

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A DENSITY BONUS REGULATORY AGREEMENT, PURSUANT TO SAN JOSE MUNICIPAL CODE CHAPTER 20.190 RELATING TO AFFORDABLE HOUSING DENSITY BONUSES AND INCENTIVES FOR 280 MCEVOY STREET RESIDENTIAL APARTMENTS LOCATED AT 699 WEST SAN CARLOS STREET, AND DELEGATING SIGNATURE AUTHORITY TO THE CITY MANAGER

FILE NO. SP18-059

WHEREAS, the State Density Bonus Law (“Government Code sections 65915-65918”) and Chapter 20.190 of the San José Municipal Code (collectively “Density Bonus Law”), provide a mechanism by which private residential development may be granted waivers or concessions from the City of San José (“City”) development requirements under specified conditions in exchange for the development of affordable housing; and

WHEREAS, on May 10, 2018, a Special Use Permit (“SUP”) application was submitted to the City for a 365 multi-family residential apartment project located at 699 West San Carlos Street (“Subject Property”) to allow the demolition of all buildings and structures on site including two buildings totaling approximately 11,380 square feet, and two structures totaling approximately 2,020 square feet, the removal of three (3) ordinance-sized trees and one (1) non-ordinance-sized tree, and the construction of an approximately 345,000-square foot 100% affordable housing project with 365 affordable multi-family residential apartment units (excluding four market-rate manager’s units) with an alternative parking arrangement, back-up generator, and an up to 12.5-foot tall retaining wall, and concessions and waivers under state density bonus laws requesting a 29% increase in density and waivers to increase building height; reduce the required setbacks along McEvoy Street Dupont Street, and the West San Carlos Bridge and

reduce the amount of required motorcycle parking on an approximately 1.13-gross acre site ("699 West San Carlos Street"); and

WHEREAS, the proposed project is 100% affordable (excluding four market-rate manager's units) and is restricted to 70% low income and 30% very low income with residents earning no more than 30% to 80% Area Median Income ("AMI") in accordance with Government Code section 65915; and

WHEREAS, a project that constructs at least 20% of the units for lower income residents subject to a recorded affordability restriction of at least 55 years is eligible for waivers pursuant to the Density Bonus Law; and

WHEREAS, pursuant to Section 20.190.100 of the San José Municipal Code, concurrently with the approval of the SUP the applicant must enter into, and the City Council must approve, a Regulatory Agreement with the City meeting the requirements of the Density Bonus Law that will be recorded against the subject property to insure the continuing affordability of the units. The Regulatory Agreement is attached hereto and incorporated herein by reference as Exhibit "A" ("Regulatory Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The project consists of 100% affordable units consisting of 70% low income and 30% very low income with residents earning no more than 30% to 80% AMI, and four unrestricted Manager's units.
2. Pursuant to San José Municipal Code Section 20.190.070, the project is eligible for the following waivers which are reflected in the Regulatory Agreement and the SUP for File No. SP18-059:

- a. An increase in height from the maximum 110 feet, as stipulated in the approved Diridon Station Area Plan, to 164 feet. This is an approximately 49% height increase.
 - b. A reduction in the amount of required motorcycle parking. The San José Municipal Code requires one motorcycle parking space per four living units which would require 92 motorcycle parking spaces. The waiver requests a reduction to allow the provision of 16 motorcycle parking spaces (approximately one space per 22 living units).
 - c. A 0.33-foot setback along McEvoy Street in lieu of the required 10-foot setback.
 - d. A 0-foot setback along Dupont Street in lieu of the required 10-foot setback.
 - e. A 2-foot, 7-inch setback along Dupont Street in lieu of the required 10-foot setback.
3. The project includes a request for additional density of 29% or 83 residential units, as allowed under the proposed General Plan designation of Transit Residential.
 4. The City Council, as the Approval Authority for the Regulatory Agreement pursuant to San José Municipal Code Section 20.190.100, hereby authorizes the City Manager or his designee to execute the Regulatory Agreement in the form attached hereto as Exhibit "A," including any assignment of rights in the Subject Property and all other documents necessary to complete the transaction.

