

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sunnyvale
Community Development Department
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**

**LOAN AGREEMENT
CITY OF SUNNYVALE
HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM
EDWINA BENNER PLAZA**

This HOME Loan Agreement (the "Agreement") is made as of April 1, 2017 by and between the **City of Sunnyvale**, a municipal corporation (the "Lender"), and **MP Edwina Benner Associates L.P.**, a California limited partnership (the "Borrower").

RECITALS

A. The Borrower has applied to the Lender for a loan in the amount of **Six Hundred Thousand Dollars** (\$600,000) (the "HOME" Loan") to assist Borrower in the development of an affordable housing project with Sixty-Six (66) dwelling units (the "Project") located at **460 Persian Drive** in Sunnyvale, California, as more particularly described in **Exhibit A**, attached hereto (the "Property").

B. Sixty-Five of the units in the Project are restricted under a City Of Sunnyvale Housing Mitigation Fund Regulatory Agreement And Declaration Of Restrictive Covenants recorded concurrently herewith (the City Regulatory Agreement). The City Regulatory Agreement restricts Sixty-Five (65) Units to be affordable to Lower-Income Households, as that term is defined therein, and one additional unit shall be a Manager's unit. **Three (3)** of the affordable units in the Project are assisted by HOME funds (the "HOME-Assisted Units") and shall be subject to the restrictions set forth herein and in the City HOME Regulatory Agreement.

C. On May 3, 2016, the Sunnyvale City Council approved this award of HOME funds of up to \$600,000 to the Borrower, which will be used to assist in the development of the Assisted Units in accordance with the terms of this Agreement, including the Project Budget and Schedule set forth in Exhibits B and C.

D. The Loan will be provided by the Lender in accordance with federal laws and regulations governing the HOME Program as set forth in the Cranston-Gonzales National Housing Act of 1990, 42 U.S.C. 12741 et seq., and 24 CFR Part 92, all as amended from time to time.

E. The HOME Assisted Units shall be subject to the HOME Program “Low” rent limits, and made available and affordable to Very Low Income Households, both as defined herein.

F. As a condition of the Loan, the Borrower has agreed to execute and record a regulatory agreement (the “Regulatory Agreement”) which will regulate the HOME Assisted Units for the term of the Loan to ensure that the units are occupied by Eligible Tenants, as defined therein, and that rents charged to Tenants of the Assisted Units will be affordable to Very Low Income Households as described above.

G. The Lender will oversee the Project to ensure that it conforms to the Project Budget, Project Description, and Timeline, as provided in **Exhibits B and C** attached hereto, and that it meets all applicable local and State of California housing and building codes and applicable federal HOME requirements.

H. Pursuant to the CEQA Guidelines set forth at 14 California Code of Regulations, Section 15000 et seq., the City adopted a Negative Declaration for the Project on January 25, 2016 to meet the requirements of the California Environmental Quality Act (Sections 2100 et seq. of the Public Resources Code).

I. The Lender completed its environmental review of the Project pursuant to the National Environmental Policy Act (24 U.S.C. Section 4321 et seq.) and its implementing regulations (“NEPA”), consisting of an Environmental Assessment, and issued a Finding of No Significant Impact (FONSI) for the Project on April 25, 2016 pursuant to 24 CFR 58.40(g)(1). The Lender has relied on this FONSI as evidence of its compliance with NEPA.

NOW THEREFORE, IN CONSIDERATION of recitals hereof and other the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and Lender hereby agree as follows:

ARTICLE I LOAN TERMS

1.1 Loan Agreement. The Lender agrees to loan and Borrower agrees to borrow an amount not to exceed **Six Hundred Thousand Dollars (\$600,000)** of HOME Funds (the “Loan”), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by a promissory note executed by Borrower bearing three percent (3%) interest, with a term defined in Section 1.3 hereof (the “Note”), fully deferred, with residual receipts payable as provided in the Note, and secured by a deed of trust (the “Deed of Trust”) and Regulatory Agreement recorded against the Property. This Agreement, the Note, the Deed of Trust and the Regulatory Agreement shall be collectively referred to as the “HOME Loan Documents”.

