

**GROUND LEASE
(Freebird)**

by and between

**THE CITY OF SANTA CLARA,
Landlord,**

and

**MONROE STREET HOUSING PARTNERS, L.P.,
Lessee**

LEASE AGREEMENT

This LEASE AGREEMENT (this “**Lease**”) is dated as of [] 1, 2020 (the “**Commencement Date**”), between the CITY OF SANTA CLARA, a California municipal corporation (“**Landlord**”) and MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“**Lessee**”), who agree as follows:

RECITALS

A. The Landlord is the owner of that certain real property located in the City of Santa Clara (“**City**”) and described in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”).

B. The Landlord desires to lease the Property to Lessee and have Lessee construct, own, manage and operate the Improvements comprising 65 units of housing, of which (1) 16 units shall be leased to households at or below 30% of area median income, (2) 10 units shall be leased to households at or below 50% area median income, (3) 13 units shall be leased to households at or below 60% area median income, (4) 16 units shall be leased to households at or below 80% of area median income, (5) 9 units shall be leased to households at or below 120% of area median income, and (6) 1 two-bedroom unit to be used as a non-revenue manager’s units, using the income limits used for the Santa Clara MSA, as published approximately annually by TCAC for the 30%, 50%, 60% and 80% area median incomes, and by the California Department of Housing and Community Development (“**HCD**”) for the 120% area median income.

NOW, THEREFORE, in consideration of the foregoing, the Landlord and Lessee agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: The City of Santa Clara, a California municipal corporation.

1.2 Lessee: Monroe Street Housing Partners, L.P., a California limited partnership. All references in this Lease to the “**Lessee**” shall mean and refer to Lessee or any successor or assign, as the context may require.

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the “**Property**”) is described in Recital A, above.

1.5 Term: The Term of this Lease is set forth in Section 2.3, below.

1.6 Landlord's address for notices:

City Manager’s Office
The City of Santa Clara
1500 Warburton Avenue

Santa Clara, California 95050
Attention: City Manager

1.7 Lessee's address for notices:

Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

1.8 Lessee's Rent: Lessee shall pay, as rent for the Property, an annual amount as provided in Section 2.4, below.

ARTICLE 2 TERMS AND PROVISIONS

2.1 AGREEMENT TO LEASE

2.1.1 Landlord hereby leases the Property to Lessee, and Lessee hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth.

2.2 ACCEPTANCE OF PROPERTY

2.2.1 Landlord makes no representations, expressed or implied, with respect to the legality, fitness, or desirability of the Property for Lessee's intended use. If Lessee desires to do so, Lessee shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Lessee's ability to use the Property for Lessee's intended use.

2.3 TERM

2.3.1 Term. The Lease term (the “**Term**”) shall commence on the Commencement Date and shall continue for sixty-five (65) years after the issuance of the temporary certificate of occupancy for the Improvements, unless earlier terminated in accordance with this Lease. *[Term may be increased as determined by final underwriting and approval by City Housing Division]*

2.3.2 Termination. Subject to the notice and cure provisions of Sections 2.20 and 2.23 below, Landlord may terminate this Lease by giving written notice of termination to Lessee in the event of any default under this Lease that is not cured within the applicable cure period. In such event, Landlord shall retain any and all Rent paid by Lessee to Landlord as a measure of damages; provided, however, nothing herein shall limit any other remedies, including damages, available to Landlord in accordance with the terms and provisions of this Lease.

2.3.3 Surrender. Subject to the damage and reconstruction provisions of Section 2.19, Lessee shall upon the expiration or sooner termination of this Lease immediately surrender the Property and the Improvements to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions located on the Property. All personal property not removed by Lessee, shall, without compensation to Lessee, then become Landlord's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

2.4 RENT

2.4.1 Rent. The Rent payable for each Lease Year (the “**Rent**”) shall be as set forth in Section 2.4.2 hereto. Rent shall be paid in arrears for each calendar year (or portion of a calendar year for the first and last months of the Term) no later than June 1 of the following calendar year during the Term. The Rent shall be prorated on a per diem basis for the first and last partial years of the Term (assuming the Commencement Date is not January 1). The last payment of Rent shall be due within twenty (20) days following the termination of this Lease.