ADOPTED this ___ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NO FEE DOCUMENT

(Government Code Sections 6103 and 27383)

Recording requested by:

City of San José

When recorded mail to:

City of San José,
Department of Planning, Building, and Code Enforcement
200 E. Santa Clara St. 3rd Floor
San José, CA 95113
Attn.: Housing Asset Management

And

City of San José,
Department of Housing
200 E. Santa Clara St. 12th Floor
San José, CA 95113
Attn.: Housing Asset Management

REGULATORY AGREEMENT

699 W. San Carlos St, San Jose, CA 95126

DENSITY BONUS

RENTAL RESTRICTION

THE CITY OF SAN JOSÉ

AND

MCEVOY STREET, LP

NOTICE: THIS AGREEMENT CONTAINS SUBORDINATION REQUIREMENTS TO PRESERVE PRIORITY OF LAND USE AND REGULATORY COVENANTS.

REGULATORY AGREEMENT -RENTAL - NEW CONSTRUCTION

This Regulatory Agreement, dated for reference this 24th day of January, 2020, is made by and between the City of San José, a municipal corporation (the “City”), and McEvoy Street, LP, a California Limited Partnership (“Owner”), pursuant to City conditions of approval for permit number(s) GP17-015, C18-034, SP18-059, and T19-017 approved on _____, 20_____.

RECITALS

This Regulatory Agreement is entered into based on the following facts and understandings of the parties:

A. Owner is developing a 365 unit new rental housing project on property located at in the City of San José, County of Santa Clara, State of California, as more particularly described in **Exhibit A**. In accordance with the State Housing Density Bonuses and Incentives Law (California Government Code Section 65915, *et seq.*), and the City’s Density Bonus Ordinance, San José Municipal Code Chapter 20.190 (the “Ordinance”) the City has imposed conditions of approval that provide Owner with one or more density bonuses or incentives to support development of the project in exchange for Owner’s agreement to provide no fewer than 361 units restricted to affordable housing in the project.

B. As part of this agreement, Owner has agreed to enter into and record this Regulatory Agreement. The purpose of this Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the units restricted to affordable housing for the benefit of project tenants and the people of the City of San José.

C. The density bonuses and/or incentives granted during the planning approvals for this Project in connection with this Agreement are listed in **Exhibit B**.

D. The covenants in this Regulatory Agreement are intended to run with the land and be binding on Owner and Owner's successors to the land for the full term of this Regulatory Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are hereby incorporated into this Agreement) and the covenants and mutual obligations contained in this Regulatory Agreement, and in reliance on the representations and warranties set forth herein, Owner and the City hereby agree as follows:

1. DEFINED TERMS.

The following terms and their derivatives have the meanings set forth in this section wherever used in this Regulatory Agreement or attached Exhibits.

“**Affordable Rent**” means, rent, which including a reasonable utility allowance, does not exceed: (a) for very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit and (b) for lower income households whose gross incomes exceed the maximum income for very low income households, the rents shall be set at an

affordable rent, the product of 30 percent of 80 percent of the area median income adjusted for family size appropriate for the unit.

“**City**” means the City of San José, a municipal corporation, along with any assigns, transferees, or successors-in-interest thereto.

“**Density Bonus Units**” means additional dwelling units granted and listed in Exhibit B that exceed the otherwise Maximum Residential Density for a Project Site established in the City’s General Plan

“**Lower Income Households**” means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits are published in the California Code of Regulations for each county.

“**Non-Restricted Unit**” means a Project Unit that is not a Restricted Unit.

“**Owner**” means McEvoy Street, LP, a California Limited Partnership.

“**Project**” means the development of the Property for residential and other uses as described in the attached **Exhibit C** and the following permits: GP17-015, C18-034, SP18-059, and T19-017.

“**Project Unit**” means any housing unit developed on the Property as part of the Project.

“**Property**” means the real property described in the attached **Exhibit A** and any buildings or improvements now or hereafter situated on such real property.

“**Restricted Unit**” means a Project Unit which is (a) reserved for occupancy by a tenant household with a certain maximum income, which maximum income restrictions are imposed as set forth in the Schedule included in **Exhibit C**, and (b) restricted to affordable rent as set forth in the Schedule included in **Exhibit C**. It is synonymous with Restricted Affordable Unit as defined in the Ordinance.

“**Tenant Household**” means a lower income or very low income household, with an income certified pursuant to **Exhibit D**.

“**Site Plan**” means the plan required to be submitted in connection with the Owner’s Density Bonus application showing location of Non-Restricted Units, Restricted Units, and Density Bonus Units within the proposed Project.

“**Very Low Income Households**” means persons and families whose income does not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits are published in the California Code of Regulations for each county.

