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

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS (Affordable Housing Restrictions for Rental Units) (this “Agreement”), dated for reference purposes as of [] 1, 2020, is made by and between MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“Developer”), and THE CITY OF SANTA CLARA, a California municipal corporation (“City”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties”. The City and the Developer agree as follows with reference to the following facts:

RECITALS

A. Developer holds the leasehold interest in the land legally described on Exhibit A attached hereto (“Property”), and fee interest in the structures and improvements located thereon or to be located thereon, including, without limitation, 65-units of rental housing to be constructed on the Property (together with equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities, the “Project”).

B. The City is providing a loan to Developer in the amount of \$5,000,000 (the “City Loan”) pursuant to that certain Loan Agreement between the City and the Developer of even date herewith (the “Loan Agreement”) and the City Loan Documents (such term and other capitalized terms not defined herein shall have the meanings given to them in the Loan Agreement).

C. Developer accepts responsibility for meeting the provision of sixty-four (64) affordable rental housing units plus one manager’s unit within the Project. The sixty- four (64) affordable rental housing units shall be provided in the Project according to the terms herein stated. The housing units shall be allocated as follows: (a) 16 units to be leased to 30% AMI Households who qualify as persons with developmental disabilities; (b) 10 units to be leased to 50% AMI

Households; (c) 13 units to be leased to 60% AMI Households; (d) 16 units to be leased to 80% AMI Households; (e) 9 units to be leased to 120% AMI Households; and (f) 1 unit as a manager's unit (the "Management Unit"). All Affordable Housing Units shall be made available at Below Market Rate Rents (as defined below).

D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing to households at the income levels pursuant to the Unit Allocation at Below Market Rate Monthly Rent, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

1. Definitions

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

"Affordable Housing Cost" shall mean a monthly rent paid by the household legally occupying a unit plus a reasonable Utility Allowance, if applicable, that does not exceed the following:

- (a) For a 30% AMI Household, the product of thirty percent (30%) times thirty percent (30%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a 50% AMI Household, the product of thirty percent (30%) times fifty percent (50%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (c) For a 60% AMI Household, the product of thirty percent (30%) times sixty percent (60%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (d) For an 80% AMI Household, the product of thirty percent (30%) times eighty percent (80%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (e) For a 120% AMI Household, the product of thirty percent (30%) times one hundred percent (100%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This

period shall be for the greater of (a) fifty-five (55) years from Conversion and (b) the full term of the Lease, as may be extended, restated or , as such term is defined in the Loan Agreement.

“Affordable Housing Unit(s)” shall mean each and all of the 64 dwelling units in the Project, allocated as provided in Exhibit B attached hereto and incorporated hereby, to be occupied or made available for occupancy exclusively to Income-Qualified Households; one unrestricted 2 bedroom unit may be used as a Manager Unit and is not an Affordable Housing Unit.

“AMI” shall mean the median family income figures and standards (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households; and (II) utilized by HCD pursuant to California Health and Safety Code Section 50093 as to 120% AMI Households.

“Annual Income” shall mean the annual income limits (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households; and (II) utilized by HCD as to 120% AMI Households.

“Below Market Rate” shall mean the provision of a dwelling unit at rent levels less than market rates.

“Below Market Rate Monthly Rent” shall mean, for purposes of this Agreement, the applicable Affordable Housing Cost less the Utility Allowance, if applicable.

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

“HCD” shall mean the California Department of Housing and Community Development.

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

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

- (a) 30% AMI Household of the Area Median Income adjusted for family size.
- (b) 50% AMI Household of the Area Median Income adjusted for family size.
- (c) 60% AMI Household of the Area Median Income adjusted for family size.
- (d) 80% AMI Household of the Area Median Income adjusted for family size.
- (e) 120% AMI Household of the Area Median Income adjusted for family size.

“Monitoring Fee” means a fee of One Hundred Dollars (\$100) per Unit (which shall be increased by three percent (3%) per annum on each June 30, commencing with the June 30 following the calendar year in which Conversion occurs) to be paid annually by Developer to the City in accordance herewith.

“TCAC” shall mean the California Tax Credit Allocation Committee.

“Unit(s)” shall mean all dwelling units in the Project.

“Unit Allocation” shall mean the allocation of the Units in the Project as provided in Exhibit B attached hereto and incorporated hereby.

