

RECORD WITHOUT FEE  
PURSUANT TO GOVERNMENT CODE § 6103

**RECORDING REQUESTED BY  
AND  
WHEN RECORDED MAIL TO:**  
City of Santa Clara  
City Clerk's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**AMENDMENT NO. 1  
TO THE AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
SHAC LS APARTMENTS II LLC**

**PREAMBLE**

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and SHAC LS Apartments II, LLC, a Delaware limited liability company, (Developer), whose address is 777 California Avenue, Palo Alto, CA 94304. City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Amended and Restated Affordable Housing Agreement", which was recorded in the official records of Santa Clara County, California on May 1, 2020 as Document No.24469213 ("Agreement"); and
- B. The Parties entered into the "Amended and Restated Affordable Housing Agreement" of having Developer provide fifty-three (53) Affordable Housing Units within the project that will be designated for low and moderate income residents, and the Parties now wish to amend and restate the Agreement to decrease the number of Affordable Housing Units available for rental in the Project to forty-three (43).
- C. The Parties agrees with respect to the Developer's election (if ever) to sell the units as condominiums during the term of the Affordability Period, there shall be fifty-three (53) Affordable Housing Units to be sold at an Affordable Sales Price as provided in the Agreement without regard to this Amendment No. 1.

- D. Developer accepts responsibility for meeting the provision of forty-three (43) Affordable Housing Units within the Project. The forty-three (43) Affordable Housing Units shall be provided in the Project according to the terms herein stated. The proportion of Affordable Housing Units shall be 58% moderate income and 42% low income. Moderate income shall be defined as 120% of the Area Median Income (AMI) and low income shall be defined as 80% of the AMI. The distribution of these Affordable Housing Units shall be twenty-five (25) moderate income and eighteen (18) low income units.
- E. All forty-three (43) proposed Affordable Housing Units shall be made available at Below Market Rate (BMR) rents that do not exceed Affordable Housing Cost, as defined in the Amended and Restated Agreement Containing Covenants and Restrictions recorded on May 27, 2020 as Document No. 24488932, Official Records. Each of the forty-three (43) Affordable Housing Units are designated and identified in the attached Exhibit B.

NOW, THEREFORE, the Parties agree as follows:

#### **AMENDMENT TERMS AND CONDITIONS**

1. Section 1.1(b) of the Agreement is amended and restated in its entirety as follows:

“An apartment community containing 286 residential dwelling units is intended to be constructed on the Site as Building A (the "Project"). As a Condition of Architectural Review Approval, Developer has agreed to provide forty-three (43) affordable rental units ("Affordable Housing Units" or "Units") within the Project that will be designated for low and moderate income residents and shall meet affordability requirements for low and moderate income residents for a period of 55 years ("Initial Term"). The proportion of Units shall be 58% moderate income and 42% low income. Moderate income shall be defined as 120% of the Area Median Income (AMI) and low income shall be defined as 80% AMI. The distribution of Units shall be twenty-five (25) moderate income and eighteen (18) low income. Should a condominium plan be approved to allow condominium or other individual unit sales in the Project, prior to occupancy of any such units, Developer shall enter into an affordability agreement with the Community Development Department's Housing & Community Services Division restricting fifty-three (53) Units to meet affordability requirements for low and moderate residents for a period of 45 years. The Units shall be constructed to the same standards as the market rate apartment units, and shall be distributed throughout Building A. Review and approval of the distribution of Units, whether as rentals or as market rate sales, shall be at the discretion of the Director of Community Development.”

2. Developer's address information in Section 1.4(b) of the Agreement is hereby changed as follows:

Attention:  
President  
777 California Avenue  
Palo Alto, CA 94304

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

3. Pursuant to Section 1.6 of the Agreement, City and Developer agree that the Affordable Housing Agreement entered into between City and Developer that was recorded in the Official Records of Santa Clara County on March 20, 2019 as Document No. 24138221 is hereby terminated and removed from title to the Site and to the Project and shall be of no further force and effect.

The Agreement defined in Recital A above, as amended by this Amendment No. 1, remains in full force and effect in accordance with its terms.

4. References to "fifty-three (53)" in Section 3.1(a) and Section 3.1(b) of the Agreement are hereby changed to "forty-three (43)".
5. Exhibit B of the Agreement, entitled "Amended and Restated Affordable Housing Agreement" is amended and replaced by Exhibit B of this Agreement.
6. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

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

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

\_\_\_\_\_  
JÖVAN D. GROGAN  
City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

DEVELOPER’S SIGNATURE ON NEXT PAGE

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

State of California            )  
County of                        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**SHAC LS APARTMENTS II LLC,**  
a Delaware limited liability company

BY: SHAC LS APARTMENTS II VENTURE LLC,  
a Delaware limited liability company, its manager

BY: SHAC LS APARTMENTS II MANAGER LLC,  
a Delaware limited liability company, its manager

BY: SUMMERHILL APARTMENT COMMUNITIES LLC,  
a California corporation, its managing member

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: Doug McDonald

Title: President

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: Jason Biggs

Title: Assistant Secretary

Principal Place of  
Business Address: 777 California Avenue, Palo Alto, CA 94304

Email Address: dmcdonald@shapartments.com

Telephone: (650) 494-1400

Fax: (650) 213-8849

"DEVELOPER"

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

State of California            )  
County of                        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT B

<b>Unit Size</b>	<b>Low Income (80% AMI)</b>	<b>Moderate Income (120% AMI)</b>	<b>Number of Units</b>
1X1	12	17	29
2X2	6	8	14
<b>TOTAL UNITS</b>	<b>18</b>	<b>25</b>	<b>43</b>