2. OWNER’S REPRESENTATIONS AND WARRANTIES.

The Owner represents and warrants that:

- A. No Pre-Existing Very Low or Low Income Units (as described in San Jose Municipal Code Section 20.190.030.C) have been vacated or demolished in the five (5) year period preceding the Owner's density bonus application.
- B. The Owner will income certify tenant households for income eligibility prior to permitting their occupancy of Restricted Units and Owner is required to recertify Tenant Households for continuing Program qualification within 150 days of the annual renewal of each Tenant lease.

3. TERM OF AGREEMENT.

- A. This Regulatory Agreement shall commence upon execution and shall remain in full force and effect until the fifty-fifth (55th) anniversary of the recording of the Notice of Completion for the Project in the Official Records of the County of Santa Clara, or if no notice of completion is recorded, until the sixtieth (60th) anniversary of the recording of this Regulatory Agreement (the "Term").
- B. Failure to record this Regulatory Agreement shall not relieve Owner or Project of any of its obligations hereunder.
- C. The obligations in this Regulatory Agreement shall remain effective and fully binding for this full Term regardless of any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by the City in a recorded writing or extended by the mutual consent of the parties.
- D. Any granted Density Bonus and Incentive(s) shall terminate with the demolition, destruction or other removal of the structure receiving the Density Bonus and/or Incentive(s).

4. SCHEDULE FOR COMPLETION AND OCCUPANCY OF RESTRICTED UNITS.

Restricted Units shall be constructed concurrently with Non-Restricted Unit, receive Certificate of Occupancy concurrent with other Project units and be concurrently first marketed and occupied. The projected date for completion of construction is March 2024. The projected date for commencement of marketing for the first tower is July 2023 and for the second tower is December 2023 and the projected date of occupancy is for the first tower is January 2024 and for the second tower is June 2024.

5. LIMITS ON OCCUPANCY OF RESTRICTED UNITS. Owner must limit for the full Term of this Regulatory Agreement the rental of Restricted Units to tenant households according to the schedule and occupancy requirements set forth in **Exhibit C** attached hereto.

6. RENTS FOR RESTRICTED UNITS. Owner must limit for the full Term of this Regulatory Agreement rents for Restricted Units to those rents specified in the schedule in **Exhibit C** and in conformance with the rent-setting requirements in **Exhibit C**.

7. QUALITY OF RESTRICTED UNITS; AMENITIES. The design, square footage, appearance and general quality of the Restricted Units shall be compatible with the design of the Non-Restricted Units. The quality of exterior design and overall quality of construction of the Restricted Affordable Units shall be consistent with the exterior design of all Non-Restricted Units in the Housing Development; the design, square footage, appearance, finishes, features and general quality of the Restricted Units shall be functionally equivalent to the Non-Restricted Units; Restricted Affordable Units shall have functionally equivalent parking to Non-Restricted Units. Tenant households in Restricted Units must have equal access to services and facilities as tenants in all other Project Units.

8. LOCATION AND SIZE OF RESTRICTED UNITS. The unit sizes, and number of bedrooms of the Restricted Units shall be consistent with **Exhibit C** attached hereto. The Restricted Units shall be dispersed throughout the Project.

9. NO CONDOMINIUM CONVERSION. Owner may not convert Restricted Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Restricted Units during the term of this Regulatory Agreement.

10. NONDISCRIMINATION. Owner may not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Project Units on the basis of 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, or on the basis of actual or perceived gender identity, or any other arbitrary basis.

11. MANAGEMENT RESPONSIBILITIES. Owner is responsible for all management functions with respect to the Restricted Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Restricted Units.

12. MANAGEMENT ENTITY. Owner must give the City written notice at least 90 days in advance of any change in the management agent for the Property.

13. MAINTENANCE AND SECURITY. Owner at its own expense must maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Restricted Unit occupants. Owner may not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Owner must provide adequate ongoing security equipment and services for Restricted Unit occupants. Owner must maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations.

14. VACANCIES. Owner is required to use its best efforts to fill vacancies in Restricted Units with tenant households as quickly as possible. Excessive or continuing Restricted Unit vacancies shall constitute a breach of this Regulatory Agreement.

15. DOCUMENTS TO BE MAINTAINED ON SITE. Owner shall at all times maintain on the Property, in the rental office or otherwise in the control of the property manager, copies of all regulatory agreements and other documents imposing limitations on rent or occupancy of any Restricted Units.

