

## DDA EXHIBIT H

(b) Use of Income from Operations. The Developer, or its management agent, shall promptly deposit all operating income in a segregated account established exclusively for the Project with an FDIC or other comparable federally-insured financial institution.

Section 4.4. Management Agent; Periodic Reports. Unless the City approves self-management by the Developer, the Project shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Developer shall submit for the City's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 4.5. Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

Section 4.6. Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, or, if the Project is being self-managed, to cause the Developer to retain a Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Developer of such written notice, City staff, as applicable, and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff, as applicable, recommends in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, or cease self-management if the Project is self-managed and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth above and approved by the City.

Any contract for the operation or management of the Project entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent or to appoint a Management Agent instead of self-management in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings.

## DDA EXHIBIT H

Section 4.7. Approval of Management Policies. Within thirty (30) days after receipt of a written request from the City, the Developer shall submit its written management policies with respect to the Project to the City for its review. The Developer shall amend such policies in any way reasonably requested by the City in writing to ensure that such policies comply with the provisions of this Agreement.

Section 4.8. Property Maintenance. The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

## **ARTICLE 5. ENFORCEMENT**

Section 5.1. Covenants Running with the Land. The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall apply to and bind Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until the end of the Affordability Term. Until all or portions of the Property are expressly released from the burdens of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument. In the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Property prior to the end of the Affordability Term, title to all or any portion of the Property shall be taken subject to this Agreement.

Section 5.2. Compliance with DDA, Loan Documents and Program Requirements. Developer's actions with respect to the Project and the use of funds provided herein shall at all times be in full conformity with all requirements of the DDA and the Loan Documents.

Section 5.3. Default. If the Developer fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the Loan. The City may declare a default under the Loan Documents, accelerate the indebtedness evidenced by the City Subordinate Loan Note, including outstanding principal and interest, and demand immediate repayment thereof. Upon failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Loan Documents and State law regarding foreclosures.

## DDA EXHIBIT H

(b) Collect Rents. Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(c) Excess Rents. In the event that the breach or violation involves the rents to Tenants or other charges in excess of those permitted under this Agreement, the City may demand, and seek as an additional remedy, the return of such excess rents or other charge to the affected households.

(d) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Developer's performance of its obligations under this Agreement, and/or for damages, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement or for such other relief as may be appropriate.

(e) Remedies Provided Under DDA or the Loan Documents. The City may exercise any other remedy provided under the DDA or the Loan Documents.

(f) Remedies Cumulative. The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

Section 5.4. Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute. In the event litigation is not instituted, the City shall be entitled to receive from the Developer, or any person violating the requirements of this Agreement, the costs of enforcing this Agreement, including without limitation reasonable attorneys' fees and the costs of City staff time.

## ARTICLE 6. GENERAL PROVISIONS

Section 6.1. Appointment of Other Agencies. At its sole discretion, the City may designate, appoint or contract with any other public agency or for-profit or non-profit organization to perform some or all of the City's obligations under this Agreement.

Section 6.2. Nondiscrimination. Except as specified in this Agreement, all of the Assisted Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible and/or eligible for Special Needs Units and otherwise eligible for the applicable unit type and/or preference as described in the approved Tenant Selection Plan. The Developer shall not give preference to any particular class or group of persons in renting or selling the Units, or any part of the Project except to the extent that the Units are required to be leased to eligible households as described herein and to the extent that preference is to be provided to Sunnyvale residents and individuals employed in Sunnyvale as described in the Tenant Selection Plan, while complying with state and federal fair housing laws. There shall be no discrimination against or segregation of any person or group of persons, on account of race,

## DDA EXHIBIT H

color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), age, ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit or in the use or enjoyment of the Project, nor shall the Developer or any person claiming under or through the Developer, 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, sublessees, subtenants, or vendees of any Unit or any part of the Project or in connection with the employment of persons for the construction, operation and management of any Project.

Section 6.3. Section 8 Certificate Holders. The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Assisted Units by such prospective Tenants.

Section 6.4. Notice of Expiration of Affordability Term. At least six (6) months prior to the expiration of the Affordability Term, the Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in City Assisted Units containing (a) the anticipated date of the expiration of the Affordability Term, (b) any anticipated Rent increase upon the expiration of the Affordability Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Developer shall also file a copy of the above-described notice with the Housing Officer of the City.