“Utility Allowance” shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

2. Uses

- a. General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation, including the provision of services, pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 65 Units, of which 64 shall be Affordable Housing Units and 1 shall be an unrestricted two bedroom Manager’s Unit.
- b. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, during the Affordability Period, that all rental Units in the Project shall be rented or leased to or held available for rental or occupancy to households at the income levels as provided in the Unit Allocation.
- c. Notwithstanding anything to the contrary contained elsewhere in this Agreement, in the event of a loss or reduction of Section 8 rental subsidies, the maximum household income of all Affordable Housing Units shall be increased up to 60% of AMI, adjusted for household size appropriate to the unit, but only to the extent necessary for the Project to operate at a minimum debt service coverage ratio of 1.15, as reasonably determined by the City, and the maximum rent shall be the Affordable Rent for households at 60% of Area Median Income

(1) Units Generally.

- (a) The Units shall be occupied, rented and leased in accordance with the Unit Allocation.
- (b) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in the Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.
- (c) [16 of the Affordable Housing Units will be set aside for persons with developmental disabilities, as provided in Exhibit B.]

(2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge to or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Below Market Rate Monthly Rent applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to Below Market Rate Monthly Rent.
- (b) The Below Market Rate Monthly Rent for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by TCAC and HCD, as applicable. Upon written request, City shall notify the Developer of the applicable AMI and Annual Income based on number of bedrooms.
- (c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in AMI plus Five Percent (5%). In no case may Below Market Rate Monthly Rents for the Affordable Housing Units exceed the amount derived by the Below Market Rate Monthly Rent formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

(3) Income Qualification of Affordable Housing Unit Tenants

- (a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.
- (b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the applicable Annual Income. The Developer may certify initial income qualification using one of the following two source documentation methods:
 - (i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
 - (ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; income verification form from the Social Security Administration and/or the California Department of Social Services if the

applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.

- (c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the Household's income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.
- (d) Income limits, adjusted for household size, will be based off of the AMI for Santa Clara County, which is published periodically by TCAC and HCD, as applicable. Upon request, City shall notify the Developer of the applicable area median income limits. If at any time TCAC does not publish the appropriate levels for AMI and/or Annual Income, Developer shall utilize the equivalent standards published by HCD.

(4) Over-Income Tenants in Affordable Housing Units

- (a) If a Household of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household at the AMI level which such Household initially qualified (the "Initial AMI Level") for occupancy due to an increase in income but qualifies as an Income-Qualified Household at a higher AMI level, the Household may continue to occupy the Affordable Housing Unit and shall be treated as an Income-Qualified Household under such higher AMI level; provided, however, Developer shall rent the next available comparable unit within the Project (i.e., same number of bedrooms and bathrooms) as an Affordable Housing Unit to an Income-Qualified Household that qualifies as an Income-Qualified Household at the Initial AMI Level. If an occupant of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household due to an increase in income, the occupant may continue to occupy the former Affordable Housing Unit; provided, however, Developer may increase the rental rate for such former Affordable Housing Unit to 30% of the occupants' Annual Income and such occupant shall for compliance purposes hereunder be treated as an Income-Qualified Household under the highest AMI level provided in the Unit Allocation for that Unit type and the next available Unit of such Unit type shall be leased to an Income-Qualified Household at the Initial AMI Level to the extent necessary to comply with the Unit Allocation. Developer shall send written notice to the City with the address and bedroom/bathroom mix of any occupant that pays rent greater than the equivalent Affordable Rent for an Income-Qualified Household under this Agreement.

(5) Waiting List for Affordable Housing Units; Preferences

- (a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall

include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.

- (b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units based on a lottery, then chronologically (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.
- (c) Upon the adoption by the City Council of the City of Santa Clara of a City-preference policy for affordable housing rental units and upon written notice thereof from the City to Developer (the "Policy"), Developer's selection of tenants in the Project shall give preference to Income-Qualified Households, to the extent provided in the Policy, that either: (1) include at least one adult member who works in the City of Santa Clara, or (2) Income-Qualified Households that currently reside in the City of Santa Clara, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project. The foregoing provisions of this Section 2.c.(5)(c) shall not apply to any tenants subject to Project-base Section 8 vouchers, or to the extent prohibited under any financing for the Project previously approved by the City.
- (d) Notwithstanding the foregoing provisions of this Section 2.c.(5), with respect to any Affordable Housing Units which are subject to housing rental vouchers (including, but not limited to a project-based, sponsor-based or tenant-based U.S. Department of Housing and Urban Development Section 8 or Veterans Affairs Supportive Housing Vouchers) (as applicable, "Rental Vouchers"), Developer may use any waiting list or other tenant selection process or priority required under such Rental Vouchers.

(e) [To be updated for any County tenant selection requirements.]

(6) Lease Provisions

- (a) A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- (b) The lease may not contain any terms prohibited by applicable law.
- (c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.