2.4.2 Rent Amounts. Rent shall be in the amount of \$*[10% of value of land per TCAC appraisal]*, and shall be due and payable only to the extent of 50% of Residual Receipts (as defined below), provided, however, that no Rent payments shall be due unless and until the City Loan, County Loan, and any other Project loan requiring residual receipts payments and previously approved by Landlord (including but not limited to any loan from the California Department of Housing and Community Development) have been repaid in full. Rent shall not accrue to the extent not paid in full or in part due to lack of Residual Receipts. The term “Residual Receipts” shall have the meaning given to it in the Promissory Note (the “**City Note**”) of even date herewith in the amount of \$5,000,000 made by Lessee in favor of Landlord, as lender, including any amendments to such definition agreed to in writing by Landlord in its capacity as lender, and which definition shall survive repayment in full or termination of the City Note and is incorporated hereby.

2.4.3 Payment of Rent. At Lease expiration or sooner termination all Rent accrued but not paid shall be due and payable.

2.4.4 Miscellaneous. All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America in cash or by corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Lessee by Landlord in writing from time to time.

2.4.5 Records and Audit. At all times during the Term, Lessee shall keep and maintain complete, accurate and customary records and books of account relating to the Property and shall retain such materials for the two (2) most recent completed years under this Lease. At all reasonable times during normal business hours, either on the Property or such other office of Lessee at which said records and books of account may be kept, Landlord and its duly authorized agents, attorneys and accountants shall have the right to inspect, audit and make copies of any and all of such records and books of account, including copies of any information returns required by or furnished to any governmental authority, together with any and all other records and documents relating to the Property. If Lessee does not maintain such books and records at an office within fifty (50) miles of the Property, then Lessee shall prepare and deliver to Landlord certified duplicates of such books and records upon Landlord's request, provided that Landlord shall not make such requests more than once every twelve (12) months.

2.4.6 Rent Generally. All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Lessee shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

2.5 USE

2.5.1 For the Term of this Lease, Lessee shall use the Property for any lawful purpose.

2.5.2 Lessee shall construct the Improvements on the Property in accordance with the terms and conditions of the Loan Agreement dated [] 1, 2020, between Lessee and Landlord (the "**Loan Agreement**"). Capitalized terms not defined herein shall have the meanings given to them in the Loan Agreement.

2.5.3 Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Lessee, 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, sublessees, or vendees of the Property.

2.5.4 All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

2.5.5 Lessee shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property.

2.5.6 Lessee shall comply with all regulatory agreements and restrictive covenants recorded against the Property, including, without limitation, the City Regulatory Agreement.

2.6 COMPLIANCE WITH LAW

2.6.1 Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

2.6.2 The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether Landlord be a party thereto or not, that Lessee has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Lessee.

2.7 ALTERATIONS AND ADDITIONS

2.7.1 Except as set forth in Section 2.5.2, above, after the completion of the initial Improvements, Lessee shall not make any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the following shall not constitute alteration, additions or improvements under this section 2.7.1: (i) repairs and maintenance performed under Section 2.8 below; or (ii) cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) performed in the normal course of operation of the Project

2.8 REPAIRS

2.8.1 Lessee shall, without cost or expense to the Landlord, (a) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted, and keep and maintain the remaining Property in at least the same condition it was in after completion of the Improvements, ordinary wear and tear excepted; and (b) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances or as may be required in an emergency to protect the safety and well-being of the Project's residents, provided that Lessee shall promptly provide Landlord of written notice of such emergency.

2.9 TAXES

2.9.1 To the extent applicable, Lessee shall promptly pay, or cause to be paid prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property and the Improvements thereon. In addition, to the extent applicable, Lessee shall, during the term of this Lease, pay any levy for the installation, maintenance or operations of local improvements affecting the Property and the Improvements as may be assessed by any governmental boards or bureaus having jurisdiction thereof.

2.9.2 Lessee shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Lessee must either (a) pay the taxes alleged to be due in their entirety and seek a refund

from the appropriate authority, or (b) post bond in an amount sufficient to insure full payment of the taxes.

2.9.3 To the extent applicable, Lessee shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property and the Improvements. Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

2.10 CHANGE IN CONTROL OF LESSEE, ASSIGNMENT AND SUBLETTING

2.10.1 The qualifications and identities of Lessee and its general partners are of particular concern to the Landlord. It is because of those qualifications and identity that the Landlord has entered into this Lease with Lessee. Except as otherwise provided in this Lease, there shall be no change in management or control of the Lessee without the prior approval of Landlord. Except as otherwise permitted by this Lease, including, without limitation, Section 2.23, below, neither Lessee nor its general partners shall assign all or any part of their rights pursuant to this Lease to any other entity without the prior written approval of the Landlord.

