

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

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Community Development Agency

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383

Space above this line for Recorder's use.

Subject Property:

Project:

APN:

AFFORDABLE HOUSING AGREEMENT

(City of Morgan Hill Affordable Housing Program – Below Market-Rate Units)
(Development)

The City of Morgan Hill, a California municipal corporation (“City”), Nyanda and Associates, LLC, a California limited liability company d/b/a House Keys (“Administrator”) and Developer (“Developer”) enter into this Affordable Housing Agreement (the “Agreement”) effective as of _____, 2018 (the “Effective Date”). City, Administrator, and Developer are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

The following recitals are an integral part of this Agreement and are binding on the Parties. Capitalized terms used in these Recitals and elsewhere in this Agreement shall have the meanings ascribed to such terms as set forth in Section 2 below.

A. Developer is constructing the Project within the City’s jurisdiction. In order to participate in the City’s affordable housing program (the “Program”), Developer has agreed to sell a total of xxx (x) Below Market Units in the Project to Eligible Purchasers selected by City and Administrator at a below market-rate. In particular, this Agreement sets forth the specific terms and conditions applicable to the sale of the Subject Property, located at xxxxxx, Morgan Hill, CA (Lot x of the Map), which includes one (1) of these x (x) Below Market Rate Units. The Project is subject to the Below Market Rate Unit Reduction and In-Lieu Fee Program as modified by and subject to the Development Agreement executed by and between City and Developer and recorded xxxxx as Document No. xxxxx in the Official Records of Santa Clara County. The Development Agreement, along with Developer’s Project approvals, reflects Developer’s obligation to include affordable units within the Project in accordance with Developer’s planning application and award pursuant to the City’s Residential Development Control System (RDCS).

Pursuant to the RDCS process, Developer has committed to include affordable ~~x~~ (x) Below Market Rate Units in the Project, as more fully described in Section 4F below and detailed in Attachment 4.

B. The intent of the Program and Developer's participation therein pursuant to this Agreement is to provide opportunities for Eligible Purchasers to purchase homes in the City at an affordable price. To accomplish this end, City and Administrator shall restrict the initial sale price of the Below Market Units and certify household income and program eligibility for each Eligible Purchaser. Developer shall allow City and Administrator to select each eligible purchaser for a Below Market Rate Unit.

C. Except as otherwise specified herein, the City has delegated responsibility for administration of the Program and monitoring compliance with the requirements of this Agreement to Administrator pursuant to the Administrative Services Agreement, and the Administrator has agreed to undertake this responsibility.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are hereby incorporated into this Agreement.

2. **Definitions.** The following terms shall have the meanings set forth below whenever used in this Agreement or the Attachments hereto, unless the context clearly indicates otherwise.

A. **"Administrative Services Agreement"** means that certain Consultant Agreement, dated July 15, 2015, and executed by and between City and Administrator, as such agreement may be amended or replaced from time to time. Developer is not a Party to such agreement and shall have no liability or responsibility thereunder.

B. **"Administrator"** means Nyanda & Associates, LLC, a California limited liability company d/b/a House Keys , and any person or entity that succeeds to the responsibilities of the Administrator pursuant to the Administrative Services Agreement or replacement thereof and this Agreement.

C. **"Affordable Sales Price"** means the maximum sales price for a Below Market Unit as determined by the City pursuant to Section 4F, below and Attachment 1. Developer shall have no responsibility for determining the Affordable Sales Price.

D. **"Area Median Income" or "AMI"** means the median annual income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall determine the Area Median Income using such other reasonable method as City may elect.

E. **"Below Market Promissory Note"** means the Below Market Secured Promissory Note in form provided by City at the time City designates the Eligible Purchaser to be executed by the purchaser of a Below-Market Unit at the closing for purchase of the Below Market Unit to evidence the obligation to repay the loan to be provided by City to assist in the

purchase of the Below-Market Unit. The Administrator will ensure the Note is signed by the Eligible Purchaser and deposited into escrow.