1.2 Conditions of Funding. The obligation of the Lender to disburse Loan proceeds under this Agreement is subject to the following conditions:

(a) There exists no Default nor any act, failure, omission or condition that would constitute a default under this Agreement;

(b) The Borrower holds clear title to the Property at the time of disbursement of the Loan proceeds;

(c) A title insurer reasonable acceptable to the Lender is unconditionally and irrevocably committed to issuing an LP-1-ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Lender, and containing such endorsements as the Lender may reasonably require.

(d) Escrow instructions ("Escrow Instructions") prepared by the parties shall be delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that prior to the Closing Date (as defined below):

- (1) This Agreement shall be executed by the Borrower and the Lender and delivered to the Lender;
- (2) The Note shall be executed by Borrower and delivered to the Lender;
- (3) The Deed of Trust shall be executed by Borrower and recorded in the records of the County of Santa Clara (the "County");
- (4) The Regulatory Agreement shall have been executed by Borrower and the Lender and recorded in the records of the County;

(e) Any approval of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement contemplated by this Agreement that is required under the Loan Documents shall be delivered to the Lender, and any certification required by the Lender with respect to the procurement of any such approval shall be delivered by Borrower to the Lender.

(f) Borrower shall provide the Lender with a resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the Lender regarding Borrower's status and authority to enter into this transaction.

(g) Borrower shall provide the Lender with certificates of insurance, in form and with insurers admitted in California and acceptable to the Lender, evidencing compliance with the insurance requirements, as provided by the Lender on or prior to the Closing Date, and upon demand by Lender at any time subsequent. If requested by the Lender, Borrower shall also provide complete copies of the required insurance policies and bonds.

(h) The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date (the "Closing Date").

(i) The Lender has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Project, are not less than the amount that is necessary to pay for the Project and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(j) The Lender has received a written draw request from the Borrower, including certification by the Borrower that the condition set forth in Section 1.4(a) is satisfied, setting forth the expenses previously incurred for which reimbursement is requested in connection with the eligible costs of the Project, as set forth in the Project Budget, included herein as Exhibit B. Reimbursement requests shall specify the amount of funds needed, and a copy of the bill or invoice covering the applicable cost. The Borrower shall apply all disbursements for the purpose requested.

(k) Borrower shall provide Lender with evidence consisting of written, enforceable loan commitments, that all other funds needed to develop the Project ("Matching Funds") have been secured. Matching Funds secured by Borrower to date amount to approximately **Thirty-Six Million Three Hundred Thousand Dollars (\$36,300,000)**, as shown in Exhibit B, Project Budget. Borrower shall be responsible for securing all Matching Funds needed to pay for Project development costs, consistent with the Project Budget and Project Description and Timeline (Exhibits B and C to this Agreement).

(l) Borrower shall submit its Affirmative Marketing Policies and Procedures and Tenant Selection Plan for the Lender's review and approval, at least 120 days prior to planned completion of the Project, which will include a detailed plan for marketing the Assisted Units and a Tenant Selection Plan describing how Borrower will select Tenants from the among all eligible applicants. Lender 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 5.2 or with the requirements of other Project funding agencies and/or state or federal fair housing laws, for the HOME Assisted Units, Borrower shall provide a local preference for Sunnyvale residents and those employed within the Sunnyvale city limits.

1.3 Term of Agreement. The term of this Agreement (the "Term") shall commence upon execution of this Agreement and shall end the earlier of Fifty-Five (55) Years from the date

on which the Project receives a Final Occupancy Certificate or December 31, 2075 (“Occupancy”). All payments on the Loan shall become due and payable in full as set forth in the Note.

1.4 Use of Funds.

(a) The Borrower shall use the HOME Loan Funds for the reimbursement of eligible costs incurred by the Project (the “Permitted Use”), as described in the Project Budget, attached hereto as Exhibit B.

(b) The Borrower agrees that it will not use the HOME Funds pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any other federal funds under any other federal program without prior written approval of the City.

(c) The Borrower agrees to be additionally liable for repayment of any disbursed Loan proceeds not utilized for the Permitted Use.

1.5 Regulatory Agreement. In connection herewith, the Borrower shall execute and record a HOME Regulatory Agreement which shall regulate the Assisted Units in the Project to ensure that they are occupied by and affordable to Very Low Income Households for the Term as defined in Section 1.3 above. These affordability requirements shall apply without regard to repayment of the Loan, or any full or partial transfer of ownership of the property, and shall run with the land.

