



## SPECIAL MEETING AGENDA

**Date:** 4/3/2023  
**Time:** 6:30 p.m.  
**Location:** [Zoom.us/join](https://zoom.us/join) – ID# 895 2840 6631 and  
City Hall Downtown Conference Room, 1st Floor  
701 Laurel St., Menlo Park, CA 94025

Members of the public can listen to the meeting and participate using the following methods.

### How to participate in the meeting

- Access the meeting, in-person, at the Downtown Conference Room
- Access the meeting real-time online at:  
[Zoom.us/join](https://zoom.us/join) –Meeting ID# 895 2840 6631
- Access the meeting real-time via telephone at:  
(669) 900-6833  
Meeting ID# 895 2840 6631  
Press \*9 to raise hand to speak

Subject to Change: The format of this meeting may be altered or the meeting may be cancelled. You may check on the status of the meeting by visiting the city website [menlopark.gov](https://menlopark.gov). The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information ([menlopark.gov/agendas](https://menlopark.gov/agendas)).

### Special Session

#### A. Call To Order

#### B. Roll Call

#### C. Regular Business

- C1. Approve minutes for the Housing Commission regular meeting on February 1, 2023 ([Attachment](#))  
Not a California Environmental Quality Act (CEQA) project.
- C2. Review and recommendation of two revised below market rate housing agreements for previously approved projects located at 506-558 Santa Cruz Avenue/1125 Merrill Street and 1162-1170 El Camino Real ([Staff Report #23-002-HC](#))  
Not a CEQA project.
- C3. Establish an ad hoc subcommittee for Community Outreach  
Not a CEQA project

#### D. Reports and Announcements

- D1. Commissioner updates  
Not a CEQA project.

D2. Future agenda items  
Not a CEQA project.

D3. Staff updates and announcements  
Not a CEQA project.

## **E. Adjournment**

At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the right to address the Commission on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or prior to, the public hearing.

Any writing that is distributed to a majority of the Commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at [jaherren@menlopark.gov](mailto:jaherren@menlopark.gov). Persons with disabilities, who require auxiliary aids or services in attending or participating in Commission meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Cal. Gov. Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the city website at [menlopark.gov/agendas](http://menlopark.gov/agendas) and can receive notification of agenda postings by subscribing at [menlopark.gov/subscribe](http://menlopark.gov/subscribe). Agendas and staff reports may also be obtained by contacting the City Clerk at 650-330-6620. (Posted: 3/31/2023)



REGULAR MEETING MINUTES – DRAFT

**Date:** 2/1/2023  
**Time:** 6:30 p.m.  
**Location:** Teleconference and  
City Hall Downtown Conference Room, 1st Floor  
701 Laurel St., Menlo Park, CA 94025

**Regular Session**

**A. Call To Order**

Chair Bigelow called the meeting to order at 6:40 p.m.

**B. Roll Call**

**Present:** Bigelow, Leitch, Campos, Merriman, Walker  
**Absent:** Pimentel, Nguyen  
**Staff:** Interim Housing Manager Eren Romero, Management Analyst Adam Patterson,  
Associate Planner Matt Pruter

**C. Public Comment**

- Pam D. Jones spoke in support of the Housing Commission's work and the work on the adoption of the Housing Element Update.

**D. Regular Business**

D1. Approve minutes for the Housing Commission regular meeting on December 7, 2022 (Attachment)

**ACTION:** Motion and second (Campos/ Walker), to approve the minutes for the Housing Commission regular meeting on December 7, 2023, passed 5-0 (Pimentel and Nguyen absent).

D2. Recommend approval to the Planning Commission for payment of the Below Market Rate Housing In-lieu Fee for 4055 Bohannon Drive (Staff Report #23-001-HC)

Associate Planner Matt Pruter introduced the item.

The Commission received clarification on the type of development, in-lieu fee and study, and project pipeline.

- Pam D. Jones clarified amenities near the development site.

The Commission requested that staff reports be written for a broader audience.

**ACTION:** Motion and second (Merriman/ Campos), to recommend approval to the Planning Commission for payment of the Below Market Rate Housing In-lieu Fee for 4055 Bohannon Drive, passed 5-0 (Pimentel and Nguyen absent).

**D3. Discussion on work plan (Attachment)**

The Commission received clarification regarding the work plan timeframe, types of community engagement, their role in community engagement, upcoming community engagement events, and staffing and staff priorities.

- Pam D. Jones spoke in support of engaging the community on tenant rights, Environmental Justice and Safety elements, and language justice.

The Commission discussed priorities based on the adopted work plan timeline, partnership opportunities, community engagement strategies, tenant protections, below market rate (BMR) rental recertification issues, and next steps.

The Commission requested that staff pull policies for discussion at the next meeting.

**E. Reports and Announcements**

**E1. Commissioner updates**

- Commissioner Campos reported out on upcoming community engagement events.
- Commissioner Merriman reported out on events in Half Moon Bay.

**E2. Future agenda items**

None.

**E3. Staff updates and announcements**

Staff reported on the Housing Element Update adoption, upcoming Environmental Justice and Safety element meetings, housing staff recruitments, notice of funding availability proposal issuance and responses, and upcoming new housing rental opportunities.

**F. Adjournment**

Chair Bigelow adjourned the meeting at 7:47 p.m.

Adam Patterson, Management Analyst II



## STAFF REPORT

**City Council**

**Meeting Date:**

**4/3/2023**

**Staff Report Number:**

**23-002-HC**

**Regular Business:**

**Review and recommendation of two revised below market rate housing agreements for previously approved projects located at 506-558 Santa Cruz Avenue/1125 Merrill Street and 1162-1170 El Camino Real**

### Recommendation

Staff recommends that the Housing Commission review and recommend approval of two revised below market rate (BMR) housing agreements for previously approved projects located at 506-558 Santa Cruz Avenue/1125 Merrill Street and 1162 El Camino Real, included as Attachments A and B.

### Policy Issues

Each below market rate housing agreement is considered individually on a project-by-project basis. The Housing Commission should consider whether the proposal would be in compliance with the BMR Housing Ordinance and the BMR Housing Guidelines.

### Background

#### 506 – 558 Santa Cruz Avenue/1125 Merrill Street

On May 14, 2018, the Planning Commission unanimously approved three separate, but coordinated, mixed-use development projects located on contiguous properties at 506-540 Santa Cruz Avenue, 556-558 Santa Cruz Avenue, and 1125 Merrill Street, commonly referred to as the 506-556 Santa Cruz Avenue/1125 Merrill Street project, in the El Camino Real/Downtown Specific Plan Area ("Santa Cruz Project"). The Santa Cruz Project components for the three developments are summarized below in Table 1. For reference, the May 14, 2018 Planning Commission staff report, including the plans for the Santa Cruz Project, are included as Attachment C.

**Table 1: 506-556 Santa Cruz Avenue/1125 Merrill Street Project Summary**

Address	Residential units	Retail square footage	Non-medical office square footage
506-540 Santa Cruz Avenue	3	3,567	10,422
556-558 Santa Cruz Avenue	4	1,050	7,438
1125 Merrill Street	2	0	4,366
<b>TOTAL</b>	<b>9</b>	<b>4,617</b>	<b>22,226</b>

As part of the Santa Cruz Project entitlements, the Planning Commission approved a BMR agreement (“Original Santa Cruz BMR Agreement”) that comprehensively considered the three developments. During the project review, the applicant had requested the option to provide off-site BMR units because providing on-site BMR units raised financial feasibility and operational challenges. Although only ten (10) percent of the total number of units in the Santa Cruz Project, or 0.9 units, were required, the applicant proposed to provide two (2) units off-site to compensate the City for the delay in providing the units if the applicant selected that option.

The Original Santa Cruz BMR Agreement (Attachment D) provides that before the first residential unit in the Santa Cruz Project received its certificate of occupancy, the applicant would opt for one of the following: 1) to designate one on-site unit as a BMR unit, 2) enter into and record a BMR Agreement requiring the applicant to provide two off-site BMR units at a future residential project site (to be developed by an entity affiliated with the applicant) located at 1162-1170 El Camino Real (“1162 ECR Project”), or 3) pay an in-lieu fee for two (2) BMR units. For option #2, the Original Santa Cruz BMR Agreement included a provision that the off-site BMR units must be ready for occupancy within two years of receipt of the certificate of occupancy for the last residential unit at the Santa Cruz Project or pay a residential in-lieu fee for the two units to help minimize significant delays in the fulfillment of the BMR obligation.

The Santa Cruz Project has been constructed and the last residential unit received a certificate of occupancy on June 17, 2021. The development includes commercial tenants such as Philz Coffee, Little Sky Bakery, Coldwell Banker Realty and other office uses. To comply with the Original Santa Cruz BMR Agreement, the applicant must provide the two off-site units at 1162 El Camino Real or conduct a residential in-lieu analysis and pay the fee by June 17, 2023. The parties understood that off-site units would be provided but did not record the BMR Agreement for the 1162 ECR Project at that time of certificate of occupancy for the Santa Cruz Project.

#### 1162 El Camino Real

On February 22, 2021, the Planning Commission unanimously approved the 1162 ECR Project, a nine-unit residential development located at 1162 – 1170 El Camino Real. For reference, the Planning Commission staff report, including the project plans, are included as Attachment E. As part of the project entitlements, a BMR agreement was approved for three BMR units, including one BMR unit for the 1162 ECR Project to comply with the City’s BMR Ordinance and the two offsite BMR units from the Santa Cruz Project. Table 2 includes a summary of the approved BMR units and the locations are shown in the approved BMR Agreement included in Attachment E.

Table 2: BMR unit summary at 1162 El Camino Real		
Unit type	Household income	Quantity
Studio	Very-low income	1
One bedroom, one bathroom	Low-income	1
Two bedroom, two bathroom	Low-income	1

The previously existing buildings at the 1162 ECR Project site have been demolished and a building permit for the development has been submitted for review, but has not been issued.

#### **Analysis**

The applicant for the Santa Cruz Project and its affiliate developer (the applicant for the 1162 ECR Project) are requesting to extend the timeline to deliver the three BMR units at the 1162 El Camino Real project

given the pending June 2023 deadline to either deliver the off-site units or pay the residential in-lieu fee, and adapt the agreements to conform to the present facts. Staff is proposing two (2) agreements, one for each project. The new BMR agreement for the Santa Cruz Project is referred to as the “Santa Cruz BMR Agreement” and included as Attachment A and the BMR agreement for the 1162 ECR Project is referred to as the 1162 ECR BMR Agreement B.

