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**2019-020352**

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Count of Pages 22  
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County of San Mateo  
Mark Church  
Assessor-County Clerk-Recorder



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

22

**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 W. 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 Roky 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.

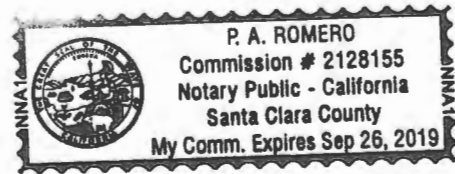
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph true and correct.

COUNTY OF Santa Clara

ss. Witness my hand and official seal.

P.A. Romero  
(Signature)

(Seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

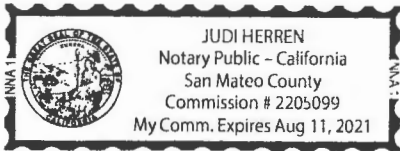
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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 [Handwritten 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° 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° 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° 0 26' 20" West (called South 36° 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° 05' West, along said Southwesterly line of 60.55 feet to the. Southeasterly line of Pimentel Parcel mentioned above; thence North 31° 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
<b>Other-- specify:</b>							
<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.					Heating		\$
					Cooking		\$
Name of Family					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