16. INSPECTION AND RECORDS. Owner must maintain records which clearly document Owner's performance of its obligations to operate the Property under the terms of this Regulatory Agreement. Owner must submit any records to the City within ten (10) business days of the City's request. Owner shall permit representatives of the City to enter and inspect the Property for compliance with obligations under this Regulatory Agreement upon 24 hours advance notice of such visit to Owner or Owner's management agent, as permitted under applicable law.

17. ANNUAL REPORTS. Owner must submit an annual report to the City, on a form provided by the City, which, at a minimum, shall state for each Restricted Unit the rental rate (including any rental assistance received on behalf of the tenant household) and the income, household size, race and ethnicity of the occupants. The income information required under this report shall be determined in accordance with the provisions of **Exhibits C and D** to this Agreement.

18. MONITORING. The City shall have the right to take such actions to monitor compliance with this Regulatory Agreement as it deems necessary, including but not limited to reasonable requests for documents.

19. MONITORING FEES. Owner shall pay annual monitoring fees to the City in advance on or prior to July 1 consistent with the amount set forth in the City's Schedule of Fees and Charges. As of January 21, 2020, the fee is \$38.75, which is subject to change.

20. PROPERTY DAMAGE OR DESTRUCTION. If the Restricted Units or access thereto is damaged or destroyed, Owner must, at its own cost and expense, repair or restore the Restricted Units. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

21. SUBORDINATION. This Regulatory Agreement must be senior in priority to any other liens or encumbrances on the Property. The City will require as a precondition to entering into this Agreement that all pre-existing lienholders enter into a subordination agreement, in a form reasonably acceptable to the City, that subordinates the private liens or encumbrances to this Regulatory Agreement.

22. TRANSFER OF RESTRICTED UNITS. During the term of this Regulatory Agreement, Owner must give written notice to the City at least 90 days in advance of any sale, agreement to sell, assignment, conveyance, lease (other than the rental of Restricted Units to eligible residential tenant occupants), or transfer of the Restricted Units or any part thereof, including the sale of any general or limited partnership interests, the removal of any general partner, or any substantial change in operational or management control over the Restricted Units.

23. DEFAULT AND REMEDIES. A breach of any agreement, obligation, or warranty under this Regulatory Agreement shall be an Owner default. The City shall give written notice to Owner of any

such default. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the default. In addition, if the default is curable and does not give rise to an imminent danger to health or safety, the notice shall also specify the action required to cure the default, and a reasonable date, which shall not be less than 15 calendar days from the mailing of the notice, by which Owner must take or commence such action to cure. If the notice specifies only a commencement date for the cure, Owner must commence such cure within the specified time and shall diligently pursue the cure to completion within a reasonable time thereafter.

If Owner fails to cure or commence to cure the breach within the time frame specified in the notice, or if a cure is not possible, the City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of this Regulatory Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;
- B. Enter upon, take possession of, and manage the Restricted Units, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Restricted Units, and continue in possession until such time as the City in its sole judgment determines that Owner is in a position to operate the Restricted Units in compliance with this Regulatory Agreement;
- C. After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof;
- D. For violations of Owner's obligations with respect to occupancy restrictions for Restricted Units, Property maintenance, and Project Unit vacancies, impose as liquidated damages a charge upon Owner in an amount of \$10 per day (with this amount to be adjusted annually in accordance with changes in the Consumer Price Index, all consumers, for the San José area) for each Project Unit that is not operated in compliance with this Regulatory Agreement;
- E. For violations of Owner's obligations with respect to maximum rents for Restricted Units, impose as liquidated damages a charge upon Owner in an amount equal to the actual amount Owner has collected from any tenant household in excess of the allowable rent;
or
- F. Pursue any other remedy allowed at law or in equity.

The parties agree that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages the City is likely to suffer from violations of the respective terms. Owner agrees to pay in full any accrued liquidated damages to the City within ten business days of a written demand by the City for such payment.

24. THIRD PARTY BENEFICIARIES. The tenants of Restricted Units are intended to be third party beneficiaries of this Regulatory Agreement, and shall have such rights and remedies to enforce any of Owner's obligations under this Agreement as may be available to third party beneficiaries under the

law.

25. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No member, official, officer, director, employee, or agent of the City of San José shall be personally liable to Owner for any obligation created under the terms of this Regulatory Agreement, except in the case of actual fraud or willful misconduct by such person.

