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When Recorded Mail To:

CITY OF SANTA CLARA
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Division Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
(Including Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions ("Agreement") is made by and between BENTON AND EL CAMINO, LP, a California limited partnership ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties." The City and the Developer agree as follows with reference to the following facts:

RECITALS

- A. Developer is the legal owner of the real property legally described on Exhibit A attached hereto ("Property"). A three hundred fifty-five (355) unit apartment community has been or will be constructed on the Property (the "Project").
- B. On July 17, 2018, City adopted Ordinance No. 1985, approving a Development Agreement concerning the development of the Project on the Property (the "Development Agreement"), and the Development Agreement became effective thirty (30) days later on August 16, 2018. Pursuant to Section 4.6 and Exhibit E of the Development Agreement, Developer voluntarily agreed to provide a total of ten percent (10%) of the total number of residential units within the Project, which equals thirty-six (36) units, as affordable rental housing units (the "Affordable Housing Units"). Thirty percent (30%) or eleven (11) of the Affordable Housing Units shall be low income units restricted to occupancy by households with income that does not exceed eighty percent (80%) of the Area Median Income for Santa Clara County ("AMI") and seventy percent (70%) or twenty-five (25) of the Affordable Housing Units shall be moderate income units restricted to occupancy by households with income that does not exceed one hundred twenty percent (120%) of the AMI. The Affordable Housing Units shall be provided in the Project according to the terms herein stated.

- C. All Affordable Housing Units shall be made available at affordable rents that do not exceed an Affordable Housing Cost, as defined herein. Each of the Affordable Housing Units are designated and identified in the attached Exhibit B.
- D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the provisions set forth in Section 4.6 and Exhibit E of the Development Agreement.

AGREEMENT

NOW, THEREFORE, to satisfy Developer's obligations to provide certain Affordable Housing Units, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in the Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and its respective successors and assigns.

1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for thirty (30) years from the date of issuance of the first Certificate of Occupancy for the Project.

"Affordable Housing Cost" shall mean, for purposes of this Agreement, an amount that is no greater than the following:

- a. For a "Low-Income Unit," thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for Assumed Household Size.
- b. For a "Moderate-Income Unit," thirty percent (30%) of one hundred twenty percent (120%) of the Area Median Income divided by twelve (12), and adjusted for Assumed Household Size.

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the thirty-six (36) units rented at an Affordable Housing Cost, including eleven (11) Low-Income Units and twenty-five (25) Moderate-Income Units, of which all such 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. Low-Income Units and Moderate-Income Units shall collectively be described as Affordable Housing Units.

"Annual Income" shall mean the annual income limits established by the U.S. Department of Housing and Urban Development.

“Area Median Income” shall mean the annual median income for Santa Clara County, adjusted for household size and as established and amended from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937 or any successor statute.

“Assumed Household Size” shall mean the following assumed household sizes per Affordable Housing Unit:

| Unit Type | Assumed Household Size |
|------------------|-------------------------------|
| Studio | One (1) person household |
| 1 Bedroom | Two (2) person household |
| 2 Bedroom | Three (3) person household |

“City” shall mean the City of Santa Clara, California.

“Developer” shall mean Benton and El Camino, LP, a California limited partnership and its transfers and assigns.

“Household” shall mean one or more persons occupying a housing unit.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Income-Qualified Household” shall mean a household with an income that does not exceed the following:

- a. For a Low-Income Unit, eighty percent (80%) of the Area Median Income adjusted for Household Size.
- b. For a Moderate-Income Unit, one hundred twenty percent (120%) of the Area Median Income adjusted for Household Size.