1.6 Subordinate Loan. The HOME Loan Documents shall be subordinate to the Senior Loans as defined below (each, a "Senior Loan"): the Construction Loan, until repaid; the Bank of America Permanent Loan; the City of Sunnyvale Housing Mitigation Funds Loan; the County of Santa Clara HOME Loan, the County of Santa Clara Permanent Supportive Housing Loan, and the Housing Trust Silicon Valley Loan.

1.7 Compliance with HOME Program Requirements. The Borrower agrees that at all times its acts regarding the Project and the use of funds provided herein shall be in conformity with all provisions of the HOME Program including the statutes, rules and regulations and such policies and procedures of HUD pertaining to the HOME Program. The Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions.

ARTICLE II GENERAL REQUIREMENTS

2.1 Rental Agreement. Leases of units must comply with the following requirements:

- (a) Tenant leases must be for not less than one year unless by mutual agreement between tenant and owner.
- (b) Any termination of tenancy or refusal to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by

at least thirty (30) days written notice specifying the grounds for the action by the owner.

- (c) Leases shall be in writing and may not contain the following prohibitive clauses:
- (1) Agreement by the tenant to be sued.
 - (2) Statement that owner can confiscate tenant property.
 - (3) Statement excusing owner from legal responsibility.
 - (4) Statement that owner does not have to give notice when instituting a lawsuit.
 - (5) Agreement by the tenant to waive rights to a jury trial.
 - (6) Agreement by the tenant to waive rights to appeal a court decision.
 - (7) Agreement by the tenant to pay attorneys' fees if the tenant wins a court case.
 - (8) Agreement by the tenant to waive rights to civil court proceeding to defend eviction.

2.2 Construction Management. The Borrower shall comply with all of the terms and provisions of the City permits issued for the Project and ensure that the premises are clean and orderly during the course of the work. All surplus materials delivered to the job site and all materials, fixtures, and equipment shall be removed from the job site promptly after completion, as well as all rubbish and construction debris resulting from construction. The area affected by this work shall be left in a clean condition.

2.2 Property Management. During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition and shall comply with all of the terms and provisions of the City permits issued for the Project. The Borrower must keep and maintain the Property in compliance with all applicable laws and Lender requirements for the duration of this Agreement, and shall not cause or allow the Property to be in violation of any federal, state or local laws, ordinances or regulations.

2.3 Occupancy Procedures. The Borrower shall develop and submit to Lender for review and approval a tenant selection plan and written tenant selection policies and criteria for the all of the units that:

- (a) Are consistent with the purpose of providing housing for Lower-Income Households;
- (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
- (c) Provide for:

- (i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

2.4 Security Deposits. Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Property in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

2.5 Hazard and Liability Insurance. The Borrower shall at all times cause the Property to be insured against loss by fire, flood, if in a flood zone, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the Lender. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Lender. Property insurance policies shall name the Lender as an additional insured, as approved by the Lender. The foregoing shall not limit the obligations of Borrower pursuant to the Deed of Trust.

2.6 Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the Lender and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with the Borrower's construction, management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the Lender's or its agents', employees', volunteers' or officers' gross negligence or willful misconduct.

2.7 Annual Report. The Borrower shall file with the Lender an annual report, no later than 120 days following the end of each calendar year. The report shall contain a certification by the Borrower as to such information as the Lender may then require including, but not limited to, the following:

- (a) Any substantial physical defects in the Property, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Property in a safe and sanitary condition in accordance with applicable housing and building codes.
- (b) The occupancy of the Property including:
 - (1) the verified income of each current household; and
 - (2) the current rent charged each household and whether these rents include utilities.

- (c) A summary of the information received from the recertification of tenants' incomes.
- (d) Other information reasonably required by the Lender and/or HUD, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; the amount of any fiscal reserves and the total amount of Residual Receipts received. Such financial statement shall be prepared in accordance with the requirements of the Lender and/or HUD. The Lender may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the Lender or other person designated by the Lender.
- (e) For Projects with floating HOME units, the Borrower must provide the Lender with information regarding unit substitution and filling vacancies to comply with HOME rental occupancy requirements.