The key components of the agreements include:

- Transfer the Santa Cruz Project obligation to provide two off-site BMR units to the 1162 ECR Project and set a deadline of two (2) years from the effective date of the 1162 ECR BMR Agreement for providing those off-site BMR units. If that deadline is not met, the applicant for the 1162 ECR Project must pay the residential in-lieu fee.
- The two year deadline could be extended by up to one year if the City Manager or their designee determines that the Owner is diligently pursuing construction of the two Santa Cruz BMR units.
- Record a new Santa Cruz Project BMR Agreement that supersedes the Original Santa Cruz BMR Agreement, releases the Santa Cruz Project of its BMR obligations because no BMR units are located there, and states that the Santa Cruz Project’s BMR obligations will be satisfied under the 1162 ECR BMR Agreement.
- Require the 1162 ECR BMR Agreement to be executed and recorded within 30 days of action by the Planning Commission. The Santa Cruz BMR Agreement is required to be recorded within 10 business days of the recording of the 1162 BMR agreement.
- Update the methodology for calculating the residential in-lieu fee for consistency with the current BMR Guidelines.
- Establish milestones for initiating the in-lieu fee analysis in order to be completed before the end of the two-year time period.
- No changes to the number, size or household income category from the original project approvals.

Staff is recommending that the Housing Commission recommend approval of the two revised BMR agreements for the Santa Cruz Project and 1162 ECR Project in order to extend the timeline for delivery of the two BMR units for the Santa Cruz Project. This extension would preserve the ability to incorporate the two off-site BMR units from the Santa Cruz Project into the future 1162 ECR Project rather than require the payment of the residential in-lieu fee, which would be deposited into the City’s BMR fund, at this time. While the BMR funds are used to assist with future production and preservation of affordable housing units, the construction of affordable housing units (versus payment of an in-lieu) is often preferred when there is a known development project. The development of new affordable housing units would also help meet the City’s 2023-2031 regional housing needs allocation (RHNA) requirement. In the absence of development at the 1162 ECR Project site, the applicant would be obligated to pay the in-lieu fee for the Santa Cruz Project based upon an analysis performed between 14-18 months of the effective date of the agreement. The additional units at the 1162 ECR Project site would provide much needed affordable units in a desirable location near the Downtown and El Camino Real corridor and in close proximity to a transit station. No other aspects of the development projects are proposed to change.

### **Impact on City Resources**

The project applicant is required to pay fees based on the City’s Master Fee Schedule to fully cover the cost of staff time spent on the review of the project.

## Environmental Review

The projects were previously reviewed for conformance with the Specific Plan EIR and found that the proposed projects would not result in greater impacts than were identified in the Specific Plan EIR. The change in the BMR agreements would not create any new impacts not already considered.

## Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

## Attachments

- A. Proposed Santa Cruz BMR Agreement
- B. Proposed 1162 El Camino Real BMR Agreement
- C. Hyperlink: Planning Commission staff report 506-556 Santa Cruz Avenue/1125 Merrill Street:  
[https://www.menlopark.org/DocumentCenter/View/17518/F5---1125-Merrill\\_506-SC\\_556-SC?bidId=](https://www.menlopark.org/DocumentCenter/View/17518/F5---1125-Merrill_506-SC_556-SC?bidId=)
- D. Recorded Santa Cruz Avenue and Merrill Street Project Street BMR Agreement
- E. Hyperlink: Planning Commission staff report 1162 El Camino Real:  
[https://www.menlopark.org/DocumentCenter/View/27406/F3\\_1162-ECR-Staff-Report?bidId=](https://www.menlopark.org/DocumentCenter/View/27406/F3_1162-ECR-Staff-Report?bidId=)

Report prepared by:

Deanna Chow, Assistant Community Development Director

Report reviewed by:

Eren Romero, Interim Housing Manager

Nira Doherty, City Attorney



This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025

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**BELOW MARKET RATE RENTAL HOUSING AGREEMENT  
AND  
RESCISSION OF RESTRICTIVE COVENANTS**

**THIS BELOW MARKET RATE RENTAL HOUSING AGREEMENT AND RESCISSION OF RESTRICTIVE COVENANTS (“Agreement”)** is entered into as of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and between the **CITY OF MENLO PARK**, a California municipal corporation (“**City**”), and 500 SC Partners, LLC, a California limited liability company (“**500 SC**”), 556 SC Partners, LLC, a California limited liability company (“**556 SC**”), and Merrill Street Investors LLC, a California limited liability company (“**Merrill**”, and together with 500 SC and 556 SC collectively, “**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

**RECITALS**

A. 556 SC is the owner of that certain parcel of real property, having a current address at 556-558 Santa Cruz Avenue, Menlo Park, CA. Merrill is the owner of that certain parcel of real property, having a current address at 1125 Merrill Street, Menlo Park, CA. 500 SC has a long-term ground lease of that certain parcel of real property having a current address at 506-540 Santa Cruz Avenue, Menlo Park, CA (collectively, the “**Property**”), as more particularly described in Exhibit A attached hereto.

B. Following a duly noticed hearing on May 14, 2018, the City’s Planning Commission approved the demolition of existing commercial buildings on the Property and construction of three (3) non-medical office and residential mixed-use buildings with separate retail and café spaces, underground parking and associated site improvements (the “**Project**”), subject to certain terms and conditions (the “**Project Approvals**”). In relevant part, the Project Approvals permit the development of nine (9) residential units on the Property. The portion of the Property improved with residential units is hereinafter the “**Residential Portion**”.

C. The Project Approvals require the Owner to comply with Chapter 16.96 of the City’s Municipal Code (“**BMR Ordinance**”) and with the Below Market Rate Housing Program Guidelines (“**Guidelines**”) adopted by the City Council to implement the BMR Ordinance. The BMR Ordinance and Guidelines require Owner to execute and record an approved BMR Housing Agreement as a condition precedent to the issuance of a building permit for the Project.

D. On March 19, 2019, the Parties entered into that certain Affordable Housing Agreement and Declaration of Restrictive Covenants, recorded as Instrument No. 2019-020352 (“**Prior Agreement.**”) The Prior Agreement provided that Owner would either: (i) provide one (1) unit to be occupied exclusively by, and rented to, qualified Low Income Households (a “**Low Income Unit**”) on the Property; or (ii) construct two (2) Low Income Units on another property owned by 1162 El Camino Investors, LLC (“**Off-Site Property**”), an entity with which Owner is affiliated, no later than two (2) years after the last residential unit in the Project is approved for occupancy; or (iii) pay an in lieu fee equal to the cost of providing two (2) Low Income Units no later than two (2) years after the last residential unit in the Project is approved for occupancy.

E. The construction of the Residential Portion was completed and certificates of occupancy were issued in June 2021, and Owner elected not to provide a Low Income Unit at the Property.

F. Owner’s affiliate, 1162 El Camino Investors, LLC (“**Owner’s Affiliate**”) has experienced delays in development of the Off-Site Property, and Owner has requested additional time to determine if two (2) Low Income Units can be provided on the Off-Site Property. City desires to amend the Prior Agreement to grant this additional time because City would prefer to receive Low Income Units to meet affordable housing needs instead of receiving an in-lieu fee.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

1. **SUPERSEDURE AND RELEASE OF PRIOR AGREEMENT.** This Agreement shall supersede the Prior Agreement and the Prior Agreement has no further force and effect. Owner is hereby discharged and released from any and all obligations undertaken by it pursuant to the Prior Agreement. The covenants and conditions of the Prior Agreement are hereby rescinded, cancelled and annulled.

2. **IN LIEU FEE.** If Owner’s Affiliate has failed to obtain certificates of occupancy for two (2) Low Income Units on the Off-Site Property within (2) years following the Effective Date of the Below Market Rate Rental Housing Agreement and Declaration of Restrictive Covenants (1162 El Camino Real) recorded against the Off-Site Property as Instrument No. \_\_\_\_\_ (“**Off-Site BMR Agreement**”), the terms of which are incorporated herein by this reference, Owner shall cause Owner’s Affiliate to pay City the In-Lieu Fee determined pursuant to the terms of the Off-Site BMR Agreement. This Agreement shall be recorded within ten (10) business days of the recording of the Off-Site BMR Agreement.

3. **DEFAULT AND REMEDIES.**

3.1 **Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting Party without the defaulting Party curing such breach.

3.2 **Remedies.**

3.2.1 The occurrence of any Event of Default shall give the non-defaulting Party the right to proceed with an action in law or equity to require the defaulting Party to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

3.2.2 City and Owner acknowledge that the purpose of this Agreement is to allow the Owner to satisfy the requirements of the BMR Ordinance and Guidelines, as set forth in the recitals. City

and Owner agree that to determine a sum of money which would adequately compensate either Party for nonperformance of this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Owner agree that, in no event shall a Party, or its boards, commissions, officers, agents, or employees, be liable in damages for an Event of Default under this Agreement. This exclusion on damages shall not preclude actions by a Party to enforce payments of monies or fees due or the performance of obligations requiring the expenditures of money under the terms of this Agreement.

**3.3 Obligations Personal to Owner.** The liability of the Owner under this Agreement to any person or entity is limited to the Owner's interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of the Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing the Owner's obligations under this Agreement), shall be rendered against the Owner, the assets of the Owner (other than the Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of the Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligations of the Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations of an "owner" hereunder during its period of ownership.

**3.4 Force Majeure.** Subject to the Party's compliance with the notice requirements, performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the Party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, 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, materials or tools, acts or omissions of the other Party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause.

**3.5 Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys' fees.

**3.6 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

3.7 **Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

3.8 **Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the City or failure to enforce any provision hereof, or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

#### 4. GENERAL PROVISIONS

4.1 **Time.** Time is of the essence in this Agreement.

4.2 **Notices.** Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate Party as follows:

**Owner:** 500 SC Partners, LLC, 556 SC Partners, LLC,  
Merrill Street Investors LLC  
975 High Street \_\_\_\_\_  
Palo Alto, CA  
94301 \_\_\_\_\_  
Attention: Ventana Properties/Sarah Brown  
With a copy to:  
Sheppard Mullin  
Four Embarcadero, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
Attention: Jennifer Renk, Esq.