- F. **“Below Market Units”** means the **xxxxx (x)** residential units constructed or to be constructed within the Project to be sold at a below-market rate to an Eligible Purchaser. See Attachment 3 for the legal description of the Subject Property, which shall provide one (1) of the Project’s Below Market Rate Units, in accordance with this Agreement, and Attachment 4 for a full list of the Below Market Units for the Project. Below Market Units may singularly be referred to as a “Below Market Unit” or collectively as the “Below Market Units.”
- G. **“Deed of Trust”** means the Below Market-Rate Deed of Trust and Assignment of Rents, in form provided by the City or the Administrator, at the time the City designates the Eligible Purchaser, to be executed by the homebuyer to secure the homebuyer’s obligations under the Below Market Promissory Note, and to be recorded in the official records of Santa Clara County at the closing for the sale of each Below Market Unit. The Administrator shall ensure that the Deed of Trust is signed by the Eligible Purchaser and deposited into escrow.
- H. **“Development Agreement”** means that certain Development Agreement executed by and between City and Developer and recorded **xxxxx** as Document No. **xxxxin** the Official Records of Santa Clara County, by Ordinance No. **xxxxx** and which sets forth Developer’s obligations to sell certain units in the Project to Eligible Purchasers Selected by City or Administrator at an Affordable Sales Price under the City’s Below Market Rate Program.
- I. **“Effective Date”** is the date set forth in the Preamble to this Agreement.
- J. **“Eligible Purchaser”** means a person whose Gross Income does not exceed the Income Category specified in this Agreement and who demonstrates to City and Administrator that he or she meets all of the following required criteria to the reasonable satisfaction of the Administrator by showing that he or she:
- (i) Is a First-Time Homebuyer as defined in 24 CFR 92.2;
 - (ii) Will provide personal funds (cannot be financed) in the amount of at least three percent (3%) of the purchase price of a Below Market Unit;
 - (iii) Will qualify for and obtain a mortgage loan to finance acquisition of a Below Market Unit in a maximum amount equal to ninety-seven percent (97%) of the sales price plus closing costs;
 - (iv) Will, after purchase of a Below Market Unit, have a monthly housing cost (principal, interest, taxes, insurance and homeowner association fees) that does not exceed forty percent (40%) of his or her monthly Gross Income;
 - (v) Will, after purchase of a Below Market Unit, have a total debt (housing cost and all other monthly debt service payments) that does not exceed forty-five percent (45%) of his or her monthly Gross Income;

- (vi) In the acquisition of a Below Market Unit, agrees to use a lender from the approved lender list maintained by the Administrator;
 - (vii) Has provided verification satisfactory to the Administrator of income, job history, prior home ownership history, and qualification for any priority status (as applicable) under the rating system described in the Program Guidelines;
 - (viii) Has a Household Size that does not exceed limits appropriate for the Below Market Unit as established by the City; and
 - (ix) Developer shall have no responsibility for the determination of an Eligible Purchaser.
- K. **"Gross Income"** shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such Section may be revised from time to time.
- L. **"Household Size"** means the actual number of persons who will be residing in the Below Market Unit.
- M. **"Household Size Appropriate for the Unit"** shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any).
- N. **"Income Category"** means the income category to be used to qualify Eligible Purchasers and determine the Affordable Sales Price for the Below Market Units.
- O. **"Initial Purchaser"** means the Eligible Purchaser who purchases a particular Below Market Unit from Developer.
- P. **"Low-Income Household"** means a household whose Gross Income does not exceed eighty percent (80%) of AMI, adjusted for Household Size.
- Q. **"Map"** means the Subdivision Map entitled "Tract Map xxx " which was recorded on xxxxxxxxxxxx, in Book xxx of Maps at Pages xx through xxx, in the official records of the County of Santa Clara.
- R. **"Median Income Household"** means a household whose Gross Income does not exceed one hundred percent (100%) of AMI.
- S. **"Moderate Income Household"** means a household whose Gross Income does not exceed one hundred twenty percent (120%) of AMI.
- T. **"Owner"** means the owner of record of fee title to a Below-Market Unit.
- U. **"Program"** means the City's Affordable Housing Program, as set forth in the Residential Development Control System provisions of the City's Zoning Ordinance.
- V. **"Program Guidelines"** means the City's guidelines for administration of the Program as set forth in the City's Policies and Procedures Manual as it may be updated from time to time.