26. INDEMNITY. Owner hereby indemnifies and holds the City of San José, its members, officials, officers, directors, employees, and agents (collectively, the "Indemnified Parties") harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligations as and when required by this Regulatory Agreement; (2) any failure of Owner's representations or warranties to be true and complete; or (3) any act or omission by Owner or any contractor, subcontractor, management agent, or supplier with respect to the Project or the Property, except to the extent that such losses are caused by the negligence or willful misconduct of the City. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Owner's duty to indemnify an Indemnified Party shall survive the term of this Regulatory Agreement.

27. GOVERNING LAW. This Regulatory Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

28. TIME. Time is of the essence in the performance of this Regulatory Agreement by Owner and the City.

29. CONSENTS AND APPROVALS. Any consent or approval required under this Regulatory Agreement shall not be unreasonably withheld, delayed, or conditioned.

30. NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Owner and the City shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and the City as follows, or if any such office is relocated, to the new address specified by the relocated party:

CITY: City of San José
c/o: Department of Planning, Building, and Code Enforcement
200 E. Santa Clara Street, 3rd Floor
San José, CA 95113
Attn.: Rhonda Buss

Copy to:
City of San José
City Attorney's Office

200 E. Santa Clara Street, 16th Floor
San José, CA 95113

OWNER: McEvoy Street, LP
c/o Geoffrey Morgan
First Community Housing
75 E. Santa Clara Street, Suite 1300
San José, CA 95113

31. BINDING UPON SUCCESSORS; COVENANTS TO RUN WITH THE LAND. All provisions of this Regulatory Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and the City, regardless of any voluntary or involuntary conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all of the duties and obligations imposed on Owner under this Regulatory Agreement for the full term of this Regulatory Agreement. The term "Owner" as used in this Regulatory Agreement shall include all such assigns, successors-in-interest, and transferees.

The parties intend that the covenants contained in this Regulatory Agreement shall constitute covenants running with the land and shall bind the Property and every person having an interest in the Property during the term of this Agreement. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

32. RELATIONSHIP OF PARTIES. The relationship of Owner and the City with respect to the Property during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The City neither undertakes nor assumes any responsibility or duty to Owner or to any third party with respect to the operation of the Property or the actions of Owner. Except as the City may specify in writing, Owner shall have no authority to act as an agent of the City or to bind the City to any obligation.

33. WAIVER. Any waiver by the City of any obligation in this Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Regulatory Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Regulatory Agreement shall not operate as a waiver or release from any of its obligations under this Regulatory Agreement. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

34. OTHER AGREEMENTS. Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without an express written waiver by the City.

35. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be effective only if executed by both Owner and the City.

36. SEVERABILITY. Every provision of this Regulatory Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

37. INCORPORATION. The Recitals and following Exhibits are attached to this Regulatory Agreement and are hereby incorporated into this Loan Agreement by reference:

Exhibit A:	Property Description
Exhibit B:	Density Bonuses and Incentives Granted
Exhibit C:	Occupancy and Rent Restrictions
Exhibit D:	Income Certification
Exhibit E:	Sample Calculation of the Affordable Rent

38. COUNTERPARTS. This Regulatory Agreement may be signed in multiple counterparts, which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Regulatory Agreement, effective as of the date first written above.

“OWNER”

MCEVOY STREET, LP
a California Limited Partnership

By: 
Geoffrey Morgan

Title: President & CEO

“CITY”

CITY OF SAN JOSÉ, a municipal corporation

By: _____

Name: _____

Approved as to form and legality:

By: _____
Senior Deputy City Attorney

Name: _____

[SIGNATURE(S) MUST BE ACKNOWLEDGED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

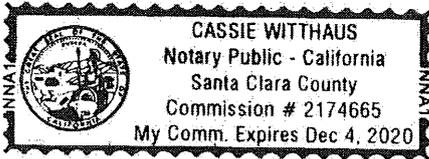
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On January 28, 2020 before me, Cassie Witthaus, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Geoffrey Morgan
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 Cassie Witthaus
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: Regulatory Agreement - Rental - New Construction
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: _____

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 _____

County of _____

On _____ before me, _____, Notary Public, personally
DATE NAME OF NOTARY
appeared _____
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 acknowledge 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 OF NOTARY

ACKNOWLEDGMENT

EXHIBIT A
PROPERTY DESCRIPTION

All that certain real property situated in the City of San José, County of Santa Clara, State of California, described as follows:

