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

No fee for recording pursuant to
Government Code Section 27383

APN: 110-29-028

**CITY OF SUNNYVALE HOUSING MITIGATION FUND
REGULATORY AGREEMENT AND DECLARATION
OF RESTRICTIVE COVENANTS**
(Edwina Benner Plaza)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this ____ day of March 2017, by and between the City of Sunnyvale, a municipal corporation (the "City") and MP Edwina Benner Associates L.P., a California limited partnership (the "Borrower").

RECITALS

A. The City and the Borrower have entered into a City of Sunnyvale Housing Mitigation Fund Loan Agreement dated concurrently herewith, pursuant to which the City will provide a loan (the "Loan") to the Borrower to pay for acquisition of the property located **at 460 Persian Drive** in Sunnyvale, CA, as more particularly described in **Exhibit A** attached hereto (the "Property") for the purpose of developing thereon an affordable housing project (the "Project"). The Project shall provide sixty-five affordable apartments for Extremely Low, Very Low, and Low-Income households as defined herein, (collectively "Lower-Income households") and one manager's unit. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement (as defined below).

B. The Borrower intends to construct sixty-six (66) multi-family rental apartments and associated improvements on the Property consistent with permits issued by the City to provide affordable housing for Lower-income Households (the "Project").

C. The Loan is provided by the City with funds from the City's Housing Mitigation Fund.

D. The City has agreed to make the Loan to the Borrower on the condition that the Property be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance, as specified in this Agreement and the Loan Agreement.

E. As a condition of providing the Loan, the City requires the Borrower to execute this Agreement to regulate sixty-five (65) of the apartments in the Project as “Assisted Units”, as more particularly described in Exhibit B attached hereto and incorporated herein, to ensure that the units are occupied by and affordable to Lower-Income Households for the term of this Agreement. These units will be monitored by the City for compliance with City Housing Mitigation Fund program requirements.

NOW THEREFORE, in consideration of the recitals, hereof, and other mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Borrower hereby agree as follows.

1. DEFINITIONS

1.1. Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(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) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(c) “Assisted Unit(s)” means one or more of the sixty-five (65) apartments within the Project developed with funding provided by this Loan and which shall be subject to this Agreement.

(d) “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 Unit, plus one. For example, the Assumed Household Size for a two-bedroom unit shall be a household of three. Assumed Household Size is not intended to be used as a maximum occupancy limit for the Units.

(e) "Borrower" shall mean MP Edwina Benner Associates L.P., a California limited partnership and its successors and assigns to the Project.

(f) "City" shall mean the City of Sunnyvale, a municipal corporation.

(g) "Deed of Trust" shall mean the deed of trust to the City on the Property which secures repayment of the Loan and the performance of terms of the Promissory Note, the Loan Agreement and this Agreement.

(h) "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 (30) percent of area Median Income.

(i) “Extremely Low Income Rent” shall mean the maximum allowable rent for an Extremely Low Income household pursuant to Section 2.2(b) below.

(j) “Household Size” shall mean the actual number of persons in the applicable household.

(k) “Loan” shall mean all funds loaned to the Borrower by the City pursuant to the Loan Agreement.

(l) "Loan Agreement" shall mean the City Housing Mitigation Fund Loan Agreement entered into by and between the City and the Borrower, dated concurrently herewith.

(m) “Low Income Household” shall mean a household whose Adjusted Income is 60 percent or less of the area Median Income as determined by HCD.

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

(o) "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 Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(p) "Note" shall mean the promissory note from the Borrower to the City evidencing all or any part of the Loan.

(q) "Project" shall have the meaning set forth in Recital A above.

(r) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(s) "Rent" shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower 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 Borrower, and paid by the Tenant.

(t) “Special Needs Unit(s)” shall mean a unit(s) reserved for tenants with special needs, which may include one or more of the following: seniors (head of household aged 62 or older), disabled adults, veterans, people transitioning out of homelessness, people with HIV/AIDS, young adults aging out of foster care, and survivors of domestic violence. To the extent that operating and/or supportive services funding for these Units is made available by other funding agencies, such as the County of Santa Clara or the Housing Authority, those agencies may further limit the Special Needs Units to one or more types of special needs households listed above, consistent with the approved Tenant Selection Plan.