- W. **“Project”** means the residential development that Developer has constructed or will construct on the property described in the Map and the Site Plan, and commonly known as “XXXX.”
- X. **“Property”** means the lots on which the Below Market Units have been or will be constructed.
- Y. **“Site Plan”** means the Site Plan or other document approved in writing by the City Council of the City of Morgan Hill in conjunction with its approval of the Project.
- Z. **“Subject Property”** means the specific property against which this agreement will be recorded and described on Attachment 3 hereto.

3. Affordable Housing Program. The Below Market Units shall be subject to the following requirements:

- A. **Construction.** Developer shall construct the Below Market Unit on the Subject Property. Construction shall be in accordance with development plans approved by the City and shall be conducted pursuant to building permits issued by the City.
- B. **Quality of Improvements.** The Below Market Unit on the Subject Property shall be constructed in a workmanlike and competent manner according to the approved plans and specifications. Construction, interior building materials and surfaces, appliances, and fixtures shall be of similar quality to market-rate units of a similar size in the Project and as set forth in the option/selection list prepared by the Administrator for the Below Market Unit.
- C. **Recordation of Agreement; Reconveyance.** Promptly following execution of this Agreement, this Agreement shall be recorded in the official records of Santa Clara County against the Subject Property. Upon sale of a Below Market Unit to an Eligible Purchaser, City agrees to execute and record an instrument releasing and reconveying this Agreement as to the Subject Property, so that the City will no longer be encumbered by this Agreement. City shall deposit such instrument with the escrow holder with instructions to record it concurrently with the close of escrow for the sale of the Below Market Unit to the Eligible Purchaser.
- D. **Covenants Run with the Land.** Developer hereby subjects the Below Market Unit on the Subject Property, and the Subject Property, to the restrictions set forth herein in order to achieve the purposes of the Program set forth herein. The covenants and restrictions set forth herein shall be covenants running with the land and binding on the Below Market Unit on the Subject Property, and the Subject Property, and the successor owners thereof until this Agreement is released and reconveyed pursuant to the provisions hereof. So long as this Agreement remains of record as to a Below Market Unit on the Subject Property, any conveyance of such Below Market Unit and the Subject Property shall be conclusively held to have been delivered and accepted subject the restrictions set forth in this Agreement, without regard to whether any party to such transaction has actual knowledge of the restrictions hereof. The covenants and restrictions set forth herein are to be construed as covenants running with the land pursuant to California Civil Code §1468 and not as conditions which might result in forfeiture of title by Owner. This

cannot burden other lots within the Phase or Project. The burden of this Agreement touches and concerns each of the Below Market Units, the Project and the Property in that they may render an Owner's interest therein less valuable and they enhance and increase the enjoyment and use of the Project, the Property and the Below Market Units by Eligible Purchasers who will benefit from such covenants and restrictions.