**City:** City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

With a copy to:  
City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Attorney

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

4.3 **Intended Beneficiaries.** The City is the intended beneficiary of this Agreement, and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of low income, as required by the Guidelines, and to implement the provisions of the Project Approvals. No other person or persons, other than the City and the Owner and their assigns and successors, shall have any right of action hereon.

4.4 **Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

4.5 **Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

4.6 **Each Party's Role in Drafting the Agreement.** Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

4.7 **Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

4.8 **Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year set forth above.

**OWNER:**

500 SC Partners, LLC, a California limited liability company

By:

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Date:

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556 SC Partners, LLC, a California limited liability company

By:

---

Date:

---

Merrill Street Investors LLC, a California limited liability company

By

---

Date:

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**CITY:**

CITY OF MENLO PARK,  
a California municipal corporation

By:

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Justin Murphy, City Manager

Date:

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**Exhibit A**  
**Property Description**

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

Beginning at a point in the Southwesterly line of the lands of Southern Pacific Railroad Company, distant thereon North 51° 52' 30" East 73.85 feet from its intersection with the Northwesterly line of Santa Cruz Avenue, formerly known as Golders Lane, said point of beginning being the most Easterly corner of a tract of land conveyed by Mary Louise Hall to Arthur Parker, by Deed dated September 2, 1899 and recorded February 9, 1900 in Book 84 of Deeds at Page 66, Records of San Mateo County; thence from said point of beginning South 51° 52' 30" East along said line of the Southern Pacific Railroad Company, 73.85 feet to the Northwesterly line of Santa Cruz Avenue; thence along the last mentioned line South 35° 16' 30" West 138.52 feet to the Northeasterly line of lands formerly of Maurice Dioze and Peter Darracq; thence North 58° 30' West parallel to the Northeasterly line of El Camino Real 175.12 feet to the Southerly line of the property now or formerly owned by John H. Sullivan; thence along the last mentioned line North 31° 30" East 50 feet; thence South 58° 30' East 104.58 feet and North 35° 13' 30" East 96.94 feet to the point of beginning.

APN: 061-441-040

BEGINNING at a point on the Northwesterly line' of Golders Lane, so call also known as Santa Cruz Avenue, distant thereon North 35° 30' East 107 feet from the intersection thereof with the Northeasterly line of El Camino Real, also known as the Main County Road, leading from San Francisco to San Jose; thence North 58° 30' West 206 feet 6.1 inches; thence North 31° 30' East 53 feet 3 inches to the most Westerly Corner of that certain parcel of land described in the Deed from D. H. Ryan to Mrs. Isabella Maxfield, dated July 30, 1869 and recorded December 4, 1869 in Book 10 of Deeds at page 284, Records of San Mateo County, California; thence South 58° 30' East, along the Southwesterly line of said Maxfield parcel, 210 feet 1-1/2 inches, more or less, to the North Westerly line of Santa Cruz Avenue; thence South 35° 30' West, along said line of Santa Cruz Avenue, 53 feet 3.2 inches, more or less, to the point of beginning. BEING a portion of Lots 188 and 189 of that certain map entitled "Plat of the Lands of the Menlo Park Villa Association, Southern Portion of Pulgas Rancho, San Mateo Co.", filed in the office of the County Recorder of San Mateo County on September 14, 1863 in Book "C" of Maps at page 6 and copied into Book 2 of Maps at page 40.

APN: 061-441-050

A portion Lots 188 and 189, as designated on that certain Map entitled, "Plat of the Lands of the Menlo Park Villa Association, Southern Portion of Pulgas Rancho, San Mateo County, California", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California on September 14, 1863, in Book "C" of Maps at Page 6 and copied into Book 2 of Maps at Page 40, more particularly described as follows:  
Beginning at a point on the Southwesterly line of Merrill Avenue, as described in the Agreement

to City of Menlo Park recorded April 30, 1952 in Book 2236 of Official Records at Pages 572, distant thereon South  $51^{\circ} 45'$  East, 275 feet, 4.4 inches from the Southeasterly line of Oak Grove Avenue, said point being the most Easterly corner of that Parcel described in the Deed to Anthony Goularte Pimentel, et ux, recorded May 4, 1951 in Book 2065 of Official Records at Page 485 (File No. 34263-J); thence South  $51^{\circ} 45'$  East, along the Southwesterly line of Merrill Avenue 67.90 feet to the Northwesterly line of Parcel Two described in the Deed to Ernest J. Kimp, recorded April 18, 1950; in Book 1838 of Official Records at Page 690 (File No. 51294-I); thence South  $35^{\circ} 26' 20''$  West (called South  $36^{\circ} 10'$  West in said Deed), along said Northwesterly line 96.89 feet to the Southwesterly line of that Parcel described in the Deed to J. Edward Lathan, et al, recorded August 4, 1952 in Book 2275 of Official Records at Page 557; thence North  $58^{\circ} 05'$  West, along said Southwesterly line of 60.55 feet to the. Southeasterly line of Pimentel Parcel mentioned above; thence North  $31^{\circ} 18' 40''$  East, along said Southeasterly line 104.20 feet to the point of beginning.

APN: 061-441-030

JPN: 061-044-441-03



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 )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_ 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: \_\_\_\_\_ (seal)

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 STATE )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_ 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 State that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025

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## BELOW MARKET RATE RENTAL HOUSING AGREEMENT

AND

## DECLARATION OF RESTRICTIVE COVENANTS

(1162 EL CAMINO REAL)

**THIS BELOW MARKET RATE RENTAL HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (“**Agreement**”) is entered into as of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and between the **CITY OF MENLO PARK**, a California municipal corporation (“**City**”), and 1162 El Camino Investors, LLC (“**Owner**”) (City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**”) with reference to the following facts:

### RECITALS

A. Owner is the owner of that certain parcel of real property with Assessor's Parcel Number 061-441-100, having former addresses of 1162, 1166, and 1170 El Camino Real in the City of Menlo Park, California (the “**Property**”), as more particularly described in Exhibit A attached hereto.

B. Owner has applied for and received architectural control approvals to demolish existing commercial buildings on the Property and construct a three-story building consisting of nine pre-fabricated modular apartment units on two stories, set over a one-story, ground-level, parking garage with a building entry/lobby facing El Camino Real, and associated site improvements (the “**Project**”). Following a duly noticed hearing on February 22, 2021 the City’s Planning Commission approved the Project subject to certain terms and conditions (the “**Project Approvals**”).

C. Owner is affiliated with the owner (566 SC Partners, LLC and Merrill Street Investors, LLC) of those certain parcels of real property having current addresses at 556-558 Santa Cruz Avenue and 1125 Merrill Street in the City of Menlo Park, California and lessor (500 SC Partners, LLC) of that certain parcel of real property having a current address at 506-540 Santa Cruz Avenue (collectively, “**Owner’s Affiliate**”). On May 14, 2018, the Planning Commission approved entitlements for three mixed-use projects at these locations. These entitlements approved the demolition of approximately 14,483 square feet of existing commercial space and development of approximately 22,226 square feet of office space, 4,617 square feet of non-office commercial space, and nine (9) residential rental units (“**Santa Cruz/Merrill Street Project**”). Owner’s Affiliate, the applicant for the Santa Cruz/Merrill Street Project, requested and was granted the ability to meet its obligation to provide below market rate housing for the Santa Cruz/Merrill Street Project by constructing two low-income units on an off-site property. City and Owner’s Affiliate entered into a Below Market Rate Agreement, dated March 19, 2019, which specifies the requirements for the Santa Cruz/Merrill Street Project to meet its below market rate housing obligations, including the requirement that two (2) dwelling units be provided in the Project affordable to Low Income Households, as defined below, in addition to the Project’s requirements under the BMR Ordinance.

D. Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”) require the Owner to provide ten percent (10%) of the units in the Project, or 0.9 units that has been rounded up to one (1) unit, as affordable to below market rate (“**BMR**”) households. The remaining units in the Project that need not be affordable to below market rate households are each referred to as a “**Market Unit**.” In the event that the Owner is required to pay an in-lieu fee, the Guidelines provide that the Owner shall make a pro rata residential in lieu payment if the number of units required to be affordable to BMR households is a fraction.

E. In order to satisfy its obligations described more fully in sections C and D herein, the Owner agrees to provide a total of three (3) below market rate units on the Property (collectively, “**BMR Units**”). Of the BMR Units, one (1) unit shall be available to Very Low Income Households, and two (2) units shall be available to Low Income Households. The two (2) BMR Units that will be made available to Low Income Households shall satisfy the off-site BMR requirements for the Santa Cruz/Merrill Street Project (“**Santa Cruz BMR Units**”). The third unit that will be made available to Very Low Income Households shall satisfy the BMR requirements set forth in the BMR Ordinance and Guidelines for this Project (“**Project BMR Unit**”). All three (3) BMR Units will be rental units.

F. All certificates of occupancy for the Santa Cruz/Merrill Street Project have been issued and Owner’s Affiliate did not provide the Santa Cruz BMR Units in connection with the Santa Cruz/Merrill Street Project. In order to ensure that the requirements of the BMR Ordinance and Guidelines are satisfied for the Santa Cruz/Merrill Street Project, City finds it necessary to require the Owner to construct the Santa Cruz BMR Units or pay the in-lieu fee no later than two (2) years from the Effective Date.

G. The BMR Ordinance, Guidelines, and the Project Approvals require execution and recordation of an approved Below Market Rate Housing Agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

H. Owner acknowledges and agrees that the Project Approvals provided adequate and proper notice pursuant to Government Code Section 66020 of Owner’s right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Agreement, that no protest in compliance with Section 66020 was made within ninety (90) days of the date that notice was given, and that the period has expired in which Owner may protest any and all fees, dedications, reservations, and other exactions as may be included in this Agreement.

