

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “**Indemnity**”), dated as of [] 1, 202[], is made by Monroe Street Housing Partners, L.P., a California limited partnership (the “**Borrower**”), in favor of THE CITY OF SANTA CLARA, a California municipal corporation (the “**City**”).

WITNESSETH

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Ground Lease pursuant to which City is leasing to Borrower an approximately 2.5 acre parcel (the “**Property**”) described on Exhibit A hereto for the construction and operation of 65 unit senior affordable housing project (the “**Project**”).

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Loan Agreement (the “**Loan Agreement**”), pursuant to which the City agreed to make a loan (the “**City Loan**”) to Borrower for the purposes of providing financial assistance for the construction of the Project. The City Loan is evidenced by that certain Promissory Note in the original principal amount of Five Million Dollars (\$5,000,000) dated as of even date herewith made by Borrower in favor of City (the “**City Note**”) and secured by that certain Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Chicago Title Company is the Trustee, and City is the Beneficiary, dated as of the date hereof (the “**City Deed of Trust**”) and encumbering the Project. The Loan Agreement, the City Note, the City Deed of Trust and the other documents and instruments defined in the Loan Agreement as the “City Loan Documents” are referred to herein collectively as the “**City Loan Documents**”; and

WHEREAS, Borrower has agreed to execute and deliver to the City this Indemnity to induce the City to make the City Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the City as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “**Hazardous Materials**” or “**Hazardous Substances**” shall include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms

used in this Indemnity and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials (“**Environmental Laws**”), to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or the routine operation and maintenance of the Project and the Property or in the ordinary course of the tenants’ residencies.

(c) Borrower further agrees that Borrower shall not release or dispose of any Hazardous Materials at the Property except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or routine operation and maintenance of the Project and Property or in the ordinary course of the tenants’ residencies without the express written approval of the City and that any such release or disposal shall be effected in strict compliance with all applicable Environmental Laws.

(d) The City shall have the right, at any time, to conduct an environmental audit of the Property at the City’s expense, unless Hazardous Materials are found in violation of Environmental Laws, then at Borrower’s sole cost and expense, and Borrower shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the City reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior written notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower shall give the City and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials in violation of Environmental Laws.

(e) Borrower shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material (collectively, “**Asbestos**”).

(f) Borrower shall immediately advise the City in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable Environmental Law, (B) could reasonably be anticipated to cause the Property

to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any Environmental Law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity.

Borrower shall indemnify, protect, and hold the City harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "**Obligations**") which may at any time be imposed upon, incurred by or asserted or awarded against the City and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the City of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower shall be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations, any judicial proceedings brought by the City against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon shall be sought or obtained by the City against Borrower, or its officers, directors, agents, attorneys, servants or employees.

2.3 Exceptions to Non-Recourse Liability.

Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

- (a) The City may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and
- (b) The City may recover personally from any person or entity:
 - (1) any damages, costs and expenses incurred by the City as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials (other than Preexisting Hazardous Materials) by such person or entity or by others; provided, however, that neither Borrower nor any officer, director, agent, attorney, servant or employee of Borrower shall have

any personal liability if the act or omission complained of was performed in good faith and was not reckless, wanton, intentional or grossly negligent;

(2) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any general partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(3) any damages, costs and expenses incurred by City as a result of any misappropriation of City Loan proceeds for the construction of the Project, as described in the Loan Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds; and

(4) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations.

Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the City Loan Documents or affecting any of the rights of the City with respect thereto. The obligations of Borrower hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the City Loan Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the City Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the City Loan Documents;

(c) Any extension of the maturity of the City Loan or any waiver of, or consent to any departure from, any provision contained in any of the City Loan Documents;

(d) Any exculpatory provision in any of the City Loan Documents limiting the City's recourse to property encumbered by the Deed of Trust securing the City Loan, or to any other security, or limiting the City's rights to a deficiency judgment against Borrower;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the City Loan, or any release, amendment, waiver of, or consent to any departure from any provision of any guarantee given in respect of the City Loan;

(f) The insolvency or bankruptcy of Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the City Loan; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, or any other indemnitor or guarantor with respect to the City Loan or any or all of the Obligations.

3.2 Continuation.

This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the City Loan or the release or other extinguishment of the City Deed of Trust, or any other security for the City Loan); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though such payment had not been made.

3.3 Termination.

Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the City Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

(a) The City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Environmental Laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(c) Notice of any action taken by the City, Borrower, or any other interested party under any City Loan Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which,

but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(e) To the extent permitted by law, the right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the City exhaust any right or take any action against Borrower or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of City, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Borrower or any other right of Borrower to proceed against Borrower.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight delivery service to the address set forth in the first paragraph of this Indemnity, above, or given by facsimile to the facsimile numbers stated below, with confirmations mailed by certified mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Division Manager

In the case of Borrower: 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]

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the City at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Borrower and the City, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, shall be effective unless it is in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the City to exercise, and no delay in exercising, any right hereunder or under any other City Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the City provided herein and in the other City Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the City under any City Loan Document against any party thereto are not conditional or contingent on any attempt by the City to exercise any of its rights under any other City Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the City hereunder, to the benefit of the City, its respective directors, officers, employees, and agents, any successors to the City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the City's rights and remedies under the City Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the City may, subject to, and in accordance with, the provisions of the City Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other City Loan Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the City herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the City.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Santa Clara County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

[Signatures begin on following page.]

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

BORROWER:

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 Zimble, Manager

EXHIBIT A

LEGAL DESCRIPTION

A leasehold estate in that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[To be inserted.]