4. **Sale of Below Market Units.** The initial sale of the Below Market Units shall be subject to the following terms and provisions:
- A. **Eligible Purchasers.** The Below Market Units may initially be sold only to Eligible Purchasers of the applicable Income Category as solely determined by City and/or Administrator. In the event that there are more interested Eligible Purchasers than the available Below Market Units, then the Administrator shall select the purchaser in a manner consistent with City policies and procedures in effect at the time of sale. Developer shall have no responsibility for this determination.
 - B. **Notifications.** The City shall notify the Administrator of new housing units that will be available for sale by not later than the time of project approval by the City. The City shall provide the location of units, size of each unit, amenities, and targeted income groups. The Developer shall notify the Administrator of unit availability at least 120 days prior to the expected date of issuance of the certificate of occupancy.
 - C. **Administrator to Screen and Select Buyers.** The Administrator will pre-screen and select the Eligible Purchasers in accordance with the City's policies and procedures. The Administrator will assist the Developer to facilitate the close of escrow and will be responsible for obtaining all Eligible Purchaser documents required under the City's Below Market Rate Program and depositing such documents into escrow. The Administrator will perform these functions in coordination with the Developer and Developer will compensate Administrator for such services in accordance with Section 10 below and Attachment 2.
 - D. **Marketing Below Market Units.** Developer shall not market, and shall not be responsible for marketing, the Below Market Units in conjunction with Developer's marketing of the market-rate units in the Project. Administrator shall be solely responsible to City and Developer for marketing the Below Market Units and implementing the Program. All Below Market Units are to be considered part of the City's Affordable Housing Program so as to avoid confusion for potential buyers. Furthermore, Developer's sales personnel shall not communicate with potential buyers concerning eligibility and/or availability of Below Market Units for sale. All communication regarding the Below Market Units shall come from the Administrator or the City. Notwithstanding the foregoing, Developer shall not be precluded from offering closing cost concessions or other incentives for the use of a particular vendor or agent, provided that any such offers are coordinated with the Administrator.
 - E. **Mortgage Lending.** Each Eligible Purchaser must work with a mortgage lender that has been approved by the Administrator and that has previously approved the Deed Restriction and all other City-required documents associated with the sale of the Below Market Units. The Administrator will maintain an approved loan officer list segmented by

lender. To be eligible to finance a Below Market Unit, the lender must have been included on the approved lender list for at least sixty (60) days prior to the closing for the sale of a Below Market Unit. For the purpose of ensuring that risk to the Eligible Purchaser and the City is minimized, the proposed mortgage financing terms are subject to approval by the Administrator. Except as approved by the Administrator, the first mortgage loan shall have a fixed interest rate and a 30-year term. The Administrator will be permitted to provide mortgage lending services with respect to the Below Market Units. Developer shall have no responsibility under this Section 4 (E).

- F. **Sale Price.** Sale prices for the Below Market Units shall be the Affordable Sales Price for a household of the Household Size Appropriate for the Unit in the applicable Income Category at the time of sale, as determined by the City and Attachment 1.
 - G. **Purchase Agreement Terms Requirement.** The purchase and sale agreement to be used for the sale of each Below Market Unit by Developer to the Eligible Purchaser shall be in the form approved for the Project by the California Bureau of Real Estate, and shall contain reasonable and market sensitive requirements for (1) opening the escrow; (2) obtaining first mortgage approval; and (3) any other matters of timing determined by Developer to be reasonable. The purchase and sale agreement shall provide that all conditions to closing shall be satisfied and the close of escrow shall occur by not later than the ninetieth (90th) day (or the first business day thereafter, if the ninetieth (90th) day is a Saturday, Sunday, or holiday) after execution of the purchase and sale agreement, and shall further provide that Developer shall have the right to terminate the agreement if closing does not occur on or before such deadline unless Developer obtains written City approval of an extension of the closing date, upon recommendation by the Administrator. Unless City provides written approval of an extension, Developer shall terminate any contract that does not close within this deadline. Upon such termination, all consideration posted by the Eligible Purchaser shall be returned, the purchase agreement shall be null and void, and Developer shall have the right to sell the Below Market Unit to another Eligible Purchaser. Under such circumstances, the City will direct the Administrator to begin immediately to identify the next priority Eligible Purchaser or to find another Eligible Purchaser
 - H. **Closing Documents.** Within five (5) business days following closing of the sale of any Below Market Unit, Developer shall forward to the Administrator copies of the buyer's and seller's settlement statements and all closing documents executed in connection with the sale. Developer shall retain all records related to compliance with obligations under this Agreement for a period not less than two (2) years from the date of sale of each Below Market Unit, and upon five (5) business days' written notice, shall make them available to employees or other designees of City and/or Administrator for the purpose of inspection and copying.
5. **Termination of Developer Role.** When Developer has sold the Subject Property to the Eligible Purchaser selected by City or Administrator in accordance with the requirements of this Agreement, Developer shall be released of all responsibilities and obligations under this Agreement. Upon the sale of all Below Market Units to Eligible Purchasers, in accordance with the requirements of this Agreement, Developer shall be released of all responsibilities and obligations with respect to its provision of affordable units under the Development Agreement,

Developer's Planning application and RDCS, and the Program. However, nothing contained herein shall terminate Developer's responsibilities, if any, to the Eligible Purchaser with regard to construction and quality of the Below Market Unit on the Subject Property, which shall survive the sale of the Subject Property and shall terminate only as provided by law.

