

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

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APN: **110-29-028**

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
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 1st day of April, 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 HOME Investment Partnerships ("HOME") Program Loan Agreement dated concurrently herewith, pursuant to which the City will provide a loan (the "Loan") to the Borrower to assist in the development of an apartment project with **sixty-six (66)** units (the "Project") located at **460 Persian Drive** in the City of Sunnyvale, California, as more particularly described in **Exhibit A** attached hereto (the "Property"). The Project shall provide **sixty-five (65) apartments** affordable to Lower-Income Households as defined herein, and one manager's unit.

B. The Project provides affordable housing for Lower-Income Households (the "Tenants"). 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 HOME Assisted Units shall be maintained by Borrower as affordable housing for Very Low Income Households for the term of this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement (as defined below).

D. The Loan is funded with HOME Investment Partnership Program funds received by the City from the United States Department of Housing and Urban Development ("HUD") 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, (the "Regulations and the Acts"), all as amended from time to time.

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

F. In order to ensure that the entire Project will be used and operated in accordance with these conditions and restrictions, the City and the Borrower desire to enter into this Agreement.

G. As a condition of providing the Loan, the City requires the Borrower to execute this Regulatory Agreement which will regulate Three (3) Units in the Project as “HOME Assisted Units”, as more particularly described in Exhibit B attached hereto and incorporated herein, to ensure that they are occupied by and affordable to Very Low Income Households, as defined below, for the term of this Regulatory Agreement. The HOME-Assisted Units will be monitored by the City for compliance with HOME program requirements, and may “float” as that term is defined in HOME regulations.

NOW THEREFORE, in consideration of these recitals 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.

## ARTICLE 1 DEFINITIONS

1. Definitions. For the purpose of this Regulatory Agreement, the following definitions shall apply:

(a) "Actual Household Size" shall mean the actual number of persons in the applicant's household at time of application to rent a Unit.

(b) "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).

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

(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 one-bedroom unit shall be a household of two. 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) "Compliance" means that the HOME Assisted Units shall be maintained and operated as affordable housing in accordance with the Regulations and the Acts as defined in the Recitals above. In the event of any conflict between the terms herein and the Regulations and the Acts, the Regulations and the Acts shall prevail, except for those terms specified herein regarding income, rent, and age limits, which may be stricter than those of the Regulations and the Acts.
- (h) "Deed of Trust" shall mean the deed of trust in favor of the City, secured by Borrower's interest in the Property, which secures repayment of the Loan and the performance of the Promissory Note, Loan Agreement, and this Agreement.
- (i) "HOME Assisted Unit(s)" shall mean one or more of the Three (3) Units within the Project developed with the assistance of the HOME Loan, and which, pursuant to Section 2.1(a) below, are required to be occupied by, or if vacant, available for occupancy by Very Low-Income Households, as further set forth in Article 2 and in Exhibit B, attached hereto, and which are subject to the terms of this Agreement and the HOME Program regulations.
- (j) "Household Size" shall mean the actual number of persons in the applicable household.
- (k) "HUD" shall mean the United States Department of Housing & Urban Development.
- (l) "Loan" shall mean all HOME funds loaned to the Borrower by the City pursuant to the HOME Loan Agreement.
- (m) "Loan Agreement" shall mean the HOME Investment Partnerships ("HOME") Loan Agreement entered into by and between the City and the Borrower, dated concurrently herewith.
- (n) "Low Income Household" shall mean a household with an Adjusted Income that does not exceed the HUD Low Income Limit, (also known as the Section 8 limit) adjusted for Actual Household Size, as published annually by HUD, and which corresponds roughly to 80 percent or less of the area median income, as determined by HUD.
- (o) "Low Income Rent" shall mean the maximum allowable rent for a Low Income HOME-Assisted Unit pursuant to Section 2.2(a) below (e.g., the HOME Program "High" rent limit for Santa Clara County).
- (p) "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 the United States Department of Housing and Urban Development ("HUD"). 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 HUD.

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

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

(s) "Property" shall mean the real property described in Recital A above and in Exhibit A attached hereto and incorporated herein, located at 460 Persian Drive in Sunnyvale.

(t) "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 paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, internet, or cable TV; 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.

(u) "Rent Limit" means the maximum monthly rent that may be charged to each Tenant of a Home Assisted Unit in the Property.

(v) "Tenant" shall mean a household occupying a HOME Assisted Unit in the Property with Borrower's express written permission pursuant to a valid lease agreement, following determination of Tenant's eligibility to reside at the Property.

(w) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the Fifty-fifth (55<sup>th</sup>) 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.

(x) "Unit" for leasing and management purposes shall mean one of the sixty-five (65) apartments in the Project, 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.

(y) "Very Low Income Limit" means the HOME Program income limits for Very Low Income households, adjusted for the actual size of the applicant household, which are established annually by HUD based on approximately 50% of area median income in Santa Clara County, California.

(z) "Very Low Income Rent" shall mean the maximum allowable rent for a Very Low Income Unit pursuant to Section 2.2(a) below (e.g., the HOME Program "Low" rent limit for Santa Clara County).