Section 6.5. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Assisted Units, or Developer's performance or non-performance under this Agreement, including claims pursuant to California Labor Code Section 1720 et seq., provided, however, such indemnification obligations created by this Agreement shall not extend to repayment of principal and interest under the promissory note, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the gross negligence or willful misconduct of the City or its elected officials, officers, employees or agents. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section shall remain in full force and effect.

## DDA EXHIBIT H

Section 6.6. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the addressed set forth below:

TO THE CITY:

City of Sunnyvale  
Community Development Department, Housing Division  
P.O. Box 3707 / 456 W. Olive Ave.  
Sunnyvale, CA 94088-3707  
Attn: Director of Community Development

TO THE DEVELOPER:

\_\_\_\_\_ Housing Partners, L.P.  
c/o The Related Companies of California  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Attn: Frank Cardone

Any Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above.

Section 6.7. Integrated Agreement. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties hereto.

Section 6.8. Each Party's Role in Drafting the Agreement. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Section 6.9. Amendment of Agreement. Major amendments to this Agreement, including any proposal to make any material changes in the Project, the DDA, or the Loan Documents shall be subject to the review and approval of the decision-making body which approved the Project. Minor amendments to this Agreement may be approved by the Director. Upon approval, a new Agreement containing the amendments shall be executed and recorded.

Section 6.10. No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project or construction of the Assisted Units.

Section 6.11. Applicable Law. This Agreement shall be governed by California law. Venue shall be the County of Santa Clara.

## DDA EXHIBIT H

Section 6.12. Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 6.13. Title of Parts and Sections. Any titles of the sections, subsections, or subparagraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 6.14. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.15. Recording of Agreement. The Developer shall cause this Agreement to be recorded against the Property in the Official Records of the County of Santa Clara.

Section 6.16. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless be and remain in full force and effect.

DDA EXHIBIT H

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

**DEVELOPER:**

**CITY:**

\_\_\_\_\_ HOUSING  
PARTNERS, L.P.,  
a California limited partnership

City of Sunnyvale, a municipal corporation

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

By: RELATED/\_\_\_\_\_  
DEVELOPMENT CO., LLC, a California  
limited liability company, its administrative  
general partner

By:

\_\_\_\_\_  
Frank Cardone, President

**APPROVED AS TO FORM:**

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

Name: Robert Boco

Its: Assistant City Attorney



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, \_\_\_\_\_, 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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Name: Notary Public

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, \_\_\_\_\_, 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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Name: Notary Public

## DDA EXHIBIT H

**EXHIBIT A (TO EXHIBIT H OF THE DDA)****LEGAL DESCRIPTION OF THE PROPERTY**

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

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

## General Description and APNs of the Property

The Property includes the following parcels in the City of Sunnyvale, within Santa Clara County, California:

Situs Address(es)	Assessor's Parcel Number (APN)
388 Charles St., Sunnyvale CA 94086	165-130-74
396 Charles St., Sunnyvale CA 94086	165-130-46
397 S. Mathilda Ave., Sunnyvale CA 94086	165-130-68
402 Charles St., Sunnyvale CA 94086	165-130-45
406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

## DDA EXHIBIT H

**EXHIBIT B (TO EXHIBIT H OF THE DDA)****SCHEDULE OF ASSISTED UNITS**

The Developer shall use the Project as rental housing and ancillary purposes with 90 total units, used as follows:

- The 89 Assisted Units in the Project shall be rented to Lower-Income Households, whose Adjusted Income is 80 percent (80%) or less of the Area Median Income as determined by HCD;
- One manager's unit can be rented without income limitation;
- The average incomes of households occupying Assisted Units in the Project shall not exceed fifty percent (50%) of the Area Median Income upon initial occupancy;
- Regardless of any income averaging, at least nine and six-tenths percent (9.6%) of the Assisted Units in the Project shall be rented to Extremely Low Income Households, whose Adjusted Incomes do not exceed thirty percent (30%) of the Area Median Income as determined by HCD upon initial occupancy; and
- At least twenty-five (25%) of the Units in the Project shall be available as special needs housing for adults with developmental disabilities.