**NOW, THEREFORE**, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

## 1. CONSTRUCTION OF THE IMPROVEMENTS

1.1 **Construction of the Project.** Owner agrees to construct the Project in accordance with the City Municipal Code, the Guidelines, the Project Approvals, and all other applicable state and local building codes, development standards, ordinances and zoning codes and to meet the following conditions in accordance with the Project Approvals:

- (a) Prior to issuance of any building permit to construct any portion of the Project, Owner shall execute, acknowledge and deliver this Agreement to the City, which shall be recorded within thirty (30) days of the date of the Planning Commission hearing approving this Agreement.
- (b) Commencement and Completion of the Santa Cruz BMR Units. Owner shall complete the construction of the Santa Cruz BMR Units, as evidenced by the issuance of a certificate of occupancy, within two (2) years of the Effective Date.
- (c) Calculation of In-Lieu Fee. If Owner has not, within fourteen (14) months of the Effective Date finalized the Project grading, foundation, and onsite permits for the Project, the City shall retain a consultant and complete, no later than eighteen (18) months following the Effective Date, an analysis to calculate the in-lieu fee for the Santa Cruz BMR Units ("**Santa Cruz In-Lieu Fee**"). The Santa Cruz In-Lieu Fee shall be determined pursuant to Resolution No. 6585 and section 4.4 of the Guidelines, as it may be amended from time to time in successor Guidelines, or such other sections of any successor Guidelines or resolutions that may be adopted to establish a residential rental in-lieu fee or methodology for determining the same. Owner shall be responsible for the City's consultant's fee to perform the analysis.
- (d) Failure to Complete Santa Cruz BMR Units – Payment of In Lieu Fee. If Owner has not completed construction of the Santa Cruz BMR Units, as evidenced by the issuance of a certificate of occupancy within two (2) years of the Effective Date, Owner shall remit to City the Santa Cruz In-Lieu Fee no later than two (2) years plus ninety (90) days following the Effective Date.

Notwithstanding the foregoing, upon the request of the Owner, the City Manager or their designee may modify the requirement that the Santa Cruz In-Lieu Fee shall become due within two (2) years of the Effective Date ("**Santa Cruz In-Lieu Fee Deadline**") by making a determination that Owner has diligently pursued construction of the Santa Cruz BMR Units. Upon making such a determination, the City Manager shall be authorized to execute an Operating Memorandum in recordable form which extends the Santa Cruz In-Lieu Fee Deadline; however under no circumstances shall the Santa Cruz In-Lieu Fee Deadline be extended by more than one (1) year.

Failure of the Owner to remit to City the Santa Cruz In-Lieu Fee by the Santa Cruz In-Lieu Fee Deadline or by the deadline set forth in an Operating Memorandum, should one exist, shall be an Event of Default and the City shall have a lien on the Property in the amount of the Santa Cruz In-Lieu Fee effective the day after the Santa Cruz In-Lieu Fee Deadline or the deadline set forth in an Operating Memorandum, should one exist.

- (e) Prior to issuance of a certificate of occupancy for any Market Rate Unit, Owner shall (i) obtain certificates of occupancy, inclusive of temporary certificates of occupancy, from the City for the Project BMR Unit; (ii) obtain certificates of occupancy, inclusive of temporary certificates

of occupancy, from the City for the Santa Cruz BMR Units, and (ii) comply with the terms of Section 2 of this Agreement.

(f) The exterior materials used in the construction of the BMR Units will be similar and indistinguishable from those of the market rate units. The interior finishes of the BMR Units shall be similar to those of the market rate units.

(g) The BMR Units shall be in the location depicted in Exhibit B and have the layout depicted in Exhibit C.

**1.2 City and Other Governmental Permits.** Before commencement of the Project, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation, building permits. Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; the staff of the City will, without incurring liability or expense therefor, process applications in the ordinary course of business for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code, and all other applicable laws and regulations.

**1.3 Compliance with Laws.** The Owner shall carry out the acquisition, design, construction and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code. The Owner shall also ensure that the Project is constructed and operated in compliance with all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

## **2. OPERATION OF RENTAL HOUSING**

**2.1 BMR Units.** Owner agrees to make available, restrict occupancy, and lease the Project BMR Unit to Very Low Income Households at an Affordable Very Low Income Rent and the Santa Cruz BMR Units to Low Income Households at an Affordable Low Income Rent. The Project BMR Unit shall be a studio unit available to Very Low Income Households, one (1) of the Santa Cruz BMR Units shall be a one-bedroom unit available to Low Income Households, and one (1) of the Santa Cruz BMR Units shall be a two-bedroom unit available to Low Income Households. The BMR Units shall be of a quality and size comparable to all of the other residential units in the Project. Prior to occupancy of the first residential unit in the Project, the Owner shall notify the City and the City shall approve of any change to the location of the BMR Units as shown on Exhibit B, attached hereto or the floor plan showing the size and layout of the BMR Units as shown on Exhibit C, attached hereto.

(a) Very Low Income Units means units restricted to households with incomes of not more than fifty percent (50%) of AMI. “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, for two consecutive years, the household’s income exceeds the Very Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner’s determination that any such household is no longer qualified, the Very Low Income Unit shall no longer be deemed a Very Low Income Unit, and Owner shall make the next available

unit which is comparable in terms of size, features and number of bedrooms a Very Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Very Low Income Units are rented to Qualifying Households. Owner shall notify the City annually if Owner substitutes a different unit for the designated Very Low Income Unit pursuant to this paragraph. If there is no available unit comparable in terms of size, features and number of bedrooms, the Owner shall provide the household that no longer qualifies for a Very Low Income Unit with notice of the date that the household must vacate, which date shall be no less than ninety (90) days from the date of the recertification in the second consecutive year. A copy of such notice must be provided to City.

(b) Low Income Units means units restricted to households with incomes of not more than eighty percent (80%) of AMI. “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision.. Qualifying Households shall continue to qualify unless at the time of recertification, for two consecutive years, the household’s income exceeds the Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner’s determination that any such household is no longer qualified, the unit shall no longer be deemed a Low Income Unit, and Owner shall make the next available Low Income Unit, which is comparable in terms of size, features and number of bedrooms, a Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Low Income Units are rented to Qualifying Households. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Low Income Units pursuant to this paragraph. If there is no available unit comparable in terms of size, features and number of bedrooms, the Owner shall provide the household that no longer qualifies for a Low Income Unit with notice of the date that the household must vacate, which date shall be no less than ninety (90) days from the date of the recertification in the second consecutive year. A copy of such notice must be provided to City.

**2.2 Affordable Rent.** The maximum Monthly Rent, defined below, chargeable for the BMR Units and paid shall be as follows:

(a) Very Low Income Household: shall be 30 percent (30%) of not to exceed 50 percent (50%) of AMI. The Monthly Rent for a Very Low Income Unit rented to a Very Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the City’s Community Development Director (“**Community Development Director**”) for an unusually large unit with a maximum of two persons per bedroom, plus one.

(b) Low Income Household: shall be 30 percent (30%) of not to exceed 80 percent (80%) of AMI. The Monthly Rent for a Low Income Unit rented to a Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Community Development Director for an unusually large unit with a maximum of two persons per bedroom, plus one.

For purposes of this Agreement, “**Monthly Rent**” means the total of monthly payments actually made by the household for (i) use and occupancy of each BMR Unit and land and facilities associated therewith, (ii) any separately charged fees or service charges mandatorily assessed by the Owner which are required of all tenants, other than security deposits, (iii) a reasonable allowance for an adequate level of service of

utilities not included in (i) or (ii) above, and which are not paid directly by the Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, cable, and internet service, which reasonable allowance for utilities is set forth in the County of San Mateo's Utility Allowance Schedule for multi-family homes, and (iv) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. Pursuant to the Guidelines, in no case shall the Monthly Rent for a BMR Unit exceed 75 percent of comparable market rate rents.

**2.3 Selection of Tenants.** Each BMR Unit shall be leased to tenant(s) selected by the Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households who meet the City of Menlo Park preference criteria, as specified in section 8 of the Guidelines. The City shall provide the Owner names of persons who have expressed interest in renting BMR Units and Owner shall select tenants from that list. The Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

**2.4 Income Certification.** On or before July 1 of each year, commencing with the calendar year that the first unit in the Project is rented to a tenant, and annually thereafter, the Owner shall obtain from each household occupying a BMR Unit, and submit to the City, a completed income computation and certification form, which shall certify that the income of the household is truthfully set forth in the income certification form, on a form proposed by Owner and approved by the Community Development Director or his/her designee. The Owner shall certify that each household leasing a BMR Unit meets the income and eligibility restrictions for the BMR Units. A qualified Very Low Income Household, or Low Income Household shall continue to qualify unless, at the time of recertification, for two consecutive years, the household's income exceeds the Very Low Income Limits or Low Income Limits, then the tenant shall no longer be qualified.

**2.5 Lease Requirements.** Within 45 days of the date of this Agreement, Owner shall submit a standard lease form to the City for approval by the Community Development Director or his/her designee. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Guidelines. Owner shall enter into a written lease, in the form approved by the City, with each new tenant of a BMR Unit prior to a tenant or tenant household's occupancy of a BMR Unit. Each lease shall be offered for an initial term of not less than one year, which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, or local, state and Federal laws. Each lease shall prohibit assignment and subleasing without City's prior written consent.

**2.6 Maintenance.** The Owner shall maintain or cause to be maintained the interior and exterior of the residential buildings at the Property in a decent, safe and sanitary manner, and consistent with the standard of maintenance of first class multifamily apartment projects within San Mateo County, California of the age of the Property improvements. If, at any time, Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within five (5) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or 30 days after written notice from the City with respect to landscaping and building improvements (or such longer time in accordance with Section 3.1 of this Agreement), then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and



work of protection, maintenance, and preservation by the City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to the City upon demand.

**2.7 Affordability Period.** Unless sooner terminated pursuant to the terms of this Agreement, the Property shall be subject to the requirements of this Agreement from the date of recordation of this Agreement until the fifty-fifth (55th) anniversary of the date that the BMR Units in the Project are available for occupancy by a Very Low Income Household or Low Income Household. For purposes of this Agreement, the duration of this requirement shall be known as the “**Affordability Period.**”

**2.8 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable reporting, recordkeeping and monitoring requirements set forth in the Guidelines and shall annually complete and submit to the City by July 1st an Annual Report, as defined in Section 12.1.8 of the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hours’ notice, which can be provided by email with acknowledged receipt, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. If, for any reason, the City is unable to obtain the Owner’s consent to such an inspection or audit, the Owner understands and agrees that the City may obtain at Owner’s expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Owner agrees to maintain records in businesslike manner, and to maintain such records for the Affordability Period. City may from time to time request additional or different information, and Owner shall promptly supply such information in the reports required by the City.