2.10.2 Lessee shall have the right from time to time to enter into subleases or rental agreements with tenants for occupancy of the Property.

2.10.3 Except as provided in this Section 2.10, in Section 2.23 below, or in the Loan Agreement, the Lessee shall have no right to transfer, assign, sublease, convey or encumber its interests in the Property without the express prior written consent of Landlord. A consent by Landlord to one such transfer, assignment, sublease, conveyance or encumbrance shall not be deemed to be consent to any subsequent transfer, assignment, sublease, conveyance or encumbrance. Any transfer, assignment, sublease, conveyance or encumbrance not approved by Landlord or not deemed approved pursuant to the terms of this Lease shall be void and shall constitute a breach of this Lease.

2.10.4 Lessee shall have the right to transfer its interests in this Lease and the Property to an entity that assumes the rights and obligations of Lessee as the result of a reorganization or similar event, subject to Landlord approval of the documentation effectuating such reorganization or similar event, which approval shall not be unreasonably withheld.

2.10.5 Notwithstanding anything to the contrary contained in this Lease, the Landlord will permit the limited partners of the Lessee to remove the general partner of the Lessee in accordance with the Lessee's Amended and Restated Agreement of Limited Partnership dated on or about the date hereof and any such removal shall neither constitute a default nor require Landlord's consent under this Lease; provided, however, that any substitute general partner shall be acceptable to the Landlord in its reasonable discretion. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee.

2.10.6 Notwithstanding anything to the contrary contained in this Lease, the following transfers are hereby permitted under this Lease without the prior written approval of the Landlord:

(a) An assignment of this Lease and all of Lessee's interests in the Property to an Affiliate (as defined below);

(b) A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Lessee in connection with a loan not prohibited hereunder and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

(c) The inclusion of equity participation in the Lessee by addition of limited partners to Lessee's partnership or similar mechanism, and any transfers of limited partnership interests in Lessee's partnership;

(d) The lease for occupancy of all or any part of the Improvements on the Property;

(e) The granting of easements or permits to facilitate the development of the Property in accordance with the Loan Agreement;

(f) The withdrawal, removal and/or replacement of a general partner of Lessee pursuant to the terms of the Lessee's partnership agreement, provided that any required substitute general partner is reasonably acceptable to Landlord and is selected with reasonable promptness. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee;

(g) The assignment or replacement of the original managing general partner in the Lessee with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City; and

(h) The sale, transfer or pledge of any limited partnership interest in Lessee or of any partnership interest in the limited partner of Lessee.

"Affiliate" shall mean (1) any Person (as defined below) directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, any general partner shall be considered an "Affiliate" of Lessee.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

2.11 HOLD HARMLESS

2.11.1 Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorney's fees and costs (collectively, "**Claims**") whether for injury to or death of persons or damage to real or personal property or otherwise, arising out of or in connection with the Property, Lessee's use or occupancy of the Property, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the term of this Lease. The preceding sentence shall not apply to any negligent or intentional acts or omissions of Landlord. Lessee shall further indemnify, defend, and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease or arising from any act or negligence of Lessee or any officer, agent, employee, guest, or invitee of Lessee. In any action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Lessee upon notice from Landlord shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord. Lessee's obligation to indemnify under this paragraph shall include attorney's fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord.

2.11.2 Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from earthquake, fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord. Lessee shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

2.12 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

2.12.1 During the Term of this Lease, the Improvements, including all buildings, structures, fixtures, additions and improvements located on the Property (other than personal property owned by Landlord or others) shall be owned in fee by Lessee. The parties hereto agree that Lessee shall bear all risk of loss with respect to the Improvements and that the benefits and burdens of ownership of the Improvements are vested in Lessee. It is the intention of the parties that the Lessee be treated as owner of the Improvements for federal income tax purposes and shall have all the rights incidental thereto including, without limitation, the right to claim tax credits and depreciation deductions with respect to the Improvements.

2.12.2 Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements and all personal property not removed by Lessee, shall then become the property of Landlord, subject to then existing liens thereon.

2.13 SUBROGATION

Neither Landlord nor Lessee shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage. Landlord and Lessee hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks insured against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Lessee. The parties shall, to the extent available, cause each insurance policy obtained hereunder to provide a waiver of subrogation.