- (d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
 - (e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.
 - (f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.
- (7) Initial Leasing, Marketing and Tenant Selection Procedures.
- (a) Not later than sixty (60) days prior to the commencement of marketing, Developer shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.
 - (b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations
 - (c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
 - (d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules,

regulations and ordinances, including without limitation, all applicable federal and state labor standards.

- (e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.
- (f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
 - (1) In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land”.
 - (2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased.”
 - (3) In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or

any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land.”

- (g) Notwithstanding anything to the contrary contained elsewhere in this Agreement, in the event of a foreclosure or deed in lieu of foreclosure under the [Construction Loan or Permanent Loan], or in the event of a loss or reduction of Section 8 Rental Subsidies, the maximum household income of all Affordable Housing Units restricted at 30% AMI and 50% AMI shall be increased up to 60% of Area Median Income, but only to the extent necessary for the Project to operate at a minimum debt service coverage ratio of 1.15, as reasonably determined by the City, and the maximum rent shall be the Affordable Housing Cost for 60% AMI Households (collectively, the “Affordability Adjustments”). With respect to loss or reductions in Section 8 Rental Subsidies only, the Affordability Adjustments shall continue only until Borrower has secured a substantially similar rental subsidy from the County of Santa Clara or other sources.

(h) [Consider float up to 60% AMI for units restricted below 60% if necessary for residual analysis/tax issues as determined by final underwriting and approval by City Housing Division.]

3. Monitoring/Annual Report

- (a) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- (b) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report (the “Annual Report”). The first Annual Report shall be due 1 year after leasing at the Project has commenced. The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.
- (c) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.
- (d) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):

- (1) Apartment Number or other unit designation.

- (2) Number of bedrooms.
- (3) Household Size.
- (4) Tenant Income (certified annually).
- (5) Tenant-Paid Rent.
- (e) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- (f) Commencing with Conversion, Developer shall pay City on an annual basis, due on the same date as the Annual Report, the Monitoring Fee, provided that the Monitoring Fee shall be reduced (but not below \$0) to the extent that Developer has actually paid a monitoring fee to the County of Santa Clara.
- (g) Developer shall obtain the prior written consent of the City with respect to the execution or selection of or changes to the Property Manager, the Management Agreement, and the Management Plan (as such terms are defined in the Loan Agreement) as provided in the Loan Agreement and otherwise within the reasonable discretion of the City.

4. Enforcement

The City of Santa Clara is deemed to be the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

Developer agrees that, if a breach is not cured within thirty (30) days after written notice by City is provided to Developer, or if such breach cannot be reasonably cured within the thirty

(30) day period and Developer has not commenced the curing of such Default, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to pay to the City the full amount of such excess to the City within ten (10) business days of City's written demand. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity, and shall not constitute a repayment of or payment on the City Loan.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of \$150 per month per Unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement constitutes a default.

- (a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (b) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- (c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (1) initiates corrective action within said period, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.
- (d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid.

These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third parties, technical problems with transportation or other events outside the Developer's control.

6. Indemnification

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

7. General Provisions

(a) City as Beneficiaries

- (1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- (2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or

suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

- (3) Upon the sale, conveyance or other transfer of the Property permitted under the Loan Agreement, and the assumption of the obligations hereunder by the transferee, Developer's liability for performance shall be terminated and Developer shall be released from liability from any obligation to be performed hereunder after the date of such sale, conveyance, or transfer.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a “hard” copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

If to the City:

City of Santa Clara
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attn: Division Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Attorney

If to the Developer:

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]

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

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.

(j) Dispute Resolution

- (1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.
- (2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.
- (3) The costs of mediation shall be borne by the parties equally.
- (4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

- (l) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Project. No lender taking title to the

Project through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of the Project by such lender. Any lender who has recorded a deed of trust or mortgage against the Project shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice. No lender who takes title to the Project through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project.

[Remainder of page left intentionally blank.]

Freebird

DEVELOPER:

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

The land situated in the County of Santa Clara, City of Santa Clara, State of California, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

[to be inserted]

Assessor's Parcel Number: 224-37-068

EXHIBIT B

UNIT ALLOCATION

	Affordable Housing Units					Manager's Unit
	Up to 30% AMI with developme ntal disabilities	50% AMI	60% AMI	80% AMI	120% AMI	
Studio	[]	[]	[]	[]	[]	0
1 bedroom	[]	[]	[]	[]	[]	0
2 bedrooms	[]	[]	[]	[]	[]	1
3 bedrooms	[]	[]	[]	[]	[]	0
Total	16	10	13	19	9	1