

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 AGREEMENT
CONTAINING COVENANTS & RESTRICTIONS
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 Agreement Containing Covenants and Restrictions", which was recorded in the official records of Santa Clara County, California on May 27, 2020 as Document No. 24488932 ("Agreement"); and
- B. The Parties entered into the "Amended and Restated Affordable Housing Agreement" recorded on May 1, 2020 as Document No. 24469213 Official Records, of having Developer provide fifty-three (53) affordable housing rental 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 rental units 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 shall 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 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 units shall be twenty-five (25) moderate income and eighteen (18) low income units.
- E. All forty-three (43) proposed affordable rental housing units shall be made available at Below Market Rate (BMR) rents that do not exceed Affordable Housing Cost, as defined in the Agreement. 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. The definition of "Affordable Housing Unit" or sometimes "Unit" in Section 1 Definitions is amended and restated in its entirety as follows:

"Affordable Housing Units" or "Units" with respect to this Agreement shall have the following meaning:

If the Project is a rental development, "Affordable Housing Unit" or "Unit" shall mean one of the forty-three (43) Below Market Rate rental units, of which all forty-three (43) units shall be designated in Exhibit B by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement. The Units shall be twenty-five (25) moderate income and eighteen (18) low income. Moderate income shall be defined as 120% of the Area Median Income (AMI) and low income shall be defined as 80% AMI.

If the Project is an ownership (for-sale condominium) development, "Affordable Housing Unit" or sometimes "Unit" shall mean one of the fifty-three (53) Below Market Rate price ownership condominium units, of which all fifty-three (53) units shall be designated in Exhibit B of the Original Agreement by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in the Original Agreement.

2. The references to "fifty-three (53)" in the definition of Project, Section 2.a, Section 2.b, Section 2.b(1) and Section 2.b(7)(a), are hereby changed to "forty-three (43)".

3. Section 2.b(4)(b)(i) of the Agreement is amended and restated in its entirety as follows:

“(i) Rent the next vacant Unit of the same size (i.e.: 2-bedroom) to an Income Qualified Household for a Low Income BMR Unit (unless there are already eighteen (18) Affordable Housing Units rented to Income Qualified Households for eighteen (18) Low Income BMR Units, in which case the next vacant Unit of the same size shall be rented to an Income Qualified Household for a Moderate-Income BMR Unit) whose Annual Income would qualify them for the "non-compliant" Affordable Housing Unit. This Unit replaces the "non-compliant" Affordable Housing Unit at the affordability level of that Affordable Housing Unit; and”

4. Pursuant to Section 7(c) of the Agreement, City and Developer agree that the Agreement Containing Covenants and Restrictions (Including Affordable Housing Restrictions for Rental Units) entered into between City and Developer that was recorded in the Official Records of Santa Clara County on March 20, 2019 as Document No. 24138222 is hereby terminated and removed from title 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.

5. Developer’s address information in Section 7(h) of the Agreement is hereby changed as follows:

SHAC LS APARTMENTS II LLC
c/o SummerHill Apartment Communities
777 California Avenue
Palo Alto, CA 94304
Attn: President

Copy to:
SHAC LS APARTMENTS II LLC
c/o SummerHill Apartment Communities
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

6. Exhibit B to the Agreement is replaced by Exhibit B attached to this Amendment.
7. 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- Rental

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