2.14 LIENS

Except as otherwise provided herein, including, without limitation, Section 2.23 below, Lessee shall not create or permit any lien or encumbrance to be attached to or affect the Property by reason of any act or omission of Lessee. Lessee shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees.

2.15 INDEMNIFICATION AND INSURANCE

2.15.1 During the Term of this Lease, and for any required thereafter as set forth below, the Lessee shall purchase and maintain in full force and effect, at no cost to the Landlord, the following insurance policies:

- (1) Commercial general liability policy (bodily injury and property damage);
- (2) Comprehensive automobile liability policy (to the extent the Lessee uses any vehicles); and
- (3) Workers' compensation and employer's liability policy (to the extent Lessee has any employees).

2.15.2 Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Lease with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "Insurance Requirements" attached hereto and incorporated herein by this reference.

2.16 UTILITIES

Lessee shall make all arrangements for and pay for all services and utilities to the Property.

2.17 HOLDING OVER

In the event Lessee fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Lessee shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.18 ENTRY BY LANDLORD

Notwithstanding any provision to the contrary contained herein, Landlord reserves for itself, and its contractors, agents, employees, representatives or licensees, and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice; (c) to post notices of non-responsibility; and (d) to alter, improve, or repair the Property as Landlord may deem necessary or desirable in the event Lessee fails to comply with an obligation under this Lease to alter, improve or repair the Property, subject to notice to Lessee and a reasonable opportunity for the Lessee to cure. Lessee shall allow access and occupancy of the Property by Landlord and its contractors, agents, employees, representatives or licensees as necessary for the purposes of this Section.

2.19 DAMAGE, RECONSTRUCTION

2.19.1 In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Lessee shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds, then Lessee shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

2.19.2 (a) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs is in excess of available insurance proceeds, then Lessee shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the “**Shortfall**”), and Lessee shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such other funds as Lessee may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

If Lessee fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty (30) days from the end of the thirty day period described in clause (a), either to (1) provide the Shortfall at Landlord's sole expense and direct Lessee to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (2) subject to Section 2.23 below and after having provided notice and an opportunity to cure to any Permitted Leasehold Mortgagee and the Lessee's limited partners, give notice to Lessee terminating this Lease as of the date specified in such notice, which date shall be no less than ninety (90) and no more than one hundred twenty (120) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of the Lessee in the Property shall terminate on the date so specified in such notice.

2.19.3 Lessee shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Lessee's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Lessee waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.19.4 Notwithstanding anything contained in this Section 2.19 to the contrary, any rights of Landlord under this Section 2.19, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgagee and to the terms and conditions of any Permitted Leasehold Mortgage.

2.20 DEFAULT

2.20.1 Subject to Force Majeure delay, the failure by either the Landlord or Lessee to observe or perform any covenants, conditions, or provisions of (a) this Lease or (b) after the reconveyance and/or release of the City Deed of Trust, the City Regulatory Agreement, to be observed or performed by such party shall constitute a default and breach of this Lease. The party in default must immediately commence to cure, correct or remedy such breach and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice.

2.20.2 If a monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the complaining party.

2.20.3 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give party in default written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the complaining party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the complaining party.

2.20.4 If Lessee fails to take corrective action or cure the default within a reasonable time, Landlord shall give Lessee and, as provided in Section 2.20.5, below, the limited partner of Lessee notice thereof, whereupon, subject to the terms of Lessee's partnership agreement, the limited partner of Lessee may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Landlord agrees to accept cures tendered by the limited partner of Lessee within the cure periods provided in this Agreement or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the limited partner of Lessee is precluded from curing a non-monetary default due to an inability to remove the general

partner as a result of a bankruptcy, injunction, or similar proceeding by or against Lessee or its general partner, Landlord agrees to forbear from terminating this Lease during the period during which the limited partner of Lessee is so precluded from acting, not to exceed 180 days, provided such limited partner is otherwise in compliance with the foregoing provisions. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

2.20.5 After Lessee gives written notice to Landlord that the limited partner has been admitted to the Lessee as a general partner, Landlord shall send to the limited partner a copy of all notices of default and all other notices that Landlord sends to Lessee, at the address for the limited partner as provided in Section 1.7. In addition, Landlord shall send to any Permitted Leasehold Mortgagee, as defined in Section 2.23.1(c), a copy of all notices of default and all other notices that Landlord sends to Lessee as provided in Section 2.23.5(b) below.