See description from title report on following pages

Assessor's Parcel Numbers: 261-38-001, 261-38-004, 261-38-030, 261-38-047, 261-38-048, 261-38-049

EXHIBIT A
LEGAL DESCRIPTION

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

PARCEL ONE:

A PARCEL OF LAND, BEING A PORTION OF LOTS 25, 26, 27 AND 28, AS SAID LOTS ARE SHOWN ON THE "MAP OF THE MCEVOY SUBDIVISION, BEING LOT 61 AND PART OF LOT 62 OF LOS COCHES RANCHO, AND PART OF THE INFIRMARY SURVEY", RECORDED JULY 14, 1891, IN VOLUME "E" OF MAPS, PAGE 109, RECORDS OF SANTA CLARA COUNTY, SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAN CARLOS STREET, NOW STEVENS CREEK ROAD, WITH THE EASTERLY LINE OF MCEVOY STREET; THENCE NORTHERLY, ALONG SAID EASTERLY LINE, 45.00 FEET; THENCE EASTERLY, AT RIGHT ANGLES FROM SAID EASTERLY LINE AND PARALLEL WITH SAID NORTHERLY LINE, 207.66 FEET TO THE WESTERLY LINE OF DUPONT STREET; THENCE SOUTHERLY ALONG SAID WESTERLY LINE, 45.00 FEET TO SAID NORTHERLY LINE OF SAN CARLOS STREET, THENCE WESTERLY ALONG SAID LAST LINE, 207.66 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, ALL MINERALS AND MINERAL RIGHTS, INTERESTS, AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY, HOWEVER GRANTOR OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSES WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH, AS RESERVED AND EXCEPTED IN THE GRANT DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION, RECORDED NOVEMBER 24, 1987, IN BOOK K369, PAGE 280, OF OFFICIAL RECORDS.

APN: 261-38-001

PARCEL TWO:

LOTS 32 AND 57, AS SHOWN ON THAT CERTAIN MAP OF MCEVOY SUBDIVISION FILED JULY 14, 1891, IN BOOK "E" OF MAPS, PAGE 109, SANTA CLARA COUNTY RECORDS.

APN'S: 261-38-004 AND 261-38-030

PARCEL THREE:

LOT 58, AS SHOWN ON THAT CERTAIN MAP OF MCEVOY SUBDIVISION FILED JULY 14, 1891, IN BOOK "E" OF MAPS, PAGE 109, SANTA CLARA COUNTY RECORDS.

APN: 261-38-047

PARCEL FOUR:

LOT 31, AS SHOWN ON THAT CERTAIN MAP OF MCEVOY SUBDIVISION FILED JULY 14, 1891, IN BOOK "E" OF MAPS, PAGE 109, SANTA CLARA COUNTY RECORDS.

APN: 261-38-048

PARCEL FIVE-A:

**EXHIBIT A
(Continued)**

ALL OF LOTS 25, 26, 27, 28 AND 59 AS SHOWN ON THAT CERTAIN MAP OF MCEVOY SUBDIVISION FILED JULY 14, 1891, IN BOOK "E" OF MAPS, PAGE 109, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM THE SOUTHERLY 45 FEET OF SAID LOTS 25, 26, 27 AND 28.

PARCEL FIVE-B:

LOT 30, AS SHOWN ON THAT CERTAIN MAP OF MCEVOY SUBDIVISION FILED JULY 14, 1891, IN BOOK "E" OF MAPS, PAGE 109, SANTA CLARA COUNTY RECORDS.

APN: 261-38-049

EXHIBIT B
DENSITY BONUSES AND INCENTIVES GRANTED

The proposed project is a 100% affordable housing project, excluding four market rate managers units, for households earning between 30% to 80% of Area Median Income (AMI), as defined in Sections 65915 of the Government Code for the State of California, and is therefore subject to the State Density Bonus Law for affordable housing projects.

The proposed project includes a request for a bonus density of 29.2% over the maximum density of the Transit Residential Land Use designation in San Jose's General Plan. As provided by the applicant in a Development Incentives/Waivers Request letter, the proposed project is applicable to the following concessions and waivers:

Incentive

City's Parking Incentive, Reduction in required parking—The development standard from the San José Municipal Code Section 20.190.060(B)(1) states that if an Applicant for a Housing Development that qualifies for a Density Bonus based on the provision of Restricted Affordable Units requests the Parking Incentive, the grant of the Incentive will be deemed to be required in order to provide the Affordable Restricted Units and, in the absence of substantial evidence to the contrary, will be deemed not to have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and not to be contrary to state or federal law. The applicant requests that the Very Low Income restricted units use the parking ratio identified in Table 20-290 of the San José Municipal Code.