2.8 Lender Review and Inspections.

- (a) Upon not less than three (3) business days' notice to the Borrower, the Lender and/or HUD may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the Lender, the Borrower shall notify occupants of upcoming inspections of their units in accordance with state law.
- (b) The Lender may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.
- (c) Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of the final disbursement of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to occupancy and rent requirements until the expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

2.9 Restrictions on Sale, Encumbrance, and Other Acts.

- (a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer (a "Transfer") in any form of

the Project or of any its interest therein, except as otherwise permitted herein or with the prior written approval of the Lender in its reasonable discretion.

- (b) In the event of a transfer to a wholly-controlled affiliate of MidPen Housing Corporation (“MidPen”), Lender approval rights shall be limited to adjusting terms of the Loan and transferee’s willingness to assume all obligations.
- (c) The unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1) a refinancing, sale, transfer or other disposition of the Property or any portion thereof, unless such disposition of the Property has been first approved in writing by the Lender, as evidenced by the signature of the City Manager, and approved as to form by the Lender’s Attorney; or 2) the declaration by the Lender of a default as described and subject to the notice and cure periods in Article 3 below.
- (d) The Borrower shall not permit the use of the Property for any purpose other than that permitted by this Agreement without the prior written approval of the Lender.
- (e) Notwithstanding anything to the contrary contained herein, the following Transfers shall be permitted under this Agreement, the Note, Deed of Trust and Regulatory Agreement: (1) encumbrance of the Property by all lenders identified on Exhibit B; (2) transfers of the Borrower’s limited partner interest; (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.
- (f) The Lender may approve a Transfer provided that all of the following conditions are met:
 - (1) the Borrower is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
 - (2) the transferee agrees to assume all obligations of the Borrower pursuant to the Regulatory Agreement and the HOME Program;
 - (3) any transferee demonstrates to the Lender’s satisfaction that it has the management and financial capacity to own and operate the Property;
 - (4) the transferee demonstrates to the Lender’s satisfaction that it can own and operate the Property in full compliance with all HOME Program requirements; and

- (5) any terms of the sale, transfer or conveyance shall not threaten the Lender's security, repayment of the Loan or the successor's ability to comply with all HOME Program requirements.
- (g) The Lender may grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with HOME Program requirements and Lender's requirements, which may include adjustment of the Loan terms, including repayment terms, as a condition of approval for the transfer.

2.10 Assignment of Lender Rights. The Lender 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 Lender may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

2.11 Environmentally Impaired. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Lender's or the trustee's rights and remedies under the Deed of Trust, the Lender may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Lender in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Lender upon its demand made at any time following the conclusion of such action.

2.12 Hazardous Materials. Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined

as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction, rehabilitation and operation of projects like the Project or kept and used in and about property of this type.

Borrower shall immediately advise the Lender in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

The Lender shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the Lender and its council members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Lender in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

Without the Lender's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Lender's reasonable judgment, impair the value of the Lender's security hereunder; provided, however, that the Lender's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Lender's consent before taking such action, provided that in such event Borrower shall notify the Lender as soon as practicable of any action so taken. The Lender agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or

criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the Lender that there is no reasonable alternative to such remedial action which would result in less impairment of the Lender's security hereunder; or (iv) the action has been agreed to by the Lender.

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

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

2.14 Notice of Litigation. Borrower shall promptly notify the Lender in writing of any litigation materially affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation

2.15 Operation of Property.

- (a) Borrower shall operate the Property as affordable rental housing for eligible Households as defined in the Regulatory Agreement, consistent with (i) HUD's requirements for use of the HOME Funds, and (ii) the Regulatory Agreement.
- (b) Borrower shall submit its proposed form of lease or occupancy agreement for the Lender's review and approval. The term of the agreement shall be for no less than one (1) year, except by mutual agreement between Borrower and the Tenant, and shall not contain any provision which is prohibited by 24 CFR 92.253(b) and any modifications thereto. Any Borrower termination of a lease agreement or refusal to renew must be in conformance with 24 CFR 92.253(c), and must be preceded by not less than thirty (30) days written notice to the tenant by the Borrower specifying the grounds for the action.
- (c) Borrower shall determine in writing prior to each new occupancy of HOME Assisted Units that prospective Tenants meet the income limits set forth in the Regulatory Agreement and Borrower's Tenant Selection Policies in

order to satisfy HOME eligibility requirements for occupancy of the HOME Assisted Units.