2.20.6 If any default or breach is not cured by the party in default within the respective period of time provided in this Section 2.20, then the complaining party shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to the parties shall be cumulative, and not alternative.

2.20.7 Mediation. Any controversies between Landlord and Lessee regarding the construction or application of this Lease, and claims arising out of this Lease or its breach, shall be submitted to mediation within thirty (30) days of the written request by one party after the written notice of that request on the other party.

(a) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one (1) day of eight (8) hours. The parties may agree to extend the time allowed for mediation under this Lease.

(b) The costs of mediation shall be borne by the parties equally.

(c) Mediation under this Section is a condition precedent to filing an action in any court.

2.21 EMINENT DOMAIN

2.21.1 If the Property or any portion thereof is taken under the power of eminent domain by any public agency other than the City of Santa Clara or any agency thereof, the Redevelopment Agency of the City of Santa Clara or the Landlord, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as of the date that the condemning Landlord takes possession of the Property. Awards shall be shared among Lessee and Landlord pro rata based on their respective interests in the Property.

2.21.2 Notwithstanding anything contained in this Section 2.21 to the contrary, any rights of the Landlord under this Section 2.21, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgagee, and the terms and conditions of any Permitted Leasehold Mortgage.

2.22 HAZARDOUS MATERIALS

2.22.1 Lessee shall not:

(a) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or

(b) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.

2.22.2 Lessee shall not use, store or dispose of on the Property any solid, liquid, or gaseous matter, or any combination thereof, which is, or may become, hazardous, toxic, or radioactive including, but not limited to, those materials listed in Sections 66680 through 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 (as may be amended from time to time), in violation of applicable law (all of the foregoing collectively referred to herein as “**Hazardous Materials**”).

2.22.3 Lessee shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Lessee shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Lessee shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Lessee's activities, and free and clear of all environmental judgments, liens, or encumbrances and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Lessee's activities.

2.22.4 Lessee shall indemnify, defend, and hold Landlord harmless from and against (a) any and all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of loss of life, injury to persons, property, or business, or damage to natural resources, in connection with or arising out of any spills or discharges of Hazardous Materials in violation of applicable law, to the extent due to, contributed to, or caused by the activities of Lessee or parties in contractual relationship with Lessee (other than Landlord), or any of them, that occur during the term of this Lease, and (b) from all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of Lessee's failure to provide all information, make all submissions, and take all steps required by any Landlord under any Hazardous Materials laws or any other environmental law.

2.23 RIGHTS OF LEASEHOLD MORTGAGEES

2.23.1 DEFINITIONS

(a) For purposes of this Lease, the term “mortgage” shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust, security deeds, and conditional deeds. The term “mortgage” shall also include any instruments required in connection with a sale-leaseback transaction. The term “mortgagee” shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(b) For purposes of this Lease, the term “**Leasehold Mortgage**” means a conveyance of a security interest in this Lease and all of Lessee's interests in the Property (collectively referred to as “**Lessee's Leasehold Interests**”) to a lender (a “**Leasehold Mortgagee**”) or the conveyance of Lessee's Leasehold Interests to the Leasehold Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

(c) For purposes of this Lease, the terms “**Permitted Leasehold Mortgage**” and “**Permitted Leasehold Mortgagee**” shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in Section 2.23.2.

(d) “**Development Costs**” means costs incurred by Lessee for the development of the Property and construction of the Improvements to the extent set forth as “**Total Development Costs**” in the approved Project Budget, which shall be subject to adjustment following Completion (the “**Adjusted Project Budget**”) to reflect the final Development Costs set forth in the Cost Certification prepared and submitted to Landlord pursuant to the City Regulatory Agreement.

(e) “**Developer Equity**” means all sources of funds used by Lessee to pay Development Costs except any loan secured by a Permitted Leasehold Mortgage (each, a “**Permitted Leasehold Mortgage Loan**”) or any other loan of funds secured by a deed of trust or other security interest in the Property.

2.23.2 RIGHT TO ENCUMBER. At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord (which consent Landlord shall grant so long as the proposed Leasehold Mortgage satisfies all of the following conditions, which conditions shall apply to the Permitted Leasehold Mortgage securing the Construction Loan, the Permitted Leasehold Mortgage securing the initial Permanent Loan:

(a) The Leasehold Mortgage shall cover all of Lessee's interest in the Lease, the Property and the Improvements and shall cover no interest in any other real property other than Lessee's.