(u) "Tenant" shall mean a household occupying a Unit.

(v) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary date of the issuance of a final Certificate of Occupancy to the Project, or a specified later date in the event the City and Borrower agree to extend such term.

(w) "Unit" for leasing and management purposes shall mean one of the 66 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.

(x) "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 (50) percent of area Median Income.

(y) “Very Low Income Rent” shall mean the maximum allowable rent for a Very Low Income household pursuant to Section 2.2(c) below.

2.

AFFORDABILITY AND OCCUPANCY COVENANTS

2.1. Occupancy Requirements.

(a) Assisted Units. The Borrower shall cause all sixty-five (65) Assisted Units to be rented to and occupied by or, if vacant, available for occupancy by Lower-Income Households, and shall reserve three (3) of the Assisted Units for Special Needs Households (the “Special Needs Units”), all in accordance with the Schedule of Assisted Units set forth in Exhibit B, attached hereto and incorporated herein. City hereby acknowledges and agrees that the Assisted Units designated as “Special Needs” in accordance with Borrower’s loan from the County of Santa Clara shall be deemed the “Special Needs Units” for the purposes of this Agreement.

2.2. Allowable Rent

(a) Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units shall not exceed (1) 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) Extremely-Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units shall not exceed (1) 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.

(c) Very Low Income Rent. Rents (including utility allowance) charged to Tenants of Assisted Units shall not exceed (1) 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.

(d) 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 Borrower 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 in effect as of the date of this Agreement are shown in Exhibit B and 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.

(e) Housing Assistance Payment Contracts. In the event that some or all of the Assisted Units are subject to a valid Housing Assistance Payment (“HAP”) contract with HUD and/or the Santa Clara County Housing Authority, the allowable Rent may be determined by the parties to the HAP contract and may exceed the allowable Rent set forth above, provided that Tenant’s portion of the rent does not exceed the applicable rent limit for the unit. Borrower shall provide notice to City that a HAP contract has been executed, and such notice shall identify which units will be subject to the HAP contract, and the term of HAP contract applicable to each unit. Executed HAP contract(s) shall be made available for City inspection upon request. Under applicable federal law, prior to the expiration of any HAP assistance, Borrower shall notify Tenant that their Rent may be increased to the applicable allowable Rent limit specified herein.

2.3 Increased Income of Tenants

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Assisted Unit, the Borrower 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, 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 Income Household in compliance with Exhibit B;

AND/OR

(ii) A former Very Low Income Household's Adjusted Income has increased and exceeds the income limit for a Very Low Income Household as defined above, 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 a Very Low Income Household in compliance with Exhibit B.

AND/OR

(iii) A former 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. 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 Property at the time, the rent shall remain at the then-current Very 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 Borrower's annual reports to the City as required under Section 4.2 herein.

(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.

2.4 Loss of HAP subsidy. Notwithstanding the foregoing, in the event some or all of the Assisted Units are subject to a valid HAP, and the HAP becomes unavailable for any reason or such contract is terminated: (i) the affordability restrictions set forth herein shall automatically adjust to allow all Units to be occupied by Lower Income Households and the rent charged for such units may be raised to the Low Income Rent to the extent needed to allow the Project to meet operating income needs as approved by the California Tax Credit Allocation Committee (CTCAC).

3.**INCOME CERTIFICATION AND REPORTING****3.1. Income Certification.**

The Borrower 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 Borrower 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. Initial household income certification shall be consistent with the "Part 5 Method" described in 24 CFR 5.609.

3.2. Annual Report to the City.

The Borrower 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, a statistical report, including income and rent data for the Assisted Units, setting forth the information called for therein.

3.3. Additional Information.

The Borrower shall provide any additional information reasonably requested by the City to the City to verify compliance with this Agreement. The City shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project.

3.4. Records.

The Borrower 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 Borrower 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 Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

3.5. On-site Inspection.

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

4.

OPERATION OF THE PROJECT

4.1 Use of the Project.

The Property shall be operated as affordable rental housing consisting of sixty-five (65) Assisted Units, and one Unit for an on-site property manager.

4.2 Compliance with Loan Agreement.

Borrower shall comply with all the terms and provisions of the Loan Agreement, and the Deed of Trust for the Project.