- (d) The Borrower must determine the eligibility of each Tenant pursuant to the Lender's approved tenant eligibility screening procedures within sixty (60) days before Tenant's expected occupancy of one of the units in the Project. The Borrower shall re-certify each Tenant's eligibility on an annual basis.
- (e) The maximum household income of a Tenant occupying a Unit in the Project and the total charges for rent, utilities, and related services to each Tenant occupying a Unit shall not exceed the HOME Program rent and income limits applicable to the Unit as provided in the Regulatory Agreement.

ARTICLE III DEFAULTS AND REMEDIES

3.1 Event of Default.

Each of the following shall constitute a "Default" and "Event of Default" by Borrower under this Agreement:

(a) Failure to Complete Project. Failure of Borrower to complete the Project by the date provided in Exhibit C "Project Description and Timeline," subject to the cure periods provided in subsection (d) below and further subject to force majeure.

(b) Occupancy of Assisted Units. Failure of Borrower to complete and lease Assisted Units to eligible households within 18 months of Project completion.

(c) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Lender that such payment is due pursuant to the Loan Documents.

(d) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 3, the specific provisions shall control.

- i. Notice to Borrower and Borrower's limited partner shall be at the addresses specified herein. Notwithstanding anything to the contrary contained herein, or in any of the Loan Documents, the limited partner of Borrower shall have the right, but not the obligation, to cure the defaults of the Borrower and any cure

tendered by the limited partner shall be accepted or rejected on the same basis as if tendered by Borrower.

(e) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the other loans to Borrower in connection with the Project, if any, following expiration of all applicable notice and cure periods and the declaration of such default by the holder of such loan.

(f) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

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

(h) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(j) Unauthorized Transfer. Any transfer other than as permitted by Section 2.9.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Lender in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made and that Borrower was aware that the representation or warranty was incorrect when made.

3.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lender or automatically where so specified, relieve the Lender of any obligation to make or continue the Loan and shall give the Lender the right to

proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

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

(b) Specific Performance. The Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Regulatory Agreement or to enjoin acts on things which may be unlawful or in violation of the provisions of the Regulatory Agreement.

(c) Right to Cure at Borrower's Expense. The Lender shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lender for any funds advanced by the Lender to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

3.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Lender or the rights of the Lender hereunder.

3.4 Remedies Cumulative. No right, power, or remedy given to the Lender by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lender by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the Lender or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

3.5 Lender's Remedies. Upon the happening of an Event of Default, the Lender may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

ARTICLE IV HOME PROGRAM REQUIREMENTS

4.1 HOME Laws and Regulations. The Borrower shall comply with all applicable laws and regulations governing the HOME Program and the use of the HOME Loan, as set forth in 24 CFR Part 92 et seq., including (but not limited to) the requirements set forth in the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the Loan proceeds, the applicable HOME Program laws and regulations shall govern. The Borrower agrees to enter into any modification of this Agreement and/or the Regulatory Agreement reasonably required by the Lender to attain compliance with the requirements of the HOME Program. The Borrower acknowledges and agrees that it has received and reviewed a copy of the regulations regarding the HOME Program in effect as of the date of execution of this Agreement.

4.2 Specific Requirements. The laws and regulations governing the HOME Program and the use of the HOME Loan include (but are not limited to) the following, as may be amended from time to time:

(a) Environment and Historic Preservation. Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(d) Uniform Guidance. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards governed by 2 CFR Part 200 (Subpart A - Acronyms and definitions, Subpart B - General provisions, Subpart D - Post Award requirements, and Subpart F - Audit requirements).

(e) Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

(f) Lead-Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.) and implementing regulations at 24 CFR Part 35.

(g) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and similar state laws. If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and

payment of monetary benefits (24 CFR 92.353). The Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(h) **Disabled Access.** The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR Part 8), which prohibit discrimination against the disabled in any federally assisted program.

(i) **Training Opportunities.** The requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project."

(j) **Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-20 (Public Law 90-284) and implementing regulations at 24 CFR Part 107.**

(k) **Executive Order 11063 and regulations at 24 CFR Part 107.**

(l) **Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 107.**

(m) **The Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations at 24 CFR Part 146.**

(n) **Executive Order 12372 and implementing regulations at 24 CFR Part 52, regarding intergovernmental review of federal programs.**

(o) **Flood Disaster Act of 1973, 42 U.S.C. 4001, et seq.**

(p) **Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.**

(q) Any other Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

(r) The Fair Housing Act (42 U.S.C. 3601-3620)(Pub. L. 90-284) as it ensures fair housing practices and prohibits housing discrimination based on race, color, religion, sex, national origin, handicap, or familial status.