“Project” shall mean the three hundred fifty-five (355) unit residential apartment facility located upon the real property legally described in the Legal Description attached hereto as Exhibit A, inclusive of the thirty-six (36) Affordable Housing Units, as defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

2. Uses

- a. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that for the Affordability Period, the Affordable Housing Units shall be rented or leased to or held available for rental or occupancy by Income-Qualified Households, as follows:

- i. Thirty percent (30%) of the Affordable Housing Units (i.e. a total of eleven (11) units) shall be restricted to occupancy as Low-Income Units.
 - ii. Seventy percent (70%) of the Affordable Housing Units (i.e. a total of twenty-five (25) units) shall be restricted to occupancy as Moderate-Income Units.
- b. Units Generally.
 - i. Prior to initial tenant occupancy of the Project, Developer shall have designated in the attached Exhibit B the specific units in the Project to be the Affordable Housing Units and given notice to the City of such designation ("Unit Allocation"). Subject to the terms of this Agreement, the Developer shall have the right, from time to time, to re-designate the Affordable Housing Units, provided that the Developer shall obtain the City's prior written approval before re-designating the Affordable Housing Units, the approval of which shall not be unreasonably withheld, delayed or conditioned.
 - ii. The Affordable Housing Units shall be of comparable quality to the market rate units in the Project. If Developer implements periodic programs of replacement and upgrade which apply to all units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.
 - iii. A minimum of one (1) Affordable Housing Unit shall be adaptable to be fully accessible to households with a physically impaired member.
- c. Affordable Housing Unit Rents.
 - i. Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Affordable Housing Cost applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to the applicable Affordable Housing Cost.
 - ii. Rent increases, which may occur not more frequently than annually, shall be consistent with the annual increase, if any, in Area Median Income. If HUD fails to issue revised AMI/household income statistics for Santa Clara County within fifteen (15) months of the previous revision, rents for the Affordable Housing Units may be adjusted based on the annual percentage increase in the San Jose-

Sunnyvale-Santa Clara Consumer Price Index for Urban Wage Earners and Clerical Workers.

- iii. The Affordable Housing Cost shall exclude charges for utilities in the broadest sense, including but not limited to gas, electricity, water, garbage, television, cable, telephone, and internet service; provided, however, that if any or all of such utilities are offered at no cost to market rate units, they shall also be offered at no cost to the Affordable Housing Units.
- iv. Developer shall accept Section 8 vouchers as a means of assisting Income-Qualified Households.

d. Income Qualification of Affordable Housing Unit Tenants

- i. Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith reasonable effort to verify that the income provided by an applicant in an income certification is accurate.
- ii. The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the definition of Annual Income established herein. The Developer may certify initial income qualification using one of the following two source documentation methods:
 - (1) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
 - (2) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: Pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; Income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.
- iii. Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the households income and family size along with a signed certification by the tenant

that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.

e. Over-Income Tenants in Affordable Housing Units

- i. If, upon recertification of the income of a tenant of a Low-Income Unit, Developer determines that such income exceeds the qualifying income for a Low-Income Unit, but does not exceed the qualifying income for a Moderate-Income Unit, then, upon expiration of such tenant's lease, such tenant's unit shall be considered a Moderate-Income Unit, such tenant's rent may be increased to the rent then in effect for Moderate-Income Units upon not less than sixty (60) days' written notice, and Developer shall rent the next available Affordable Housing Unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above.
- ii. If, upon recertification of the income of a tenant of a Low-Income Unit or Moderate-Income Unit, Developer determines that such income exceeds the qualifying income for a Moderate-Income Unit, then, upon expiration of such tenant's lease, Developer shall have the option to: (a) rent such Affordable Housing Unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above; or (b) permit such tenant to continue occupying such unit and, upon not less than sixty (60) days' written notice, such tenant's rent may be increased to the fair market rent and Developer shall rent the next available residential unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above.
- iii. Upon termination of occupancy of an Affordable Housing Unit by a tenant, such Affordable Housing Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., low income or moderate income) as the income level of the vacating tenant, until such Affordable Housing Unit is reoccupied, at which time the income character of the Affordable Housing Unit (e.g., Low-Income Unit or Moderate-Income Unit) shall be re-established. In any event, Developer shall maintain the occupancy requirements set forth in Section 1 above.

f. Waiting List for Affordable Housing Units

- i. Developer shall maintain a written waiting list of households that have contacted Developer and expressed an interest in an Affordable Housing Unit ("Waiting List"). The Waiting List shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective

applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.