4.3 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.4 Marketing and Tenant Selection Plan. Borrower 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 Borrower will select Tenants from the among all eligible prospective applicants. City will review and approve these plans within thirty (30) days of 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 Section 7.2 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, at a minimum to those Units not allocated additional operating subsidies which may require an alternate selection process. Borrower shall not encumber additional Units with new subsidy programs other than those expressly described in Tenant Selection Plan without prior written approval of City.

5.

PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, 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 Borrower 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 Borrower. A resident manager shall also be required. The City hereby approves MidPen Management Corporation as the Management Agent.

(a) Accounting Records. In a manner subject to City approval, the Borrower 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 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.

(b) Use of Income from Operations. The Borrower, 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.

5.2 Management Agent; Periodic Reports.

Unless the City approves self-management by the Borrower, 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 Borrower shall submit for the City's approval the identity of any proposed Management Agent other than MidPen Management Corporation. The Borrower 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 Borrower 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. The City hereby approves MidPen Management Corporation as the initial Management Agent for the Project.

5.3 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 Borrower shall cooperate with the City in such reviews.

5.4 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 Borrower of its intention to cause replacement of the Management Agent, or, if the Project is being self-managed, to cause the

Borrower to retain a Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Borrower of such written notice, City staff, as applicable, and the Borrower 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, Borrower 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 in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Project entered into by Borrower 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 as specified in Section 6.8.

5.5 Approval of Management Policies.

The Borrower shall submit its written management policies with respect to the Project to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance.

The Borrower 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 Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

6.

MISCELLANEOUS

6.1. Lease Provisions.

The Borrower shall use a form of Tenant lease approved by the City for Assisted Units. The form of Tenant lease shall also comply with all requirements of this Agreement and shall include the following provisions for the Assisted Units:

- (a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Project in accordance with the standards set forth in 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; and

(b) be for an initial term of not less than one (1) year, and provide for no Rent increase during such year. After the initial year of tenancy, such lease may be month to month by mutual agreement of the Borrower and the Tenant; however the Rent may not be raised more often than once a year. The Borrower will provide each tenant the appropriate written notice of any increase in rent applicable to such tenant which meets all local and State notice requirements.

(c) provide that any termination of a lease or refusal by the Borrower to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by no less than thirty (30) days written notice to the Tenant by the Borrower specifying the grounds for the action.

6.2. Nondiscrimination.

Except as specified herein, all of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible and/or Special Needs households and otherwise eligible for the applicable unit type and/or preference as described in the approved Tenant Selection Plan. The Borrower 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 Applicants 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, 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 Borrower or any person claiming under or through the Borrower, 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.

6.3. Section 8 Certificate Holders.

The Borrower 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 Borrower 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 Borrower 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.

6.4. Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.5. Compliance with Loan Agreements and Program Requirements.

Borrower'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 Loan Agreement.

6.6. Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term the Borrower 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 Term, (b) any anticipated Rent increase upon the expiration of the 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 Borrower shall also file a copy of the above-described notice with the Housing Officer of the City.

6.7. Covenants to Run With the Land.

The City and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. 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, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.8. Enforcement by the City.

If the Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Borrower 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 Note, accelerate the indebtedness evidenced by the 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 Deed of Trust and State law regarding foreclosures.

(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 Borrower'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 Loan Agreement. The City may exercise any other remedy provided under the Loan Agreement.

(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.

6.9. Attorneys 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.

6.10. Recording and Filing.

The City and the Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

6.11. Governing Law.

This Agreement shall be governed by the laws of the State of California.

6.12. Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

6.13. Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

6.14. Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: MP Edwina Benner Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: General Partner

City: City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707
Attention: Housing Officer

With a copy to Trustor's investor limited partner:

Bank of America, N.A.
MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attn: Asset Management

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.15. Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16. Multiple Originals; Counterparts.

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

6.17. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

6.18. Assignment of City's Rights. The City retains the right, at its sole discretion, to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

6.19. Binding on Successors. This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

6.20. Hold Harmless. Absent the gross negligence or willful misconduct of the City, the Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its respective agents, employees and officers from any and all claims, losses, liabilities or causes

of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's rehabilitation, management, maintenance or operation of the Project.