(s) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto at 24 CFR Section 470.601 as it relates to prohibiting discriminatory actions in activities funded by Community Development Funds.

(t) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR part 135 as they relate to equal employment opportunities.

(u) Executive Orders 11625 and 12432 (concerning minority business enterprise) and 12138 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

(v) Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR part 5.

(w) No member, officer or employee of the organization, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the loan, and the Borrower shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

(x) There shall be no religious worship, instruction, or proselytizing as part of, or in connection with the performance of this agreement.

(y) Davis Bacon. All contracts for new construction or rehabilitation projects with 12 or more HOME-assisted units shall comply with HUD requirements as set forth under CFR 24 92.354, and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, and 5 governing the payment of wages and the ratio of apprentices and trainees to journeymen.

(z) Affirmative Marketing. The requirements of the City of Sunnyvale's affirmative marketing policies and procedures as contained in the City of Sunnyvale's Consolidated Plan which is in accordance with 24 CFR Part 92.351. In accordance with 24 CFR

92.351(a)(1), projects with five (5) or more HOME-assisted units are subject to Affirmative Marketing requirements.

(aa) Property Standards. HOME Assisted Units must meet all applicable state and local housing quality standards and code requirements, including meeting the property standards in 24 CFR Part 92.251, upon project completion, and for the duration of the affordability period.

i) Rehabilitation: In accordance with 24 CFR 92.251(b), capital needs assessments are required for rental projects with 26+ total units. If the remaining useful life of any system is less than the period of affordability, a replacement reserve must be established to cover eventual repair/replacement.

(bb) Affordability. The HOME Assisted Units must conform to 24 CFR Part 92.252 including compliance with the HOME rent limits as set forth in the Regulatory Agreement.

(cc) Conflict of Interest. In accordance with 24 CFR 92.356(f), no owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a CHDO when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project.

(dd) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the use of HOME funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients, owners, developers, or sponsors.

(ee) Other Federal Requirements. The Federal requirements established in 24 CFR 92.350 are applicable to participants in the HOME program, which include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(ff) Successor Rules. In the event HUD ceases to provide definitions, determinations and calculations under the HOME Program related to Income Eligible Households or Annual Income, or both, the provisions of this Section shall be performed in accordance with definitions, determinations and calculations related to such matters as established by the Lender with a view toward establishing such definitions, determinations and calculations in a manner consistent, as nearly as possible, with those formerly promulgated by HUD under the HOME Program.

(gg) Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Title IV regulations require that an applicant for public benefits is a qualified alien eligible to receive federal public benefits under the Act. According to Section 401 of PRWORA, a “Federal Public Benefit” includes “any grant, contract, loan, professional license or commercial license” provided to an individual, which includes public or assisted housing.

Certification Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

(hh) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(ii) If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure form to Report Lobbying" in accordance with its instructions.

Non-Religious Activity. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with funds, pursuant to Title II of the Housing and Community Development Act of 1990, as amended, the Borrower:

(jj) Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,

(kk) Agrees that, in connection with such services:

- (1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- (2) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
- (3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence on or in the Project Property; and,
- (4) The common portion of the Project Property shall contain no sectarian or religious symbols or decorations.

Disclosure of Confidential Tenant Information. To the extent allowed by law, Lender agrees to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may

be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

ARTICLE V MISCELLANEOUS PROVISIONS

5.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the Lender has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.

5.2 Non-discrimination. All of the Assisted Units shall be available for occupancy on a continuous basis to members of the general public who are eligible households and income eligible. The Borrower shall not give preference to any particular class or group of persons in renting the Assisted Units, or any part of the Property, except to the extent that the Assisted Units are required to be leased to Very Low Income Households, as further described in the Regulatory Agreement and Tenant Selection Plan. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, age, ancestry, national origin, religion, sex, sexual preference, marital status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.3 Hold Harmless.

- (a) The Borrower hereby agrees to, and shall, indemnify, defend, and hold Lender, its elective and appointive boards, council members, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor, except to the extent caused by the gross negligence or willful misconduct of Lender, its elective and appointive boards, council members, officers, agents or employees. The Borrower agrees to, indemnify, defend, and shall, hold the Lender, its elective and appointive boards, council members, officers, agents and employees harmless from any suits or actions at law or

in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.