**2.9 Expiration of Affordability Period; Release of Property from Agreement.**

(a) Prior to the expiration of the Affordability Period, Owner shall provide all notifications required by Government Code Sections 65863.10 and 65863.11 or successor provisions and any other notification required by any state, federal, or local law. In addition, at least six (6) months prior to the expiration of the Affordability Period, the Owner shall provide a notice by first-class mail, postage prepaid, to all tenants in the BMR Units. The notice shall contain (i) the anticipated date of the expiration of the Affordability Period and (ii) any anticipated Monthly Rent increase upon the expiration of the Affordability Period. The Owner shall file a copy of the above-described notice with the Community Development Director.

(b) Upon the expiration of the Affordability Period for the BMR Units, the City shall execute and record a release of the Project, the Property, and each unit in the Project from the burdens of this Agreement within thirty (30) days following written notice from the Owner, if, at the time, the Owner is in compliance with all terms of this Agreement, including, without limitation, the provisions of this section regarding notice of the expiration of the Affordability Period.

**2.10 Non-Discrimination Covenants.** Owner covenants that, by and for itself, its successors and assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith:

(a) In Deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) In Leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In Contracts pertaining to management of the Development, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or

any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

### 3. **DEFAULT AND REMEDIES**

3.1 **Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting Party without the defaulting Party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach within ninety (90) days, unless a longer period is granted by the City; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

#### 3.2 **Remedies.**

(a) The occurrence of any Event of Default shall give the non-defaulting Party the right to proceed with an action in law or equity to require the defaulting Party to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

(b) City and Owner acknowledge that the purpose of this Agreement is to allow the Owner to satisfy the requirements of the BMR Ordinance and Guidelines, as set forth in the recitals. City and Owner agree that to determine a sum of money which would adequately compensate either Party for nonperformance of this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Owner agree that, in no event shall a Party, or its boards, commissions, officers, agents, or employees, be liable in damages for an Event of Default under this Agreement. This exclusion on damages shall not preclude actions by a Party to enforce payments of monies or fees due or the performance of obligations requiring the expenditures of money under the terms of this Agreement.

3.3 **Obligations Personal to Owner.** The liability of the Owner under this Agreement to any person or entity is limited to the Owner’s interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of the Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing the Owner’s obligations under this Agreement), shall be rendered against the Owner, the assets of the Owner (other than the Owner’s interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or

any agreement securing the obligations of the Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligations of the Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations of an “owner” hereunder during its period of ownership.

3.4 **Force Majeure.** Subject to the Party’s compliance with the notice requirements, performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the Party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, 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, materials or tools, acts or omissions of the other Party, or acts or failures to act of any public or governmental entity (except that the City’s acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause.

3.5 **Attorneys’ Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys’ fees.

3.6 **Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

3.7 **Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

3.8 **Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to the Owner or any occupant of any BMR Unit, or any successor in interest, in the event of any default or breach by the City or failure to enforce any provision hereof, or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

#### 4. **GENERAL PROVISIONS**

4.1 **Guidelines.** This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor Guidelines that may be amended from time to time and expresses the entire obligations and duties of Owner with respect to the Owner’s obligations under the Guidelines. No other requirements or obligations under the Guidelines shall apply to Owner except as expressly provided for in this Agreement. In the event of any conflict or ambiguity between this Agreement, the Project Approvals, the requirements of state and federal fair housing laws, and the Guidelines, the terms and conditions of this Agreement, the Project Approvals, and the requirements of state and federal fair housing laws shall control.

In the event of any conflict or ambiguity between this Agreement and the Project Approvals, the Project Approvals shall control.

4.2 **Time.** Time is of the essence in this Agreement.

4.3 **Notices.** Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate Party as follows:

**Owner:** 1162 El Camino Investors, LLC  
975 High Street  
Palo Alto, CA 94301\_\_\_\_\_  
Attention: Ventana Properties/Sarah Brown

With a copy to:  
Sheppard Mullin  
Four Embarcadero, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
Attention: Jennifer Renk

**City:** City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

With a copy to:  
City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Attorney

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

4.4 **Covenants Running with the Land; Successors and Assigns.** The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall apply to and bind Owner and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden the Property. Until all or portions of the Property are expressly released from the burdens of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument. In the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Property, title to all or any portion of the Property shall be taken subject to this Agreement. Owner acknowledges that compliance with this Agreement is a land use requirement and a requirement of the Project Approvals, and that no event of foreclosure or trustee's sale may remove these requirements from the Property. Whenever the term "**Owner**" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

4.5 **Subordination.** This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

4.6 **Intended Beneficiaries.** The City is the intended beneficiary of this Agreement, and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low, or moderate income, as required by the Guidelines, and to implement the provisions of the Project Approvals. No other person or persons, other than the City and the Owner and their assigns and successors, shall have any right of action hereon.

4.7 **Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

4.8 **Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

4.9 **Each Party's Role in Drafting the Agreement.** Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

4.10 **Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

4.11 **Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

4.12 **Indemnification.** To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the "**Indemnitees**") harmless from and against any and all demands, losses, claims, costs and expenses, including without limitation, reasonable accountants' and attorneys' fees, charges and expense (collectively, "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 4.10 shall not extend to Claims to the extent resulting from the negligence or willful

misconduct of Indemnitees. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

4.13 **Insurance Coverage.** Throughout the Term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit D, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit D.

4.14 **Transfer and Encumbrance.**

4.14.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners, shall be restricted by this provision.

4.14.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Development or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

4.14.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of the whole or part of the Property if all of the following requirements are met (provided however, the requirements of this Section 4.14.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 4.14.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the BMR Units or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

4.14.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the BMR Units shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. Section 14.14 shall not apply to Transfers described in clauses (i) and (ii) of Section 14.14.2.

4.14.5 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year set forth above.

**OWNER:**

1162 El Camino Investors, LLC

By:

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Date:

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**CITY:**

CITY OF MENLO PARK,  
a California municipal corporation

By:

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Justin Murphy, City Manager

Date:

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**List of Exhibits:**

Exhibit A: Property Description

Exhibit B: BMR Unit Location

Exhibit C: Floor Plan

Exhibit D: Insurance Requirements

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 STATE )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, 2023 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 State that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

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 STATE )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, 2023 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 State that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

**Exhibit A**  
**Property Description**

## EXHIBIT A

The land referred to is situated in the County of San Mateo, City of Menlo Park, State of California, and is described as follows:

Portion of Lot 188, as shown on that certain Map entitled "Plat of the Lands of the Menlo Park Villa Association Southern Portion of Pulgas Rancho, San Mateo County", filed in the Office of the County Recorder of San Mateo County, State of California on September 14, 1863, in Book C of Maps, at Page 6 and copied into Book 2 of Maps, at Page 40, described as:

Beginning at a point on the Northeasterly side of the County Road leading from San Francisco to San Jose 119 feet 4 inches on the line of said County Road, Southeasterly from the junction of said road with the Southeasterly line of Oak Grove Avenue; thence parallel with Oak Grove Avenue North  $31\frac{1}{2}^{\circ}$  East 111 feet 7-8/10 inches; thence South  $58\frac{1}{2}^{\circ}$  East 75 feet; thence South  $31\frac{1}{2}^{\circ}$  West 111 feet 7-8/10 inches to the Northeasterly side of said County Road; thence North  $58\frac{1}{2}^{\circ}$  West along said Northeasterly side 75 feet to the point of beginning.

Also being known as portion of Lot 1 of the unrecorded Golder's Subdivision.

APN: 061-441-100

**Exhibit B**  
**Lower Income Unit Location**

# 1162 EL CAMINO – UNIT SUMMARY

<u>NO.</u>	<u>UNIT TYPE</u>	<u>SIZE (SF)</u>	<u>RENTAL RATE</u>	<u>OCCUPANTS</u>
1-201	2 BED	1255	+/- \$4100	2-3
2-202	2 BED – BMR - LOW INCOME	1277	PER INDEX	2-3
3-203	STUDIO	417	+/- \$2100	1
4-204	1 BED	737	+/- \$3100	1
5-205	STUDIO – BMR - VERY LOW INCOME	405	PER INDEX	1
6-301	2 BED	1255	+/- \$4100	2-3
7-302	2 BED	1277	+/- \$4100	2-3
8-303	1 BED	725	+/- \$3100	1
9-304	1 BED- BMR - LOW INCOME	737	PER INDEX	1
	<b>TOTAL</b>	<b>8085</b>		<b>17 MAX</b>

**Exhibit C**

**Floor Plan**



# **1162 EL CAMINO – BELOW MARKET RATE UNITS – LEVEL 2 PLAN**



# 1162 EL CAMINO – BELOW MARKET RATE UNITS – LEVEL 3 PLAN



## Exhibit D

### Insurance Requirements

Prior to initiating work on the Development and continuing throughout the Term of this Agreement, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the development, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the development, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Development on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Development construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum

of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Development with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

(b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate.

(c) Commercial Automobile Liability: \$2,000,000 combined single limit.

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

a. The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the

Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

b. All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

d. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

e. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

f. If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

g. Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

h. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified

in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

i. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Development, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

County of San Mateo  
Assessor-County Clerk-Recorder  
Mark Church

555 County Center  
Redwood City, CA, 94063

Finalization 2019017274  
3/22/19 4:17 pm  
013 33

Item Title

Document ID	Amount
1 Agreement Declaration Coven, Cond & Res	
DOC# 2019-020352	101.00

Total	0.00
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Payment Type	Amount
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NO FEE	101.00
Amount Due	0.00

THANK YOU  
PLEASE RETAIN THIS RECEIPT  
FOR YOUR RECORDS

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025

002608

**2019-020352 CONF**

4:17 pm 03/22/19 AG DR Fee: NO FEE

Count of pages 22

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



## **AFFORDABLE HOUSING AGREEMENT**

**AND**

## **DECLARATION OF RESTRICTIVE COVENANTS**

### **SANTA CRUZ AVENUE AND MERRILL STREET PROJECT**

**THIS AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement")** is entered into as of March 19<sup>th</sup>, 2019 (the "**Effective Date**"), by and between the **CITY OF MENLO PARK**, a California municipal corporation ("**City**"), and 500 SC Partners, LLC, 556 SC Partners, LLC, and Merrill Street Investors, LLC (collectively, "**Owner**;" City and Owner may be referred to individually as a "**Party**" or collectively as the "**Parties**") with reference to the following facts:

### **RECITALS**

A. Owner is the owner of those certain parcels of real property having current addresses at 556-558 Santa Cruz Avenue and 1125 Merrill Street in the City of Menlo Park, California and Owner has a long-term ground lease of that certain parcel of real property having a current address at 506-540 Santa Cruz Avenue (collectively, the "**Property**"), as more particularly described in Exhibit A attached hereto.