6. **Developer Successors; Restrictions on Transfer.** The provisions of this Agreement shall bind Developer and its successors in interest to the Subject Property. Developer may not sell, assign, lease, or otherwise convey the Subject Property or part thereof or any of the Below Market Units (other than to an Eligible Purchaser designated by City or Administrator) absent the prior written approval of City, which shall be granted or withheld in City's sole discretion. Any such sale, assignment or conveyance shall be effectuated only pursuant to a written agreement approved by City pursuant to which the transferee assumes all of the obligations of Developer hereunder.
7. Intentionally omitted.
8. **Duties of Administrator.** Administrator shall carry out its responsibilities in connection with the marketing and sale of the Below Market Units and the selection of Eligible Purchasers in accordance with the terms and conditions of the Agreement and the Administrative Services Agreement. Pursuant to the Administrative Services Agreement and this Agreement, the Administrator shall perform the following services, among others:
 - A. Conduct ongoing homebuyer education training programs, including preparation of program materials;
 - B. Screen and select and qualified buyers according to City policies and procedures;
 - C. Assist in arranging mortgage financing for purchase of the Below Market Units;
 - D. Administer programs for monitoring compliance with terms and conditions of Below Market Unit sales;
 - E. Administer Affordable Housing Program requirements concerning resale of the Below Market Units at a restricted price, including exercise of the City's option to buy the Below Market Units upon assignment of such option, and assist in resale of the unit to Eligible Purchasers or families; and
 - F. Otherwise comply with its responsibilities under this Agreement
9. **City Rights Regarding Administrator.** Developer acknowledges that City and Administrator have the right to terminate the Administrative Services Agreement without cause at any time on thirty (30) days written notice, and that City may also terminate the Administrative Services Agreement for cause at any time on written notice. If the Administrator resigns or the Administrative Services Agreement is terminated, City shall have the right and duty to locate and appoint a successor to carry out the Administrator's responsibilities (or City may elect to undertake these responsibilities by appointing itself as Administrator). Upon any resignation or termination, Administrator shall act with due diligence and in good faith to turn over to its successor or to City all of its records related to the Project, and shall brief its successor or City personnel on the status of the Below Market Units.

- 10. Administrator's Compensation and Expenses.** Developer shall compensate the Administrator for its activities pursuant to this Agreement, in accordance with the schedule of compensation specified in Attachment 2. Administrator is a third party consultant hired by the City and shall not be deemed to be a consultant or employee of Developer.
- 11. Hold Harmless and Indemnification.** Developer will indemnify, defend (with counsel approved by City) and hold harmless City and Administrator and their respective elected and appointed officials, officers, employees, agents, and board members (all of the foregoing, collectively the “**Indemnitees**”) from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with or relating in any manner to the Below Market Units or Developer's performance or non-performance under this Agreement, except to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Notwithstanding anything to the contrary, City and Administrator shall immediately defend (with counsel approved by Developer), indemnify and hold Developer harmless from and against all claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, order, damages, liability, loss, costs or expense (including, without limitation, attorneys’ fees and costs of litigation, arbitration, mediation, or administrative hearings) that arise from or are alleged to have arisen from, in whole or in part, the activities of City and Administrator in the activities and obligation of City and/or Administrator as described in or in any way relating to this Agreement or the City’s Below Market Rate Program. City and Administrator acknowledge that Administrator does not hold a real estate license issued by the California Bureau of Real Estate and warrants to Developer that it shall not undertake any activities under this Agreement for which a real estate license is required in the State of California Administrator shall indemnify Developer for any claim, loss, or liability arising from or in connection with Administrator’s failure to maintain a real estate license. The provisions of this Section shall survive the expiration or other termination of this Agreement and the release of part or all of the Subject Property from the burdens of this Agreement.
- 12. Notices.** Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City:

Housing
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Rebecca Garcia

Developer:

XXX Developer
123 Easy St
Morgan Hill, CA 95037
Attention: Bill Sadler

Administrator:

Nyanda & Associates, LLC d/b/a House Keys
409 Tennant Station, Suite 395
Morgan Hill, CA 95037
Attention: Julius Nyanda

13. **Third Party Beneficiaries.** This Agreement is not intended to be for the benefit of any person other than the Parties and their permitted successors and assigns.
14. **Attorneys' Fees.** In any action, including any arbitration, to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.
15. **Amendments/Waiver.** This Agreement may be amended, changed, or modified only by an agreement in writing signed by the Parties or their respective permitted successors. Any waiver of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by a Party to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by a Party at any time to require strict performance of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.
16. **Lienors' Remedies.** This Agreement does not limit the right of any holder of an obligation secured by the Subject Property or part thereof to enforce such security, by foreclosure or otherwise. However, in the event of any foreclosure or transfer in lieu of foreclosure, the acquiring party and the Property shall continue to be subject to this Agreement.
17. **Invalidity/Illegality.** Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid or illegal, such invalidity or illegality shall not affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

18. **Binding on Successors.** This Agreement shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of the parties. Developer hereby subjects its interest in the Subject Property to the covenants and restrictions set forth in this Agreement. The City and Developer hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Developer and City, regardless of any sale, assignment, conveyance or transfer of the Subject Property or any part thereof or interest therein. Developer agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Subject Property in favor of City.
19. **Construction; Governing Law and Venue.** The captions used in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either or any party, notwithstanding the drafting of the Agreement by any party or party's representative. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.
20. **Authority.** Each person executing this Agreement on behalf of a legal entity warrants that he or she has the actual authority to execute and deliver the Agreement on behalf of such entity and that the Agreement is binding on such entity.
21. **Entire Agreement; Exhibits.** This Agreement contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Attachments 1 through 4 attached hereto are incorporated herein by this reference. The Parties each acknowledge and agree that they have not relied on any representations of the other Parties or their representatives, except to the extent that such representations are expressly set forth herein
22. **Default; Enforcement Rights.** In the event of any breach of this Agreement, the non-defaulting Party shall provide written notice of default to the Party in default. If the default is not cured within thirty (30) days after delivery of such notice, then the non-defaulting Party shall have the right to take legal or other action to enforce this Agreement, including without limitation, bringing an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief or damages. Each of the remedies provided herein is cumulative and not exclusive and each Party may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.
23. **Non-Discrimination.** No party shall discriminate in the sale or financing of the Below Market Units or in the operation of the Affordable Housing Program on the basis of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, national origin, ancestry, or disability. Administrator shall include language to this effect in all agreements

relating to the selection of Eligible Purchasers and the sale of Below Market Units and shall be solely responsible for the selection of Eligible Purchasers.

24. **Further Assurances.** The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement
25. **Parties Not Co-Venturers; No Agency Relationship.** Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of the Parties shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project. Developer and its agents and employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, neither Developer nor Administrator shall have any authority to act as an agent of City or to bind City to any obligation. Administrator shall have no authority to act as an agent of Developer or bind Developer to any obligation.
26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Agreement effective as of the date first above written.

DEVELOPER:

By:

By: _____

Chief Operating Officer

CITY:

THE CITY OF MORGAN HILL, A MUNICIPAL CORPORATION

By: _____
Christina Turner, City Manager

Approved as to form:

By: _____
Donald Larkin, City Attorney

ADMINISTRATOR:

NYANDA & ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY d/b/a HOUSEKEYS

By: _____
Julius Nyanda, Chief Executive Officer

(All signatures, except City Attorney, must be acknowledged by a Notary Public.)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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.

