

**PROMISSORY NOTE**  
(this “Note”)

\$5,200,000

Santa Clara, California  
[ ] 1, 202[ ]

FOR VALUE RECEIVED, **MONROE STREET HOUSING PARTNERS, L.P.**, a California limited partnership (“**Borrower**”), hereby promises to pay to the CITY OF SANTA CLARA (“**City**”), a public body, corporate and politic, or order, a principal amount of \$5,200,000 (the “**Seller Loan**”). The Borrower shall pay interest at the rate, in the amount and at the time hereinafter provided.

Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement of even date herewith between City and Borrower with respect to a loan in the principal amount of \$6,500,000 (the “**City Loan Agreement**”). In addition, the following terms shall have the following meanings:

“**Annual Financial Statement**” shall mean the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower’s expense, by an independent certified public accountant reasonably acceptable to the City, which shall form the basis for determining the Residual Receipts.

“**City’s Proportionate Share**” shall mean the City’s pro-rata share of the total original outstanding principal amount due under the following approved loans, which is [ ]%, so long as such loans are outstanding at the time of determination of City’s Proportionate Share: (a) Seller Loan: \$5,200,000; (b) County Loan: \$3,200,000; (c) City Loan: \$6,500,000; (d) [HCD loan, etc.].

“**Operating Expenses**” shall mean all reasonable and actual costs and expenses of operating, managing and maintaining the Project including without limitation: *[Fee amount will tie to permitted fees under other soft loans/HCD; final terms to be determined and approved by City Housing Division]*

1. debt service, reserves and other payments currently due or payable on a non-optional basis on any Senior Loan, the Monitoring Fee and any administrative fee payable pursuant to the County.
2. payments for supportive services to Project residents, including without limitation the salary of on-site service coordinators and supervision of such service staff and any other costs related to any services required by any regulatory agreement or similar document or as approved by the City;
3. payments for property management staffing, including without limitation the salary of on-site property managers and supervision of such managers and any other costs related to any property management function required by any regulatory agreement or similar document or as approved by the City;

4. Property management, service management, and accounting and administration fees, and reimbursements in amounts in accordance with industry standards for similar developments, which shall not include tax credit shortfall payments or similar payments or indemnities in favor of the limited partner(s) of Borrower;
5. deposits to operating, replacement reserve, or any other reserve accounts which are either (i) commercially reasonable, or (ii) required by any Senior Lender or as required under the Limited Partnership Agreement;
6. costs of restoring the Project after damage, destruction or condemnation;
7. Project organizational costs (e.g., annual franchise tax payments) and direct costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business;
8. any extraordinary costs or expenses approved by City;
9. maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others, and costs of restoring the Project after damage, destruction or condemnation;
10. Project real estate taxes (if property tax welfare exemption become ineligible) and other taxes, assessments and impositions that are not exempt under the welfare exemption;
11. Payment of any previously unpaid portion of the Developer Fee for the Project;
12. general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other;
13. current and accrued partnership management fee with annual earnings in the amount of \$[ ] increasing by [ ]% annually, and current and accrued limited partner investor services fee with annual earnings in the amount of \$[ ] increasing by [ ]% annually, beginning the first calendar year the Project receives rental income; repayment of any limited partner loans and general partner operating deficit loans pursuant to the Limited Partnership Agreement, any advances by partners required under the Limited Partnership Agreement, if applicable, of Borrower and any fees to partners required under the Partnership Agreement; tax credit adjustor payments, taxes owed on taxable income allocated to the limited partner, replenishing of the Operating Reserve as required pursuant to the Limited Partnership Agreement;

14. Tenant resident services in the annual amount of \$[ ] and increasing by no more than [ ]% each calendar year, or as otherwise amended in writing;
15. utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity; and
16. Premiums for property damage and liability insurance.

**“Residual Receipts”** shall mean (a) the Revenue minus (b) the Operating Expenses. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the City.