- ii. Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.

g. Lease Provisions

- i. Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below. A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- ii. The lease may not contain any terms prohibited by applicable law.
- iii. The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- iv. The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.
- v. The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

- h. Initial Leasing, Marketing and Tenant Selection Procedures.
- i. A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations.
 - ii. Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- i. Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project, or any part thereof, nor shall the Developer itself or any person claiming under or through it 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, subtenants, sub-lessees, or vendees of Project.
- j. Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of the Affordable Housing Units on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts for sale shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
- i. In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, 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, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land".
 - ii. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, 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, sub-lessees, subtenants, or vendees in the land herein leased.”

- iii. In contracts for sale: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land.”

3. Monitoring/Annual Report

- a. Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- b. Once each year, Developer shall provide City with a written report detailing the average annual income of tenants occupying the Affordable Housing Units, the number of persons in each household occupying the Affordable Housing Units, and the number of vacancies and new rentals during the year for the Affordable Housing Units (“Annual Report”). The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report.
- c. Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- d. The Developer shall pay City on an annual basis, on or before September 30th of each year following the issuance date of the Certificate of Occupancy for the building, a multi-family monitoring fee per Affordable Housing Unit (the “Monitoring Fee”). The Monitoring Fee as of the date of this agreement is \$117 per unit. The Monitoring Fee is published in the City’s Municipal Fee Schedule and updated from time to time.

4. Enforcement

The City of Santa Clara is deemed to be the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient.

5. Defaults

- a. Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement, if such failure or delay is not cured within thirty (30) days after written notice by City to Developer, or if such failure or delay cannot be reasonably cured within the thirty (30) day period and Developer has not commenced curing the same, then such failure or delay constitutes a "Default."
- b. The City shall give written notice of default to the Developer, specifying the nature of the failure in performance which the City claims constitutes the Default, the time period during which the Default is alleged to have occurred or been occurring, and the manner in which such Default may be satisfactorily cured. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.
- c. Any failures or delays by the City in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- d. Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City-caused delays, delays

caused by third parties, technical problems with transportation or other events outside the Developer's control.

6. Indemnification

The Developer shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) with respect to the Developer's performance hereunder, any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

7. General Provisions

- a. Covenants Running with the Land. All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- b. Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement.
- c. Irrevocability; Term of Agreement. This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth in Section 2.i shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.
- d. Amendment of Agreement. Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to the Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions

- e. Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.
- f. Interpretation. The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.
- g. Applicable Law. This Agreement and the covenants created hereby shall be governed by and construed according to the laws of the State of California.
- h. Number, Gender and Headings. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.
- i. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

With a copy to: City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050

To Developer: Benton and El Camino, LP
c/o Prometheus Real Estate Group, Inc.
1900 South Norfolk St., Suite 150
San Mateo, CA 94403
Attn: Ian Rogers, Director of Asset
Management

With a copy to: Prometheus Real Estate Group, Inc.
1900 South Norfolk St., Suite 150
San Mateo, CA 94403
Attn: Theresa McFarland, General
Counsel

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

- j. Rights and Remedies Are Cumulative. The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.
- k. Dispute Resolution. Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.
 - i. The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.
 - ii. The costs of mediation shall be borne by the parties equally.
 - iii. Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.
- l. Counterparts. This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart

copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

- m. Execution and Effective Date. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

[Signatures on Following Page]

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

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

**BENTON AND EL CAMINO, LP
a California limited partnership**

BENTON AND EL CAMINO, LP
a California limited partnership

By: SUNSET RIDGE DEVELOPMENT CO., INC.,
a California corporation, its general partner

By: _____
(Officer of Corporation or Agent)

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)

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 A

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California,
described as follows:

LOT 1 AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 2019 IN BOOK 926
OF MAPS, AT PAGE 33 THROUGH 36, SANTA CLARA COUNTY RECORDS.