- (b) The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

5.4 Amendment. This Agreement may be amended only by a written instrument signed by authorized representatives of the Lender and the Borrower. The City Manager or his/her designee shall be authorized to act on behalf of the Lender.

5.5 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

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

With a copy to: City of Sunnyvale
City Attorney
P. O. Box 3707
Sunnyvale, CA 94088-3707

Borrower: MP Edwina Benner Associates, L.P. a California
limited partnership

c/o MP 460 Persian LLC, a California limited
liability company
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Matthew O. Franklin

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

5.6 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

5.7 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

5.8 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

5.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

5.11 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

5.12 No Pledging of Lender's Credit. Under no circumstances shall the Borrower have the authority or power to pledge the credit of Lender or incur any obligation in the name of Lender. Borrower shall save and hold harmless Lender, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

5.13 Venue. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the Lender and the Borrower have executed this Agreement as of the date first set forth above.

LENDER:

City of Sunnyvale, a
municipal corporation

By: Deanna Santana
Its: City Manager

BORROWER:

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

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

460 Persian Drive, Sunnyvale, CA

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

Situs Address: 460 Persian Drive, Sunnyvale, CA 94089

EXHIBIT B**Project Budget**
Sources and Uses

USES		
Category	Line Items	Subtotal
ACQUISITION		\$ 8,412,829
Property Acquisition	\$ 7,561,145	
Holding Costs (Insurance, Property Management, Security, Bridge Loan Interest, Tenant Relocation)	\$ 766,073	
Soft Costs (Legal, Title, etc.)	\$ 85,611	
CONSTRUCTION		\$ 33,192,896
Hard Costs		\$ 27,764,321
Site prep (grading, soil remediation, utilities, etc.)	\$ 193,864	
Structure (foundation, parking, dwelling units)	\$ 20,923,348	
On-site improvements (landscaping, fencing, etc.)	\$ 1,132,560	
Off-site improvements (sidewalks, etc.)	\$ 28,659	
Solar Energy System	\$ 448,000	
General Contractor Overhead (~9%)	\$ 2,371,097	
Contingency (10%)	\$ 2,666,793	
Construction Soft Costs		\$ 5,428,575
Design/Engineering	\$ 1,883,400	
Construction Management	\$ 202,675	
Permits	\$ 312,000	
Legal & Escrow Fees	\$ 180,500	
Construction loan interest	\$ 2,000,000	
City utility connection fees (water, sewer, etc.)	\$ 850,000	
OTHER SOFT COSTS		\$ 2,682,385
Insurance, audit, appraisal, other misc. soft costs	\$ 410,020	
Developer Fee	\$ 1,400,000	
Reserves	\$ 405,365	
Marketing, Lease-up expenses	\$ 150,000	
Soft Cost Contingency	\$ 317,000	
TOTAL USES	\$ 44,288,110	
SOURCES		
City of Sunnyvale Housing Mitigation Loan (Perm)	\$ 7,430,000	
Investor Equity	\$ 23,288,710	
B of A / Investor Loan (Perm*)	\$ 10,419,400	
Housing Trust Loan	\$ 200,000	
County of Santa Clara Loan	\$ 2,350,000	
City of Sunnyvale HOME Loan	\$ 600,000	
TOTAL SOURCES	\$ 44,288,110	
<i>Any change to this budget that would modify one or more of the Uses categories by 10% or more shall require prior written approval of the Community Development Director or his/her designee. *Construction loan amount is currently \$30,578,000.</i>		

EXHIBIT C**Project Description and Timeline:**

Construct a sixty-six unit (66) affordable housing project at 460 Persian Drive in Sunnyvale, CA as further described in this Agreement and in the plans and conditions of approval of Planning Application 2015-7772 granted by the City of Sunnyvale on January 25, 2016.

Timeline:

Task	Target Date
Close Construction & City Loans	March 30, 2017
Begin Construction	April 15, 2017
Submit Final Tenant Selection Plan to City	June 30, 2017
Complete Construction	September 1, 2018
Begin Lease Up	September 1, 2018
Complete Occupancy	February 1, 2019
Perm Conversion (Senior Lender)	June 1, 2019