**“Revenue”** shall mean all income derived from the Project (excluding loan proceeds, insurance proceeds (except those for loss of business), capital contributions, tenant security deposits, and any interest earned on said deposit, and includes, without limitation:

1. All rents (including rent on commercial or common space within the Project) and rent subsidies, if any;
2. interest on reserves, unless such interest remains in the applicable reserve account;
3. receipts from laundry, parking, or other services for which a fee is charged; and
4. insurance proceeds or condemnation awards actually received by Borrower after casualty to or condemnation of the Project; provided, however, Borrower shall not be deemed to have “received” (nor shall Operating Revenues include) all or any portion of insurance proceeds or condemnation award that is applied by a senior lender of Sources of Funding towards payment of costs and expenses or in payment of outstanding principal, interest, and/or charges under the senior lender’s loan or deed of trust securing the loan.

**“Soft Lenders’ Share of Residual Receipts”** is defined as fifty percent (50%) of Residual Receipts.

**“Term”** of this Note shall mean fifty-five (55) years from Conversion.

1. This Note evidences the obligation of the Borrower to the City for the repayment of the Seller Loan. None of the funds provided pursuant to the Seller Loan were funded directly or indirectly with any obligation the interest on which is exempt from tax under Section 103 of the Internal Revenue Code of 1986, as amended, or pursuant to any United States government federal source.

2. This Note is payable at the principal office of the City, 1500 Warburton Avenue, Santa Clara, California 95050, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

3. This Note shall be secured by the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (the “**Seller Deed of Trust**”) and the Assignment of Rents and Leases (the “**Seller Assignment of Rents and Leases**”; together with this Note and the Seller Deed of Trust, the “**Seller Loan Documents**”) made by Borrower in favor of City and recorded against the Project.

4. This Note shall not bear interest. Upon and during the occurrence of an event of default (after the expiration of all applicable notice, cure and grace periods) under the Seller Loan Documents, the monetary obligations under the Seller Loan Documents shall bear interest at the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

5. Except as described in Sections 6 and 7 hereof, no payments shall be due and payable under this Note.

6. The entire unpaid principal balance of this Note and any accrued but unpaid interest shall be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

(a) if the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in the Seller Loan Documents or the City Loan Agreement; or

(b) if there is an event of default by the Borrower under the terms of this Note or any of the Seller Loan Documents, the Lease, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

7. Prior to the expiration of the Term hereof, Borrower shall be obligated to repay the Seller Loan as follows:

(a) Beginning on the date of Conversion, principal and/or interest will only be payable to the extent of available Residual Receipts. For any year that it is determined that there are available Residual Receipts, the City will be paid an amount equal to the City’s Proportionate Share of Soft Lender’s Share of Residual Receipts for such fiscal year. No later than December 1st of each year, Borrower will provide to the City a projected budget for the following calendar year, which shall include an estimate of Residual Receipts. No later than April 1st of each year, Borrower will provide to the City Borrower’s calculation of Residual Receipts for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation an independent audit prepared for the Project by a certified public accountant. Notwithstanding the preceding sentence, the Borrower shall have an additional 30 days, until May 1st, to provide the City all required materials for the Residual Receipts calculation for the first such required submittal. Commencing on June 1st of the first year for which there are available Residual Receipts, and each anniversary thereafter until the Due Date, Borrower will make annual payments to City in an amount equal to City’s Proportionate Share of Soft Lenders’ Share of Residual Receipts of the Project for the calendar year most recently ended. While these dates are absolute, City staff in their sole discretion may adjust these dates annually on a case by

case basis provided the Borrower has submitted a written request prior to the April 1st deadline and City staff has provided a one-time waiver in writing prior to June 1st.