B. Owner has applied for and received architectural control approvals to demolish existing commercial buildings on the Property and construct three, non-medical office and residential mixed-use buildings with separate retail and café spaces, underground parking and associated site improvements (the "**Project**"). Following a duly noticed hearing on May 14,



2018, the City's Planning Commission approved the Project subject to certain terms and conditions (the "**Project Approvals**").

C. The Project Approvals permit the demolition of approximately 14,246 square feet of existing commercial space and the development of approximately 22,226 square feet of office space, 4,617 square feet of non-office commercial space, and nine (9) residential rental units on the Property.

D. The City's Municipal Code and the Project Approvals require the Owner to comply with Chapter 16.96 of the City's Municipal Code (the "**BMR Ordinance**") and with the Below Market Rate Housing Program Guidelines ("**Guidelines**") adopted by the City Council to implement the BMR Ordinance. The BMR Ordinance and the Project Approvals require execution and recordation of an approved Below Market Rate Housing Agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

E. Owner is also the owner of that certain parcel of real property having a current address at 1162-1170 El Camino Real in the City of Menlo Park, California (the "**Off-Site Property**"). Owner intends to develop residential units on the Off-Site Property within two (2) years after receipt of a certificate of occupancy or final inspection for the first residential unit in the Project.

F. Owner has proposed to meet the BMR Ordinance's and the Guideline's requirements for the Project on the Off-Site Property. To ensure that the Project will comply with the BMR Ordinance and the Guidelines, the Project Approvals require that the Owner enter into this Agreement to provide one (1) unit to be occupied exclusively by, and rented to, qualified Low Income Households, as defined below (a "**Low Income Unit**") on the Property; however, this Agreement may be released from the Property if Owner provides two (2) Low Income Units on the Off-Site Property, in addition to any Low Income Units or in-lieu fees that may be required as a condition of approval for development of the Off-Site Property.

G. Owner acknowledges and agrees that the Project Approvals provided adequate and proper notice pursuant to Government Code Section 66020 of Owner's right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Agreement, that no protest in compliance with Section 66020 was made within ninety (90) days of the date that notice was given, and that the period has expired in which Owner may protest any and all fees, dedications, reservations, and other exactions as may be included in this Agreement.

**NOW, THEREFORE**, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

#### 100. **CONSTRUCTION OF THE IMPROVEMENTS.**

101. **Construction of the Project.** Owner agrees to construct the Project in accordance with the City Municipal Code, the Guidelines, the Project Approvals, and all other applicable state and local building codes, development standards, ordinances and

zoning codes and to meet the following conditions in accordance with the Project Approvals:

(a) Prior to issuance of any building permit to construct any portion of the Project, Owner shall pay the City the commercial BMR in lieu fee based on the existing and proposed square footages at the time of building permit issuance and the fee levels then in effect.

(b) No portion of any residential unit may be approved for occupancy until the Owner has designated one (1) dwelling unit in the Project as a Low Income Unit, the City has approved that Low Income Unit for occupancy, and the terms of Article 200 have been otherwise complied with in regard to the Low Income Unit, unless one of the following has occurred:

(i) Owner has applied for and the City has approved entitlements for residential development at the Off-Site Property prior to receipt of a certificate of occupancy or final inspection for the first residential unit in the Project, and Owner has recorded a Below Market Rate Housing Agreement against the Off-Site Property (the **"Off-Site BMR Agreement"**) in the form described in subsection 101(c) below that requires two (2) units to be Low Income Units, in addition to any Low Income Units or in-lieu fees that may be required as a condition of approval for development of the Off-Site Property; or

(ii) The Owner has paid the City a residential BMR in lieu fee equal to the cost of providing two (2) Low Income Units based on the preparation of an affordability gap analysis at Owner's expense that determines the difference between the fair market value of two (2) market-rate and that of two (2) Low Income Units restricted for a 55 year term (the **"Residential In-Lieu Fee"**).

(c) The Off-Site BMR Agreement must:

(i) Be in a form approved by the City that is materially similar to the form of this Agreement and that complies with the BMR Ordinance and Guidelines in effect at the time of recordation.

(ii) Restrict two (2) units as Low Income Units exclusively available to Low Income Households for a term of 55 years from occupancy of the Off-Site Property, in addition to any Low Income Units or in-lieu fees that may be required as a condition of approval for development of the Off-Site Property.

(iii) Require that the two (2) Low Income Units be available for occupancy no later than two (2) years after the last residential unit in the Project is approved for occupancy.

(iv) Require that if the two (2) Low Income Units are not available for occupancy within two (2) years after the last residential unit in the Project is approved for occupancy, the Owner shall either provide one (1) Low Income Unit at the Property or pay the Residential In-Lieu Fee.

102. **City and Other Governmental Permits.** Before commencement of the Project, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; the staff of the City will, without incurring liability or expense therefor, process applications in the ordinary course of business for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code, and all other applicable laws and regulations.

103. **Compliance with Laws.** The Owner shall carry out the acquisition, design, construction and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code. The Owner shall also ensure that the Project is constructed and operated in compliance with all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

104. **Additional CEQA Requirements for Off-Site Property.** This Agreement does not limit in any way the discretion of City in acting on any applications for permits or approvals for the Off-Site Property. The Parties acknowledge that compliance with the California Environmental Quality Act ("CEQA") will be required in connection with consideration of any permits and approvals for the Off-Site Property, and that the City shall retain the sole and unfettered discretion in accordance with CEQA and other applicable law before action on any such permits or approvals to (a) adopt or certify an environmental analysis of the Off-Site Property prepared in accordance with CEQA, (b) identify and impose mitigation measures if needed to mitigate significant environmental impacts of developing the Off-Site Property, (c) select other feasible alternatives to avoid any significant environmental impacts if identified, (d) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of developing the Off-Site Property prior to taking final action if such significant impacts are identified and cannot otherwise be avoided, or (e) determine not to proceed with development of the Off-Site Property. Any action taken by the City in the exercise of its discretion relating to any analysis of the Off-Site Property required by CEQA or on any application for a permit or approval required to develop the Off-Site Property or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by the City.

## 200. OPERATION OF HOUSING

201. **Applicability of this Article 200.** The requirements of this Article 200 to provide one (1) Low Income Unit on the Property shall apply as of the Effective Date, and this Agreement shall not be released from the Property until either:

- (a) The Owner has paid to the City the Residential In-Lieu Fee; or
- (b) The Owner has entered into the Off-Site BMR Agreement with the City and, within two (2) years after the last residential unit in the Project is approved for occupancy, has received approval for occupancy of two (2) Low-Income Units at the Off-Site Property in addition to any Low Income Units or in-lieu fees that may be required as a condition of approval for development of the Off-Site Property; or
- (c) Has provided a Low-Income Unit on the Property for the Affordability Period.

202. **Provision of Low Income Unit.** The Low Income Unit shall be of a quality and size comparable to all of the other rental units in the Project. Prior to occupancy of the first residential unit in the Project, the Owner shall notify the City and the City shall approve of the locations of the Low Income Unit within the residential buildings. The location of the individual Low Income Unit may float to account for the Next Available Unit Requirement set forth below and as otherwise necessary for the smooth and professional maintenance of the Project, provided that the Low Income Unit shall be of a quality and size comparable to all of the other rental units in the Project. Monthly Rent, as defined below, for the Low Income Unit shall include the right to use at least one parking space in the residential buildings' parking garage.

203. **Low Income Units.** Owner agrees to make available, restrict occupancy, and lease not less than one (1) of the rental units on the Property exclusively to Low Income Households at Affordable Low Income Rent, as defined below. For purposes of this Agreement, "**Low Income Households**" shall mean those households with incomes that do not exceed the low income limits for San Mateo County, adjusted for household size, as set forth in the Guidelines, and as established and amended from time to time in accordance with the low income limits for San Mateo County established by the State of California in the California Code of Regulations, Title 25, Section 6932 or successor provision (the "**Low Income Limits**"). A qualified Low Income Household shall continue to qualify unless at the time of recertification, for two consecutive years, the household's income exceeds the Low Income Limits, then the tenant shall no longer be qualified. Upon the Owner's determination that any such household is no longer so qualified, the unit shall no longer be deemed a Low Income Unit, and the Owner shall make the next available comparable unit, which is comparable in terms of size, features and number of bedrooms, a Low Income Unit ("**Next Available Unit Requirement**") and take such other actions, including as specified in Section 11.1.7 of the Guidelines, as may be necessary to ensure that the total required number of units are rented to Low Income Households. The Owner shall notify the City annually if Owner substitutes a different unit for the designated Low Income Unit pursuant to this paragraph.

204. **Income Certification.** On or before July 1 of each year, commencing with the calendar year that the first unit in the Project is rented to a tenant, and annually thereafter, the Owner shall obtain from each household occupying a Low Income Unit and submit to the City a completed income computation and certification form, which shall certify that the income of the household is truthfully set forth in the income certification form, in the form attached hereto as Exhibit B unless a different form is specified by the City or proposed by Owner and approved by the City's Director of Community Development ("**Director**"). The Owner shall certify that each household leasing a Low Income Unit meets the income and eligibility restrictions for the Low Income Unit.

205. **Affordable Rent, Low Income.** The maximum Monthly Rent chargeable for the Low Income Units and actually paid by a Low Income Household shall be thirty percent (30%) of the Low Income Limits, adjusted for assumed household size for the unit based on the number of bedrooms the unit contains (the "**Affordable Low Income Rent**").

206. **Monthly Rent.** For purposes of this Agreement, "**Monthly Rent**" means the total of monthly payments actually made by the household for (a) use and occupancy of each Low Income Unit and land and facilities associated therewith, (b) any separately charged fees or service charges mandatorily assessed by the Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by the Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, cable, and internet service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. A sample utility allowance schedule prepared by San Mateo County as of the date of this Agreement is attached as Exhibit C.