(b) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property.

(c) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Lessee (or a Leasehold

Mortgagee) delivers or causes to be delivered to Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent. In the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(d) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(e) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(i) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Landlord; or

(ii) any one or a combination of the following lending institutions authorized under applicable California or federal law to make mortgage loans and not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; or

(iii) any company engaged in the ordinary course of business as a lender with a net worth or assets of not less than \$50,000,000, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; an educational institution; a pension, retirement or welfare fund; a charity; or an endowment fund or foundation authorized to make loans in the State of California; or

(iv) any partner of Lessee's partnership

Landlord acknowledges that the identity and nature of lending institutions change over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph 2.23.2 shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained in this Lease to the contrary, Landlord expressly acknowledges that the holders of the Construction Loan and the Initial Permanent Loan are Qualified Lenders and Permitted Leasehold Mortgagees for all purposes of this Lease.

(f) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Except as otherwise set forth in this Lease, Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Lessee's grant of a Leasehold Mortgage. Notwithstanding any foreclosure of any Leasehold Mortgage, Lessee shall remain liable for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

(g) No extension, nor modification, change or amendment to a material financing term of a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension or material modification, change or amendment satisfies the applicable requirements of paragraphs (a) through (f), above.

2.23.3 REFINANCING LOAN.

(a) For purposes of this Section 2.23.3, the term “**Refinancing**” means the repayment of all or part of the Initial Permanent Loan, or any subsequent Permanent Loan and/or Developer Equity, using the proceeds of a Permitted Leasehold Mortgage Loan which shall be referred to as a “**Refinancing Loan**.”

(b) In addition to the requirements set forth in Section 2.23.2, the following shall apply to any Permitted Leasehold Mortgage that secures a Refinancing Loan: At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage for the purpose of securing a Refinancing Loan, upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which consent Landlord shall grant so long as the proposed Refinancing Loan satisfies all of the following conditions:

(i) the term of the proposed Refinancing Loan shall extend no longer than the Term of this Lease;

(ii) any subordination agreement to be entered into by and among the Landlord, Lessee and the maker of the Refinancing Loan shall contain such cure rights and other similar provisions as the Landlord may reasonably require;

(iii) no event of default shall be continuing under any of the City Loan Documents (as defined in the Loan Agreement) or any other loan secured by the Project; and

(iv) the proposed Refinancing Loan shall be made pursuant to an arm's length transaction with a maker unrelated to the Lessee on commercially available terms.

2.23.4 LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Lessee of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default pursuant to the terms of the subordination agreement between the Landlord and the Permitted Leasehold Mortgagee. In such event, Landlord shall be entitled to reimbursement by Lessee of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as additional rent (collectively, “Landlord's Cure Payments”), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring the Lessee's Leasehold Interests shall not be obligated to pay Landlord any of Landlord's Cure Payments. Notwithstanding any provision of this Lease to the contrary, this Section 2.23.4 shall be subject to and superseded by the provisions of any subordination agreement executed by Landlord and any Permitted Leasehold Mortgagee.

2.23.5 RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Lessee and/or Lessee's successors and assigns (including, but not limited to, any sublessee of Lessee) shall mortgage its interest in this Lease and the Lessee's Leasehold Interests, or any part or parts thereof as permitted by this Section 2.23, the following provisions shall apply:

(a) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease either by unilateral action of Landlord or Lessee, or by joint action of Landlord and Lessee without the prior consent in writing of any Permitted Leasehold Mortgagee.

(b) Right to Notice of Default. Landlord shall, upon serving Lessee with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(c) Right to Cure. Any Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Lessee.

(d) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Lessee, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Lessee was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph 2.23.5(b), above), shall both:

(i) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the relevant Permitted Leasehold Mortgage to commence, and thereafter to diligently pursue to completion, a cure of such default, including, without limitation, a foreclosure of the relevant Permitted Leasehold Mortgage; and

(ii) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by Lessee until such time as the leasehold shall be sold upon foreclosure pursuant to the relevant Permitted Leasehold Mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(e) Condition of Termination. Any right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon: (1) Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.23.5(b) above; (2) each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Lessee's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.23.5.(d), above; and (3) the terms of Section 2.23.7 below.