APN: APNS: 230-07-059, 230-07-009, 230-07-010, 230-07-038, 230-07-002, 230-07-
031, 230-07-034, 230-07-004, 230-07-053, 230-07-029, 230-07-013, PORTION 230-07-
060 AND PORTION NOT CURRENTLY ASSESSED

EXHIBIT B

DESIGNATED THIRTY-SIX (36) AFFORDABLE HOUSING UNITS BY INCOME CATEGORY AND UNIT SIZE

**11 LOW INCOME
25 MODERATE INCOME**

| <u>Income Level</u> | <u>1 Bedroom</u> | <u>2 Bedroom</u> | <u>Number of Units</u> |
|--------------------------------|------------------|------------------|------------------------|
| 80% AMI (Low) | 6 | 5 | 11 |
| 120% AMI (Moderate) | 14 | 11 | 25 |
| Total | 20 | 16 | 36 |

| Unit type | Address ID | Name | SF | Low/Mod |
|------------------|-------------------|------------------|-----------|----------------|
| 1br/1ba | 129 | A2 | 811 | Low |
| 1br/1ba | 163 | A5 | 880 | Mod |
| 2br/2ba | 165 | B7.1.2 | 1259 | Low |
| 2br/2ba | 169 | B7 | 1298 | Mod |
| 2br/2ba | 172 | B7 | 1298 | Mod |
| 1br/1ba | 173 | A3 | 789 | Low |
| 1br/1ba | 180 | A3 | 789 | Low |
| 2br/2ba | 107 | B12-L1 and L2 | 1545 | Mod |
| 1br/1ba | 203 | A1.2 | 907 | Mod |
| 1br/1ba | 209 | A2 | 811 | Mod |
| 2br/2ba | 211 | B3.1 | 1291 | Mod |
| 2br/2ba | 224 | B4.2 | 1110 | Mod |
| 2br/2ba | 242 | B1.1 | 1323 | Mod |
| 2br/2ba | 265 | B7.1 | 1194 | Low |
| 2br/2ba | 269 | B7 | 1298 | Mod |
| 1br/1ba | 273 | A3 | 789 | Low |
| 1br/1ba | 278 | A2C | 895 | Mod |
| 2br/2ba | 279 | B1 | 1198 | Low |
| 1br/1ba | 280 | A3 | 789 | Mod |
| 1br/1ba | 284 | A2 | 811 | Mod |
| 1br/1ba | 286 | A2 | 811 | Mod |
| 1br/1ba | 304 | A1.2 | 907 | Mod |
| 1br/1ba | 306 | A1.5 | 1052 | Mod |

| | | | | |
|----------------|------------|---------------|-------------|------------|
| 1br/1ba | 308 | A2 | 811 | Mod |
| 1br/1ba | 310 | A1.5 | 1052 | Mod |
| 2br/2ba | 314 | B3.2 | 1236 | Mod |
| 1br/1ba | 354 | A3.2 | 755 | Mod |
| 2br/2ba | 365 | B7.1 | 1194 | Low |
| 2br/2ba | 369 | B7 | 1298 | Mod |
| 1br/1ba | 405 | A1.5 | 1052 | Mod |
| 1br/1ba | 407 | A2 | 811 | Low |
| 2br/2ba | 414 | B2.1.2 | 1236 | Mod |
| 2br/2ba | 465 | B7.1 | 1194 | Low |
| 1br/1ba | 507 | A2 | 811 | Mod |
| 1br/1ba | 509 | A2 | 811 | Low |
| 2br/2ba | 514 | B3.2 | 1236 | Mod |