207. **Lease Requirements.** At least ninety (90) days prior to occupancy of any residential space in the Project, the Owner shall submit a standard lease form for approval by the Director. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required by the Guidelines. The Owner shall enter into a written lease, in the form approved by the City, with each new tenant of a Low Income Unit upon such tenant's rental of the Low Income Unit. Each lease shall be for an initial term of not less than one year, and shall not contain any of the provisions which are prohibited by the Guidelines.

208. **Selection of Tenants.** Each Low Income Unit shall be leased to tenant(s) selected by the Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households who either live or work in the City of Menlo Park. The City may, from time to time, provide to the Owner names of persons who have expressed interest in renting Low Income Units for the purposes of adding such interested persons to Owner's waiting list to be processed in accordance with Owner's customary policies. The Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-

based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

209. **Maintenance.** The Owner shall maintain or cause to be maintained the interior and exterior of the residential buildings at the Property in a decent, safe and sanitary manner, and consistent with the standard of maintenance of first class multifamily apartment projects within San Mateo County, California of the age of the Property improvements. If at any time Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within five (5) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty (30) days after written notice from the City with respect to landscaping and building improvements (or such longer time in accordance with Section 301 of this Agreement), then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to the City upon demand.

210. **Monitoring and Recordkeeping.** Throughout the Affordability Period, as defined below, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines and shall annually complete and submit to City by July 1st a Certification of Continuing Program Compliance in a form approved by the City. Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hour notice, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the Low Income Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. The Owner agrees to cooperate with the City in making the Property available for such inspection or audit. If for any reason the City is unable to obtain the Owner's consent to such an inspection or audit, the Owner understands and agrees that the City may obtain at Owner's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Owner agrees to maintain records in businesslike manner, and to maintain such records for the Affordability Period.

211. **Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

212. **Term of Agreement.** Unless sooner terminated as provided in Section 213 of this Agreement, the Property shall be subject to the requirements of this

Agreement from the date of recordation of this Agreement until the fifty-fifth (55th) anniversary of the date of the date that a Low-Income Unit in the Project is available for occupancy by a Low Income Household. The duration of this requirement shall be known as the “**Affordability Period.**”

**213. Expiration of Affordability Period; Release of Property from Agreement.**

(a) Prior to the expiration of the Affordability Period, Owner shall provide all notifications required by Government Code Sections 65863.10 and 65863.11 or successor provisions and any other notification required by any state, federal, or local law. In addition, at least six (6) months prior to the expiration of the Affordability Period, the Owner shall provide a notice by first-class mail, postage prepaid, to all tenants in the Low Income Unit. The notice shall contain (i) the anticipated date of the expiration of the Affordability Period and (ii) any anticipated Monthly Rent increase upon the expiration of the Affordability Period. The Owner shall file a copy of the above-described notice with the City Manager.

(b) Upon the expiration of the Affordability Period for the Low Income Unit, or satisfaction of the requirements of subsection (c) of this Section 213, the City shall execute and record a release of the Project, the Property, and each unit in the Project from the burdens of this Agreement within thirty (30) days following written notice from the Owner, if at the time the Owner is in compliance with all terms of this Agreement, including without limitation the provisions of this section regarding notice of the expiration of the Affordability Period.

(c) The City shall also execute and record a release of the Project, the Property, and each unit in the Project from the burdens of this Agreement within thirty (30) days following written request from the Owner, if Owner has either (i) paid to the City the Residential In-Lieu Fee; or (ii) entered into the Off-Site BMR Agreement and, within two (2) years after the last residential unit in the Project is approved for occupancy, has received approval for occupancy of two (2) Low-Income Units at the Off-Site Property in addition to any Low Income Units or in-lieu fees that may be required as a condition of approval for development of the Off-Site Property

**300. DEFAULT AND REMEDIES**

301. **Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting Party without the defaulting Party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach within ninety (90) days, unless a longer period is granted by the City; provided, however, that if a different period or notice requirement is specified for any

particular breach under any other paragraph of Article 300 of this Agreement, the specific provision shall control.

**302. Remedies.**

(a) The occurrence of any Event of Default under Section 301 shall give the non-defaulting Party the right to proceed with an action in law or equity to require the defaulting Party to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

(b) City and Owner acknowledge that the purpose of this Agreement is to allow the Owner to satisfy the requirements of the BMR Ordinance and Guidelines as set forth in the recitals. City and Owner agree that to determine a sum of money which would adequately compensate either Party for nonperformance of this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Owner agree that in no event shall a Party, or its boards, commissions, officers, agents, or employees, be liable in damages for an Event of Default under this Agreement. This exclusion on damages shall not preclude actions by a Party to enforce payments of monies or fees due or the performance of obligations requiring the expenditures of money under the terms of this Agreement.

**303. Obligations Personal to Owner.** The liability of the Owner under this Agreement to any person or entity is limited to the Owner's interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of the Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing the Owner's obligations under this Agreement), shall be rendered against the Owner, the assets of the Owner (other than the Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of the Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligations of the Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations of an "owner" hereunder during its period of ownership.

**304. Force Majeure.** Subject to the Party's compliance with the notice requirements as set forth below, performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement



shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the Party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, 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, materials or tools, acts or omissions of the other Party, or acts or failures to act of any public or governmental entity (except that any action by the City regarding the Off-Site Property shall not excuse performance of the Owner). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause.

305. **Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys' fees.

306. **Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

307. **Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

308. **Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to the Owner or any occupant of any Low Income Unit, or any successor in interest, in the event of any default or breach by the City or failure to enforce any provision hereof, or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

#### 400. **GENERAL PROVISIONS**

401. **Guidelines.** This Agreement incorporates by reference the provisions of Sections 1, 2, 3, 4.1.2, 4.2, 5.1, 5.2, 5.3, 7, 11, 12, 13.6, 13.7, and 14 of the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be amended from time to time and expresses the entire obligations and duties of Owner with respect to the Owner's obligations under the Guidelines. No other requirements or obligations under the Guidelines shall apply to Owner except as expressly provided for in this Agreement. In the event of any conflict or ambiguity between this Agreement, the Project Approvals, the requirements of state and federal fair housing laws, and the

Guidelines, the terms and conditions of this Agreement, the Project Approvals, and the requirements of state and federal fair housing laws shall control. In the event of any conflict or ambiguity between this Agreement and the Project Approvals, the Project Approvals shall control.

402. **Time.** Time is of the essence in this Agreement.

403. **Notices.** Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate Party as follows:

**Owner:** 500 SC Partners, LLC  
556 SC Partners, LLC  
Merrill Street Investors, LLC  
255 Lytton Avenue, #201  
Palo Alto, CA 94301  
Attn: Chase Rapp

With a copy to:  
Sheppard Mullin  
Four Embarcadero, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Jennifer Renk, Esq.

**City:** City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

With a copy to:  
City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Attorney

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

404. **Covenants Running with the Land; Successors and Assigns.** The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall apply to and bind Owner and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden the Property. Until all or portions of the Property are expressly released from the burdens of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument. In

the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Property, title to all or any portion of the Property shall be taken subject to this Agreement. Owner acknowledges that compliance with this Agreement is a land use requirement and a requirement of the Project Approvals, and that no event of foreclosure or trustee's sale may remove these requirements from the Property. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

405. **Subordination.** At Owner's request, this Agreement may be subordinated to liens, including a deed of trust (in each case a "**Senior Loan**"), which secure the financing used to acquire, construct, operate, or refinance the Project, but only if all of the following conditions are satisfied:

(a) The Owner shall submit to the City an appraisal of the Property, completed or updated within 90 days of the proposed closing of the Senior Loan, demonstrating that the amount of all proposed Senior Loans does not exceed eighty percent (80%) of the appraised fair market value of the Property.

(b) The proposed lender of the Senior Loan (the "**Senior Lender**") must not be an Affiliated Party. For the purposes of this Section, an "**Affiliated Party**" is any corporation, limited liability company, partnership, or other entity which is controlling of, or controlled by, or under common control with the Owner, and "control," for purposes of this definition, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise. The terms "controlling" and "controlled" have the meanings correlative to "control."

(c) Any subordination agreement shall provide that the Low Income Unit described in this Agreement unconditionally shall continue to be provided as required by the Project Approvals and Section 404 of this Agreement, provided that any successor in interest to Owner as owner of the Property claiming through the foreclosure or sale under any deed of trust shall not be liable for any violations of the BMR agreement which occurred prior to such successor taking title. In addition, any subordination agreement shall provide that such successor shall, within 90 days after taking title to the Property, execute a new BMR agreement approved by the City and consistent with the provisions of this Agreement, evidencing the obligation to continue to provide the Low Income Unit.

(d) No subordination agreement may limit the effect of this Agreement before a foreclosure, nor require consent of the Senior Lender or assignee to exercise of any remedies by the City under this Agreement or the Project Approvals;

(e) The subordination described in this Section 405 may be effective only during the original term of the loan of the Senior Lender and not during any extension of its term or refinancing, unless otherwise approved in writing by the City Manager, which approval shall not be unreasonably withheld or delayed, provided that the conditions in this Section 405 are met.

(f) Owner shall submit adequate documentation to City so that City may determine that a proposed Senior Loan conforms with the provisions of this Section 405. Upon a determination by the City Manager that the conditions in this Section 405 have been satisfied, the City Manager is authorized to execute the approved subordination agreement.

406. **Intended Beneficiaries.** The City is the intended beneficiary of this Agreement, and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of low income, as required by the Guidelines, and to implement the provisions of the Project Approvals. No other person or persons, other than the City and the Owner and their assigns and successors, shall have any right of action hereon.

407. **Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

408. **Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

409. **Each Party's Role in Drafting the Agreement.** Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

410. **Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

411. **Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Below Market Rate Housing Agreement as of the date and year set forth above.

**OWNER:**

500 SC Partners, LLC

556 SC Partners, LLC

Merrill Street Investors

By: \_\_\_\_\_

Chase Rapp

Date: \_\_\_\_\_

03/19/19

**CITY:**

CITY OF MENLO PARK,  
a California municipal corporation

By: \_\_\_\_\_

~~Starla Jerome Robinson, City Manager~~  
Nick M. Pegueros, Acting

Date: \_\_\_\_\_

3/21/19

[Notarial Acknowledgements to be added for recording purposes]

**List of Exhibits:**

Exhibit A: Property Description

Exhibit B: Compliance Forms and Certifications

Exhibit C: Sample Utility Allowance

## CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

On March 19, 2019 before me, P.A. Romero, Notary Public, personally appeared Chasen Romy Rapp, 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 true and correct.