(f) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in paragraph (d) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(g) Loss Payable Endorsement. Landlord and Lessee agree that the name of the Permitted Leasehold Mortgage shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease, and any insurance proceeds are to be applied in the manner specified in the relevant Permitted Leasehold Mortgage.

(h) No Consent Required to Foreclosure. Notwithstanding anything contained in this Lease to the contrary, foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or any conveyance of the Lessee's Leasehold Interests hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Lessee hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(i) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Lessee shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of the relevant Permitted Leasehold Mortgage, and the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(j) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Lessee's Leasehold Interests, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall

be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(k) Further Protections. Landlord and Lessee shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.23 and allowing such Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the Term or rent or Option under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(l) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to a Permitted Leasehold Mortgagee, an agreement prepared by such Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Lessee, in form satisfactory to such Permitted Leasehold Mortgagee, among Landlord, Lessee and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

2.23.6 NOTICE. If Lessee and/or Lessee's successors and assigns shall mortgage its interest in this Lease or the Lessee's Leasehold Interests, or any part or parts thereof, Lessee shall send or cause to be sent to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee(s) and the pertinent recording data with respect to such Leasehold Mortgage(s).

2.23.7 NEW LEASE. Landlord agrees that in the event of termination of this Lease by reason of any default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or Lessee's property or any other reason whatsoever, Landlord if requested by any Permitted Leasehold Mortgagee will enter into a new lease of the Property, with the Permitted Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the Term, effective as of the date of such termination, subject to the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) The Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the Permitted Leasehold Mortgagee receives notice of the termination;

(b) The Permitted Leasehold Mortgagee shall perform and observe all covenants contained in the terminated Lease on Lessee's part to be performed after the date of the new Lease;

(c) The lessee under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Lessee had under the terminated Lease immediately prior to its termination; and

(d) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.23.7 shall enjoy the same priority in time as this Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(e) Any new lease made pursuant to this Section 2.23.7 shall be accompanied by a conveyance from Landlord to the new lessee of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(f) Nothing herein contained shall obligate or require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to this Section 2.23.7, nor to cure any default of Lessee referred to above.

(g) If a Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to evict, oust or remove the Lessee from the Property, but not any subtenant of Lessee actually occupying the Property, or any part thereof.

(h) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in this Section 2.23.7, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases, nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

2.23.8 LENDER'S LIABILITY. In the event any Permitted Leasehold Mortgagee becomes the Lessee under this Lease or becomes a lessee under any new lease obtained pursuant to Section 2.23.7(a) above, the Permitted Leasehold Mortgagee shall only be liable for the obligations of Lessee under this Lease or a new lease first accruing or arising after the time that the Permitted Leasehold Mortgagee first becomes lessee under this Lease or such new lease.

2.23.9 APPROVAL OF MODIFICATIONS. Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee as a condition of financing contemplated by the Loan Agreement and this Lease, and which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

2.23.10 CITY REGULATORY AGREEMENT. Notwithstanding anything to the contrary herein, Lessee (including, without limitation, any Permitted Leasehold Mortgagee under a new lease) shall at all times be bound by and comply with the City Regulatory Agreement.

2.24 RESTRICTION ON ENCUMBRANCE BY LANDLORD

2.24.1 Landlord shall not mortgage or otherwise encumber its interest in the Property (referred to as a “**Fee Mortgage**”) without the prior written consent of Lessee, which Lessee shall not unreasonably withhold, condition or delay. Any Fee Mortgage, including amendments thereto, shall be subordinated to this Lease and shall, in the event of a foreclosure of the Fee Mortgage, be obligated to recognize the rights of Lessee under this Lease, and the holder of any Fee Mortgage shall be obligated to execute, acknowledge and deliver to Lessee a statement confirming such subordination from time-to-time.