(aa) "Very Low Income Household" shall mean a household with an Adjusted Income that does not exceed the HOME Program Very Low Income Limit, adjusted for Actual Household

Size, and as published annually by HUD, and which corresponds roughly to 50 percent or less of the area median income, as determined by HUD.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

In consideration of the Loan provided by the City, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, the Loan Agreement, the Note, and the Deed of Trust, including without limitation, the occupancy and rent requirements set forth in this Article 2, as follows:

### 2.1 Occupancy Requirements.

HOME Assisted Units. **Three (3)** HOME Assisted Units shall be affordable to, and occupied by, Very Low-Income Households, as set forth in **Exhibit B**. At all times during the Term, each of the HOME Assisted Units shall be separately rented to and occupied by, or if vacant, available for occupancy by a Very Low-Income Household as defined above, as verified by Borrower. The HOME Assisted Units may “float” within the Project as that term is defined in the Regulations and Acts. Borrower shall determine, by documentation reasonably necessary to make such determination, the eligibility of prospective Tenants prior to each Tenant’s initial occupancy and annually upon recertification. Conditions of continued occupancy shall be as provided in applicable HOME regulations and in accordance with Borrower’s Program rules.

Initial Occupancy of Vacant Units. HOME Assisted Units must be occupied within six months of project completion, or the City will require an updated marketing plan. The City will require repayment of HOME funds if units are not occupied within 18 months of project completion.

### 2.2 Allowable Rent

Very Low Income Rent. Subject to the provisions of Section 2.3 below, Rents (including utility allowance) charged to Tenants of the **Three (3)** HOME Assisted Units designated as “**Very Low Income Units**” in Schedule B shall not exceed the HOME Program “Low” Rent Limits for the applicable unit size. In the event those rent limits are no longer published by HUD, the Very Low Income Rent shall not exceed (1) one-twelfth (1/12) of thirty percent (30%) of **fifty percent (50%)** of Median Income for the Assumed Household Size of the unit.

Low Income Rent. Subject to the provisions of Section 2.3 below, Rents (including utility allowance) charged to Tenants of HOME Assisted Units whose incomes, upon recertification, have been determined to exceed the Very Low Income limits but not the Low Income Limits, may be adjusted to the HOME Program “High” Rent Limits for the applicable unit size. In the event those rent limits are no longer published by HUD, the Low Income Rent shall not exceed (1) one-twelfth (1/12) of thirty percent (30%) of **sixty-five percent (65%)** of Median Income for the Assumed Household Size of the unit.

City Approval of Rents. Initial rents for all HOME Assisted Units shall be approved by the City prior to occupancy. Any subsequent rent increases shall also be subject to annual City approval and the maximum rent limit defined above. The City shall provide the Borrower with a schedule of maximum permissible rents for the HOME Assisted Units annually based on the formula described 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 HOME Program rent and income limits by the U.S. Department of Housing and Urban Development.

Housing Assistance Payment Contracts. In the event that some or all of the HOME 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 lesser of the applicable rent limit for the Unit or the maximum Tenant portion of the rent as determined by the Housing Authority. 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 a HOME Assisted Unit, the Borrower determines that a Very Low Income Tenant's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household, as set forth in Section 1(z), such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to 30% of Tenant’s Adjusted Monthly Household Income upon sixty (60) days' written notice to Tenant. 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 be adjusted to the then-current Low-Income Limit, and the number of Very Low Income HOME Assisted Units occupied by Tenants with incomes over the Very 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 3.2 herein.

#### (b) Increase from Very Low to Low Income Household.

If, upon recertification of the income of a Tenant of a Very Low Income HOME Assisted Unit, the Borrower determines that the Tenant's Adjusted Income has increased and exceeds the Very Low Income Limit as set forth in Section 1(y), but does not exceed the income limit for a Low Income Household, such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to the then-current rent limit for a Low-Income HOME Assisted Unit (e.g., the HOME Program “High” rent limit), upon sixty (60) days' written notice to Tenant. Following such rent increase, the Unit shall be accounted for as a Low-Income HOME Assisted Unit, and the next available vacant Unit shall be offered to a Very Low Income Household and converted to a Very Low Income HOME-Assisted Unit. Any changes in the number of Very Low or Low-Income HOME Assisted Units due to such Tenant income increases shall be reported to the City on an annual basis in Borrower’s annual reports to the City as required under Section 3.2 herein.

(c) Termination of Occupancy. Upon termination of occupancy of a HOME Assisted Unit by a Tenant, such HOME Assisted Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Low- or Very Low-Income Household) as the initial income level of the vacating Tenant, until such Unit is re-occupied, at which time the income character of the Unit (e.g., Very Low-Income Unit) shall be re-determined.

### **ARTICLE 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 HOME 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 at least three months’ pay or benefit check stubs (as applicable) for the most recent 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 retired or 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 (90<sup>th</sup>) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, describing Borrower’s compliance with the terms of this Agreement, including: vacancy rate, rent levels of the HOME Assisted Units, the results of the annual tenant income verification process, and a summary of household income levels for Tenants of the HOME Assisted Units, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of the United States Department of Housing and Urban Development.