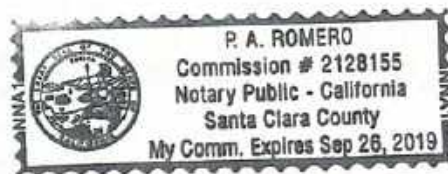
COUNTY OF Santa Clara

ss. Witness my hand and official seal.

P.A. Romero

(Seal)

(Signature)



ISLF18368391  
122710-04316005



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

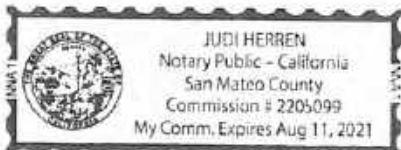
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of San Mateo )  
 On \_\_\_\_\_ before me, Judi Herren  
 Date Here Insert Name and Title of the Officer  
 personally appeared Nick M. Pegueros  
 Name(s) of Signer(s)

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 \_\_\_\_\_  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

## Exhibit A

### Property Description

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

Beginning at a point in the Southwesterly line of the lands of Southern Pacific Railroad Company, distant thereon North 51° 52' 30" East 73.85 feet from its intersection with the Northwesterly line of Santa Cruz Avenue, formerly known as Golders Lane, said point of beginning being the most Easterly corner of a tract of land conveyed by Mary Louise Hall to Arthur Parker, by Deed dated September 2, 1899 and recorded February 9, 1900 in Book 84 of Deeds at Page 66, Records of San Mateo County; thence from said point of beginning South 51° 52' 30" East along said line of the Southern Pacific Railroad Company, 73.85 feet to the Northwesterly line of Santa Cruz Avenue; thence along the last mentioned line South 35° 16' 30" West 138.52 feet to the Northeasterly line of lands formerly of Maurice Dioze and Peter Darracq; thence North 58° 30' West parallel to the Northeasterly line of El Camino Real 175.12 feet to the Southerly line of the property now or formerly owned by John H. Sullivan; thence along the last mentioned line North 31° 30" East 50 feet; thence South 58° 30' East 104.58 feet and North 35° 13' 30" East 96.94 feet to the point of beginning.

APN: 061-441-040

BEGINNING at a point on the Northwesterly line' of Golders Lane, so call also known as Santa Cruz Avenue, distant thereon North 35° 30' East 107 feet from the intersection thereof with the Northeasterly line of El Camino Real, also known as the Main County Road, leading from San Francisco to San Jose; thence North 58° 30' West 206 feet 6.1 inches; thence North 31° 30' East 53 feet 3 inches to the most Westerly Corner of that certain parcel of land described in the Deed from D. H. Ryan to Mrs. Isabella Maxfield, dated July 30, 1869 and recorded December 4, 1869 in Book 10 of Deeds at page 284, Records of San Mateo County, California; thence South 58° 30' East, along the Southwesterly line of said Maxfield parcel, 210 feet 1-1/2 inches, more or less, to the North Westerly line of Santa Cruz Avenue; thence South 35° 30' West, along said line of Santa Cruz Avenue, 53 feet 3.2 inches, more or less, to the point of beginning. BEING a portion of Lots 188 and 189 of that certain map entitled "Plat of the Lands of the Menlo Park Villa Association, Southern Portion of Pulgas Rancho, San Mateo Co.", filed in the office of the County Recorder of San Mateo County on September 14, 1863 in Book "C" of Maps at page 6 and copied into Book 2 of Maps at page 40.

APN: 061-441-050

A portion Lots 188 and 189, as designated on that certain Map entitled, "Plat of the Lands of the Menlo Park Villa Association, Southern Portion of Pulgas Rancho, San Mateo County, California", which Map was filed in the Office of the Recorder of the County of San Mateo. State of California on September 14, 1863, in Book "C" of Maps at Page 6 and copied into Book 2 of Maps at Page 40, more particularly described as follows:  
Beginning at a point on the Southwesterly line of Merrill Avenue, as described in the Agreement



to City of Menlo Park recorded April 30, 1952 in Book 2236 of Official Records at Pages 572, distant thereon South  $51^{\circ} 45'$  East, 275 feet, 4.4 inches from the Southeasterly line of Oak Grove Avenue, said point being the most Easterly corner of that Parcel described in the Deed to Anthony Goularte Pimentel, et ux, recorded May 4, 1951 in Book 2065 of Official Records at Page 485 (File No. 34263-J); thence South  $51^{\circ} 45'$  East, along the Southwesterly line of Merrill Avenue 67.90 feet to the Northwesterly line of Parcel Two described in the Deed to Ernest J. Kimp, recorded April 18, 1950; in Book 1838 of Official Records at Page 690 (File No. 51294-I); thence South  $35^{\circ} 0' 26''$  West (called South  $36^{\circ} 10'$  West in said Deed), along said Northwesterly line 96.89 feet to the Southwesterly line of that Parcel described in the Deed to J. Edward Lathan, et al, recorded August 4, 1952 in Book 2275 of Official Records at Page 557; thence North  $58^{\circ} 05'$  West, along said Southwesterly line of 60.55 feet to the Southeasterly line of Pimentel Parcel mentioned above; thence North  $31^{\circ} 18' 40''$  East, along said Southeasterly line 104.20 feet to the point of beginning.

APN: 061-441-030

JPN: 061-044-441-03

## Exhibit B

### Compliance Forms and Certifications

#### CERTIFICATE OF COMPLIANCE

**Project Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

Pursuant to Section 2.7 of the Affordable Housing Agreement and Declaration of Restrictive Covenants ("Agreement"), by and between the City of Menlo Park, a California municipal corporation (City"), and \_\_\_\_\_, a California limited liability company ("Owner") entered into on \_\_\_\_\_, I, \_\_\_\_\_, a representative of the Owner, hereby certify that, as of the date of this Certification, the multi-family residential rental project that is the subject of the Agreement is in compliance with all of the terms and conditions set forth in the Agreement.

Owner has obtained and maintains on file income certifications executed by each tenant renting a BMR Unit and hereby submits to the City a completed Income Computation and Certification Form for each household occupying a BMR Unit. Owner has made a good faith effort to obtain third party verification of the accuracy of the information provided by each tenant on an income certification. Good faith effort includes conducting a credit agency or other similar search, obtaining an income tax return for the most recent year (unless tenant is not legally required to file an income tax return) and taking one or more of the following steps: (1) obtaining a pay stub for the most recent pay period; (2) obtaining an income verification form from the tenant's current employer; or (3) obtaining an income certification from the Social Security Administration or California Department of Social Services if the tenant receives assistance from either of such agencies. To the best of Owner's knowledge and belief, each household leasing a BMR Unit meets the income and eligibility restrictions for that BMR Unit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer/Corporation

Project Name: \_\_\_\_\_  
Project Address: \_\_\_\_\_  
Menlo Park, CA 94025

Household Name: \_\_\_\_\_ Apartment/Application # \_\_\_\_\_

I certify (or declare) under penalty of perjury under the laws of the State of California that the family household is comprised of the following: (Enter the amount of income and income from assets for all members of the household).

**INCOME:**

<u>Household Member</u>	<u>Source</u>	<u>Annual Income</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total Income (A)		_____

**ASSETS:**

<u>Household Member</u>	<u>Source</u>	<u>Cash Value</u>	<u>Annual Income</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Income from Assets (B)			_____

**Total Annual Household Income (A + B)** \_\_\_\_\_

I certify that the information presented in this certification is true and accurate to the best of my/our knowledge and belief:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Exhibit C

### Sample Utility Allowance

#### Allowances for Tenant Furnished Utilities and other Services

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0169  
(exp. 09/30/2017)

Locality: <b>Housing Authority of the County of San Mateo, CA</b>		Unit Type: <b>Single-Family (Detached House)</b>				Date (mm/dd/yyyy) <b>11/01/2018</b>	
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	\$21.00	\$25.00	\$28.00	\$31.00	\$35.00	\$39.00
	b. Bottle Gas/Propane						
	c. Electric	\$28.00	\$34.00	\$39.00	\$46.00	\$52.00	\$59.00
	d. Electric Heat Pump	N/A	N/A	N/A	N/A	N/A	N/A
	e. Oil / Other						
Cooking	a. Natural Gas	\$3.00	\$3.00	\$5.00	\$6.00	\$8.00	\$9.00
	b. Bottle Gas/Propane						
	c. Electric	\$6.00	\$6.00	\$9.00	\$12.00	\$15.00	\$18.00
Other Electric (Lights & Appliances) & Climate Credit		\$24.00	\$31.00	\$49.00	\$68.00	\$86.00	\$105.00
Water Heating	a. Natural Gas	\$8.00	\$9.00	\$13.00	\$17.00	\$21.00	\$25.00
	b. Bottle Gas/Propane						
	c. Electric	\$16.00	\$19.00	\$24.00	\$30.00	\$36.00	\$43.00
	d. Oil / Other						
Water (avg)		\$66.00	\$68.00	\$85.00	\$104.00	\$123.00	\$144.00
Sewer		N/A	N/A	N/A	N/A	N/A	N/A
Trash Collection (avg)		\$28.00	\$28.00	\$28.00	\$28.00	\$28.00	\$28.00
Range / Microwave Tenant-supplied		\$11.00	\$11.00	\$11.00	\$11.00	\$11.00	\$11.00
Refrigerator Tenant-supplied		\$12.00	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00
Other--							
specify:							
<b>Actual Family Allowances</b>				Utility or Service		per month cost	
To be used by the family to compute allowance. Complete below for the actual unit rented.  Name of Family				Heating		\$	
				Cooking		\$	
				Other Electric		\$	
				Air Conditioning		\$	
				Water Heating		\$	

Address of Unit	Water	\$
	Sewer	\$
	Trash Collection	\$
	Range / Microwave	\$
	Refrigerator	\$
	Other	\$
Number of Bedrooms	Other	\$
	Total	\$



### The Nelrod Company 6/2018 Update

form HUD-52667 (09/14)  
ref. Handbook 7420.8