2.24.2 Prior to obtaining any loan secured by a Fee Mortgage, Landlord shall notify Lessee in writing (“**Landlord's Notice**”) and provide Lessee an opportunity to make the loan to Landlord, as provided in this Section 2.24.2. Landlord's Notice shall contain the following: (i) a statement that Landlord has obtained from a lender a bona fide statement of interest in making a Fee Mortgage loan to Landlord (or a comparable contingent commitment from a lender, underwriter or other entity relating to any proposed financing to be secured by a Fee Mortgage, as may be appropriate to the particular form of the proposed financing) ; (ii) the terms of the proposed Fee Mortgage loan (“**Proposed Terms**”); and (iii) a reasonable time period, not less than thirty (30) days after Landlord's Notice (the “**Offer Period**”), for Lessee to offer, in writing, to make the loan to Landlord. If, prior to the end of the Offer Period, Lessee submits to Landlord a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall not obtain the Fee Mortgage loan described in Landlord's Notice. In that event, subject to all requisite approvals by Landlord's governing body, Landlord shall have the right, but not the obligation, to accept Lessee's offer. If, prior to the end of the Offer Period, Lessee fails to submit a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall have the right to obtain the proposed Fee Mortgage loan.

2.24.3 THE PROVISIONS OF THIS LEASE DO NOT GIVE TO LESSEE OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF LESSEE.

2.25 QUIET ENJOYMENT

Absent an uncured default by Lessee, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Lessee in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgage.

2.26 GENERAL PROVISIONS

2.26.1 The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

2.26.2 All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be

sent by United States Mail, postage prepaid, to the address for each party set forth in Article 1 of this agreement. All notices shall be deemed to be served upon personal delivery or two (2) days after mailing in the manner required by this Section.

2.26.3 Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

2.26.4 The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

2.26.5 In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, floods, earthquakes, fires, casualties, Acts of God, epidemics, quarantine restrictions, governmental restrictions or priority, unusually severe weather, inability to secure necessary labor, materials or tools, acts of the other party, acts or failure to act of the City or any other public or governmental Landlord or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Times of performance under this Lease may also be extended in writing by mutual agreement of the parties.

2.26.6 If any action or proceeding is brought by either party against the other under this Lease, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any post-judgment action by either party, including without limitation efforts to enforce a judgment.

2.26.7 Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

2.26.8 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

2.26.9 This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in Santa Clara County, California.

2.26.10 Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto, or cause Landlord to be responsible in any way for the debts or obligations of Lessee, or any other party.

2.26.11 This Lease, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between Landlord and Lessee, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Lessee with respect to the premises, whether oral or written, are superseded by this Lease.

2.26.12 No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Lessee.

2.26.13 The provisions of this Lease shall be interpreted in a reasonable manner to effect the purpose and intent of the parties to this Lease.

2.26.14 Concurrently with the execution of this Lease, the Parties shall execute and record a Memorandum of Lease, substantially in the form attached to this Lease as Exhibit B.

2.26.15 As and when required by the California Tax Credit Allocation Committee, the Landlord and Lessee shall execute the then current form of the California Tax Credit Allocation Committee Lease Rider Agreement.

Executed in Santa Clara, California, as of the date first set forth above.

[Signatures appear on next page.]

IN WITNESS WHEREOF, Landlord and Lessee have signed this Lease as of the date and year first above written.

LANDLORD:

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
Brian Doyle, City Attorney

[Signatures continue on next page.]

LESSEE:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

Exhibit A

LEGAL DESCRIPTION

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

[to be inserted]

Exhibit B

MEMORANDUM OF LEASE

[ATTACHED]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

MEMORANDUM OF LEASE

This Memorandum of Lease (this “**Memorandum**”) is made as of [] 1, 2020, by and between the CITY OF SANTA CLARA (“**Landlord**”) and MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“**Lessee**”), who agree as follows:

1. Landlord hereby leases the real property described on Exhibit A attached hereto (“**Property**”) to Lessee and Lessee hereby accepts tenancy of the Property from Landlord for a term (the “**Term**”) commencing on the date that this Memorandum is recorded in the Official Records of the County of Santa Clara and shall continue for 65 years *[Term may be increased as determined by final underwriting and approval by City Housing Division]* after the issuance of the temporary certificate of occupancy for the Improvements (as defined therein), unless earlier terminated as provided in the Lease. Concurrently herewith, Landlord and Lessee have entered into that certain Lease Agreement (the “**Lease**”) with respect to the Property.
2. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.
3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.
4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.
5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the Landlord, at its offices located at 1500 Warburton Avenue, Santa Clara, California 95050.

Freebird

LESSEE:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

[Signatures must be notarized.]

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 _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

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 _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Exhibit A

LEGAL DESCRIPTION

That certain Real Property in the City of Santa Clara, County of Santa Clara, State of California,
described as follows:

Exhibit C

INSURANCE REQUIREMENTS

[Behind this Page.]