(b) All payments to City shall be applied first to the payment of all expenses, charges, costs and fees incurred by or payable to City by Borrower pursuant to the terms of the Seller Loan Documents (in such order and manner as City, in its sole discretion, may elect), then to the payment of all interest accrued to the date of such payment, and then to reduce the principal amount owed. All prepayment of principal on this Note shall be applied to the most remote principal installment or installments until paid. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of a default under the City Deed of Trust (after expiration of all applicable notice and cure periods), all amounts received by City from any party shall be applied in such order as City, in its sole discretion, may elect.

8. All payments to the City shall be applied first to interest, then to reduce the principal amount owed.

9. Prior to the repayment in full of the Seller Loan, the Borrower shall not assign or attempt to assign the Seller Loan Documents or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, except as permitted in the Seller Loan Documents.

10. Subject to the provisions and limitations of this Section 10, the obligation to repay the Seller Loan is a nonrecourse obligation of the Borrower. Neither Borrower nor any general partner of Borrower shall have any personal liability for repayment of the Seller Loan, except as provided in this Section 10. The sole recourse of City against Borrower or any general partner shall be the exercise of its rights against the Property and any related security for the Seller Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note or any of the Seller Loan Documents; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair this Note or any of the Seller Loan Documents; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing this Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by this Note or any of the Seller Loan Documents. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of an event of default after expiration of all applicable cure period, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the Property after the occurrence of such event of default after expiration of all applicable cure periods, which rentals, other revenues, or other payments or

proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

(A) 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;

(B) any damages, costs and expenses incurred by City as a result of any misappropriation of rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds by Borrower or any of its partners;

(C) any and all amounts owing by Developer pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and

(D) all court costs and reasonable 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).

11. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, any of the Seller Loan Documents, or any term or provision of either thereof.

12. Upon any event of default under the terms of this Note or any of the Seller Loan Documents, or any deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

13. (a) Subject to the extensions of time set forth in Section 14, and subject to the further provisions of this Section 14, failure or delay by Borrower to perform any material term or provision of this Note or any of the Seller Loan Documents, constitutes a default under this Note.

(b) City shall give written notice of default to Borrower, specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by 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 City in asserting any of its rights and remedies shall not deprive City of its right to institute and

maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of this Note or any of the Seller Loan Documents, prior to exercising any remedies hereunder or thereunder City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous written notice of such default. Borrower shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by City under this Note and/or the Seller Loan Documents. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of any of the Seller Loan Documents, prior to exercising any remedies hereunder or thereunder, City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous 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, Borrower shall have such period to effect a cure prior to exercise of remedies by the City under the Seller Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City.

(f) If Borrower fails to take corrective action or to cure the default within a reasonable time, City shall give Borrower and each of the general and limited partners of Borrower's partnership written notice thereof, whereupon the limited partner, subject to the terms of the Borrower's partnership agreement, 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. The City agrees to accept cures tendered by any Senior Lender or the limited partner within the time period provided herein. Additionally, in the event the Senior Lender or limited partner 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 the Borrower or its general partner, City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or limited partner is so precluded from acting, not to exceed ninety (90) days, provided such Senior Lender and limited partner are otherwise in compliance with the foregoing provisions. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default 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 by Borrower to the address set forth in the

Loan Agreement; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof Notices to the limited partner shall be sent to the following address:

[Investor Limited Partner]

14. Notwithstanding specific provisions of this Note, Borrower shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the City or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) 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 Borrower is sent to the City within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Borrower delivers to the City written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the City and Borrower.

15. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

16. The City Deed of Trust securing this Note and all other Seller Loan Documents have been made subordinate and junior to the Senior Loans as provided in the Seller Loan Documents.

17. City agrees that the lien of the City Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event of default under this Note and the City Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys’ fees incurred by City as a result of an event of default by Borrower,



and any amounts paid by City to cure any default under the Extended Use Agreement shall be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

18. In any approval, consent or other determination by City required under this Note or any of the other Seller Loan Documents, City shall act reasonably and in good faith.

19. Borrower shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty or premium.

20. Notices hereunder shall be given as provided in the City Loan Agreement.

*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year 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