6.21. Restrictions on Sale, Encumbrance, and Other Acts.

(a) Except for leases to tenants in the ordinary course of business, the Borrower shall not make, or allow, any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any of its interest therein (a "Transfer"), except with the prior written approval of the City.

(b) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(1) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(2) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement;

(3) any terms of the sale, transfer or conveyance shall not threaten the City's security or repayment of the Loan; and

(4) any successor-in-interest demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Project.

(c) Notwithstanding anything to the contrary contained herein, the following Transfers shall be permitted under this Agreement: (1) encumbrance of the Property by all lenders identified on Exhibit B of the Loan Agreement; (2) transfers of the Borrower's limited partner interests; (3) removal and replacement of Borrower's general partner pursuant to the Borrower's partnership agreement; and (4) the granting and exercise of a right of first refusal and/or purchase option from Borrower to MidPen or a wholly-controlled affiliate of MidPen.

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

[Signatures on the following page]

MP EDWINA BENNER ASSOCIATES, L.P.
a California limited partnership

By: MP 460 Persian LLC, a California limited
liability company

Its: General Partner

By: Mid-Peninsula Baker Park, Inc., a
California nonprofit
public benefit corporation

Its: Sole Member/Manager

By: Matthew O. Franklin

Its: Assistant Secretary

CITY:

CITY OF SUNNYVALE, a municipal
corporation

By: _____

Deanna Santana

Its: City Manager

APPROVED AS TO FORM:

By: _____
Robert Boco
Senior 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 SANTA CLARA)

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.

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, _____, 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 A

Legal Description

The land referred to is situated in the city of Sunnyvale, county of Santa Clara, State of California, and is described as follows:

PARCEL ONE:

Parcel E as shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 4, 1970 in [Book 268 of Maps, Page 51](#).

EXCEPTING THEREFROM, the following:

A portion of Parcel E, as shown on that certain Parcel Map recorded June 4, 1970 in Book 268, Page 51 of Maps, Records of Santa Clara County, California and being more particularly described as follows: Commencing at the Northeasterly corner of said Parcel E, said corner also being on the Southerly line of Persian Drive as shown on the above mentioned Parcel Maps; thence South 14° 50' 15" West along the Easterly line of said Parcel E, 8.90 feet to a point; thence South 78° 57' 41" West, 89.94 feet to a point on the Southerly line of said Persian Drive; and thence along said Southerly line of Persian Drive 94.17 feet to the point of commencement.

PARCEL TWO:

An easement for emergency vehicle access as set forth in that certain "Reciprocal Easement Agreement (Emergency Vehicle Access)" recorded April 6, 2015, Instrument No. 22906239, of Official Records.

APN: 110-29-028

ARB: 110-14-118.01

EXHIBIT B**Schedule of Assisted Units**

Affordability Level	Number of Units Required	Unit Sizes	Income/Rent Limit (% of AMI)
Extremely Low Income (ELI) (“Special Needs Units”)	7	Three 1-Bedrooms Two 2-Bedrooms Two 3-Bedrooms	30% AMI
Very Low Income (VLI)	39	Eighteen 1-Bedrooms Eleven 2-Bedrooms Ten 3-Bedrooms	50% AMI
Low Income (LI)	19	Nine 1-Bedrooms Five 2-Bedrooms Five 3-Bedrooms	60% AMI
Total	65		

Any changes to the above schedule shall require prior written approval of the City.

Rent Limits
(Monthly Rent)

Unit Size	ELI	VLI	LI
1-Bedroom	\$670	\$1,116	\$1,340
2-Bedroom	\$754	\$1,256	\$1,508
3-Bedroom	\$837	\$1,395	\$1,674

Based on 2016 HCD State Income Limits for Santa Clara County. Rent limits adjusted annually following release of new State limits. Rent limits include provision of utilities or a utility allowance by Landlord as defined in Section 1.1 above.

Income Limits

Household Size	1	2	3	4	5
Maximum Income Level					
ELI	\$23,460	\$26,790	\$30,150	\$33,480	\$36,180
VLI	\$39,100	\$44,650	\$50,250	\$55,800	\$60,300
LI	\$46,920	\$53,580	\$60,300	\$66,960	\$72,360

Based on 2016 HCD State Income Limits for Santa Clara County; to be adjusted annually following release of new State income limits. Limits for larger households available on request.