(Notary Signature)

ATTACHMENT 1

**RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)
SALES PRICE DETERMINATION SHEET
FY 17-18**

	<u>Commitment</u>					
Points		R-3 Condominium	R-2 & R3 Townhouses	R-2 SFD & R-1 7000	R-1 9000 & above lot size	
	<u>BMR Unit Income Mix</u>	<u>BMR Sales Price and Income Level</u>				
(a)	4% Low Income	70% AMI Low	73% AMI Low	76% AMI Low	80% AMI Low	
		\$193,900	\$202,210	\$210,520	\$221,600	Studio
		\$225,400	\$235,060	\$244,720	\$257,600	1-bdrm
13 Points		\$256,900	\$267,910	\$278,920	\$293,600	2-bdrm
		\$291,900	\$304,410	\$316,920	\$333,600	3-bdrm
		\$318,500	\$332,150	\$345,800	\$364,000	4-bdrm
	4% Median/ Moderate Income	90% AMI Median	100% AMI Median	110% AMI Moderate	120% AMI Moderate	
		\$249,300	\$277,000	\$304,700	\$332,400	Studio
		\$289,800	\$322,000	\$354,200	\$386,400	1-bdrm
		\$330,300	\$367,000	\$403,700	\$440,400	2-bdrm
		\$375,300	\$417,000	\$458,700	\$500,400	3-bdrm
		\$409,500	\$455,000	\$500,500	\$546,000	4-bdrm
(b)	6% Low Income	70% AMI Low	73% AMI Low	76% AMI Low	80% AMI Low	
		\$193,900	\$202,210	\$210,520	\$221,600	Studio
		\$225,400	\$235,060	\$244,720	\$257,600	1-bdrm
14 Points		\$256,900	\$267,910	\$278,920	\$293,600	2-bdrm
		\$291,900	\$304,410	\$316,920	\$333,600	3-bdrm
		\$318,500	\$332,150	\$345,800	\$364,000	4-bdrm
	2% Median/Moderate Income	90% AMI Median	100% AMI Median	110% AMI Moderate	120% AMI Moderate	
		\$249,300	\$277,000	\$304,700	\$332,400	Studio
		\$289,800	\$322,000	\$354,200	\$386,400	1-bdrm
		\$330,300	\$331,000	\$403,700	\$440,400	2-bdrm
		\$375,300	\$376,000	\$458,700	\$500,400	3-bdrm
		\$369,000	\$410,000	\$500,500	\$546,000	4-bdrm
(c)	8% Low Income	65% AMI Low	70% AMI Low	75% AMI Low	80% AMI Low	
		\$180,050	\$193,900	\$207,750	\$221,600	Studio
		\$209,300	\$225,400	\$241,500	\$257,600	1-bdrm
15 Points		\$238,550	\$256,900	\$275,250	\$293,600	2-bdrm
		\$271,050	\$291,900	\$312,750	\$333,600	3-bdrm
		\$295,750	\$318,500	\$341,250	\$364,000	4-bdrm

BMR sales price determination is based on household income, size and an affordability percentage. These figures are combined with an estimated total housing payment. All BMR Units are deed restricted.

Pricing applies to permits pulled within the applicable Fiscal Year. Pricing is subject to change. Make sure to confirm applicable pricing with the Program Administrator.

ATTACHMENT 2

COMPENSATION SCHEDULE

- A. For each Below Market Unit, the Developer shall pay a BMR Transaction Processing Fee to the Administrator equal to three percent (3%) of the sales price approved by the City for each such unit. This fee is not a Real Estate Commission or Real Estate Broker Commission. This fee shall be listed as an "Additional Settlement Charge" fee paid by the Seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "Other Costs" paid by the Seller in the new Closing Disclosure as determined by the TILA-REPA Integrated Disclosure rule.

ATTACHMENT 3

LEGAL DESCRIPTION

APN: xxxxxx (portion)
xxxxxxx
Morgan Hill, CA 95037

ATTACHMENT 4

DEVELOPER BELOW MARKET RATE UNIT COMMITMENT DESCRIPTION FOR SUBJECT PROPERTY

DEVELOPER BELOW MARKET RATE UNIT COMMITMENT DESCRIPTION

Name:	
Project Name:	
Current Agreement:	

Date	Detail

Phase	Bldg.	Lot#	Plan	Address	Bed	Income Level	AMI %	Price