### 3.3 Additional Information.

The Borrower shall provide the City with any additional information reasonably requested by the City for verification of 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 Property, except for confidential tenant health records protected from disclosure by state or federal law.

### 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 have the right to perform an on-site inspection of the Project at least one time per year as required by the Regulations, with advance notice to Borrower of at least three (3) business days to monitor compliance with this Agreement. The Borrower agrees to cooperate in such inspection.

## ARTICLE 4 OPERATION OF THE PROJECT

### 4.1 Use of the Development.

The Project shall be operated as affordable rental housing consisting of Sixty-six (66) Units, including but not limited to Three (3) HOME Assisted Units and one unrestricted Unit for an on-site property manager. The HOME Assisted Units shall be occupied by and Affordable to Very Low Income Households as further specified herein, and as verified by Borrower pursuant to Borrower's written tenant selection procedures.

### 4.2 Compliance with Agreements.

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

### 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.

## **ARTICLE 5**

### **PROPERTY MANAGEMENT AND MAINTENANCE**

#### **5.1 Management Responsibilities.**

The Borrower is responsible for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of Tenant income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Borrower shall develop and maintain appropriate tenant selection procedures that include verification of: income, program eligibility, and age qualification (senior status), while complying with state and federal fair housing laws. The City shall have no responsibility over management of the Property. 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. The City hereby approves MidPen Property 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. Upon completion, Borrower shall provide the City with a copy of each such annual fiscal audit. 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. 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 reserve 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 have sixty (60) days to remedy any concerns raised by the City. If such concerns cannot be addressed to the reasonable satisfaction of the City, 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 4.2 above and approved by the City pursuant to Section 4.2 above, subject to the approval of other lenders to the Project and of any limited partner of Borrower.

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 7.8.

### 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, exterior walls, windows, lighting, walkways, mailboxes, landscaping, nonresidential space, and other common areas of the Project safe, clean and well maintained and in good condition and repair.

## ARTICLE 6 MISCELLANEOUS

### 6.1 Tenant Lease Provisions.

The Borrower shall use a form of Tenant lease approved by the City, which shall not contain any provision which is prohibited by 24 CFR Section 92.253(b) and any amendments thereto. The form of Tenant lease shall also comply with all requirements of this Agreement and the Loan Agreement, and shall, include the following provisions for the HOME 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 for occupancy of a HOME Assisted Unit in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low Income Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification, or (3) for other good cause; 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 at least thirty (30) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above.

c) Provide that any termination of a lease or refusal by the Borrower to renew shall be in conformance with 24 CFR 92.253(c) and 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 HOME Assisted Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible ("Eligible Tenants"). 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 Property, except to the extent that the Units are required to be leased to Lower-Income Households. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry,

or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit or in the use or enjoyment of the Development, 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 Property or in connection with the employment of persons for the rehabilitation operation and management of any Property.

### 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 Property which have the effect of precluding occupancy of 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 Property shall at all times be in full conformity with: (i) all requirements of the HOME Loan Agreements; and (ii) all requirements imposed on projects assisted under the HOME Investment Partnership Program as contained in 42 USC 12701, et seq., 24 CFR Part 92, and other implementing rules and regulations.

### 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 HOME 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, failed 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 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.

(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 Attorney's Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

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. 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

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

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, or its respective agents, employees or officers, 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 and the HOME Program;

(3) The successor-in-interest demonstrates to the City's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements;

(4) Any terms of the sale, transfer or conveyance shall not threaten the City's security, repayment of the Loan or the successor's ability to comply with all HOME Program requirements;

(5) The City may require, as a condition of approval of the proposed sale, transfer, or conveyance, adjustment of the terms of the HOME Loan, including but not limited to adjustments to the repayment schedule, partial or full payment of the loan balance, or requirement for residual receipts payments to begin following the transfer.

(6) 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.

**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

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By: Matthew O. Franklin  
Its: Assistant Secretary



**CITY:**

City of Sunnyvale, a municipal corporation

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By: Deanna Santana  
Its: City Manager

APPROVED AS TO FORM:

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By: Robert Boco  
Its: 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 HOME Assisted Units:  
Allowable Rents and Income Limits**

All HOME-Assisted Units are Very Low Income Units and may float throughout the Project.

<b>Unit Size</b>	<b>Number of HOME Assisted Units</b>	<b>HOME “Low” Rent Limit*</b>
One-Bedroom Unit	1	\$1,046
Two-Bedroom Unit	1	\$1,256
Three-Bedroom Unit	1	\$1,451
<b>Total</b>	<b>3</b>	

*\* Based on HOME Program “Low” rent limits (based on 50% of AMI) for in Sunnyvale-San Jose MSA (Santa Clara County), as updated and published annually by HUD and available upon request from the City or at [HUDEXchange.info](http://HUDEXchange.info). Rents shown above are 2016 HOME rent limits.*