Waiver one: Building height

The Diridon Station Area Plan calls for a 110 feet height maximum on the site. The application of the existing General Plan height limit would physically preclude the Project at the density requested by eliminating three floors of each building, so the requested waiver is necessary to physically construct the Project. Through coordination with the Airport staff and FAA, building heights up to 180 feet are possible on the site. The full building program of 365 units is possible at a height of 164 feet for the family building on Dupont Street and a height of 163 feet for the workforce building on McEvoy Street. Therefore, the request is for a waiver to build up to 164 feet.

Waiver two: Motorcycle parking

Using puzzle lift technology, this project was able to meet the parking stall requirements per Table 20.290 of the City's Zoning Ordinance regarding affordable housing projects, from zero parking for Very Low Income studios and one-bedroom units to a .5 parking ratio for Low Income two- to three-bedroom units, which is the range anticipated for this 100% affordable housing project proposal. However, in addition to car stall requirements, the Diridon Station Area Plan requires motorcycle parking of one space per four units. The application of this requirement would require the conversion of approximately 9 car parking spaces into motorcycle parking. As a result, the development would lose 3 low income 0-1 bedroom units, or the development would need to request a waiver to reduce car parking requirements by 9 spaces. The site layout is able to accommodate 16 motorcycle parking spaces without compromising the number of units provided

or requesting a waiver for reduced car stalls. Therefore, we request a waiver to provide 16 motorcycle parking spaces.

Waiver three: Setback on McEvoy Street

The Diridon Station Area Plan recommends little to no setbacks from street frontages to activate the street in this urban area, while the R-M zoning district requires a 10 ft front setback and 5 ft side setbacks.

Along McEvoy Street, this Project requests a waiver to reduce the front setback to 4 inches.

Waiver four: Setback on Dupont Street

Along Dupont Street, this Project requests a waiver to reduce the front setback from the property line to 0 feet.

Waiver five: Setback at West San Carlos Bridge

Along the West San Carlos Bridge, this Project requests a waiver to reduce the front setback from the property line to 2 feet, 7 inches.

EXHIBIT C
OCCUPANCY AND RENT RESTRICTIONS

1. Schedule of rent and occupancy restrictions

The rents and occupancy of Restricted Units in the Project shall be restricted according to the following schedule (the "Schedule"):

Restricted Unit Type <i>[If Project has fixed units, specify unit numbers on each row.]</i>	Number of Restricted Units	Affordability Type <i>[check one per row]</i>		Maximum Tenant Household Income	Maximum Annual Rent
		Very Low Income	Lower Income		
Workforce - 0 Bedroom (Studio)	99		X	80% of AMI	30% of 80% of AMI
Workforce - Jr 1-bedroom	56		X	80 % of AMI	30% of 80% of AMI
Family – 1 Bedroom	41		X	80% of AMI	30% of 80% of AMI
Family - 2 Bedroom	26		X	80% of AMI	30% of 80% of AMI
Family - 3 Bedroom	31		X	80% of AMI	30% of 80% of AMI
Workforce – 0 Bedroom (studio)	43	X		50% of AMI	30% of 50% of AMI
Workforce – Jr 1-bedroom	24	X		50% of AMI	30% of 50% AMI
Family - 1 bedroom	17	X		50% of AMI	30% of 50% of AMI
Family – 2 Bedroom	11	X		50% of AMI	30% of 50% of AMI)
Family - 3 Bedroom	13	X		50% of AMI	30% of 50% of AMI
Total Restricted Units	361				

Total Non-Restricted Units	4				
Total Project Units	365				

The unit numbers of the Restricted Units will be designated by mutual agreement of the City and Owner within six months of the date of this Regulatory Agreement.

2. Definitions

The following terms and their derivatives have the meanings set forth in this section wherever used in this Exhibit or elsewhere in the Regulatory Agreement:

“**AMI**” means area median income for the County of Santa Clara as published and adjusted by HUD.

“**Income Determination Guidelines**” means the rules for determining income and adjustments to income in Exhibit D.

“**Low Income Unit**” means a Restricted Unit that is restricted according to the Schedule (in section 1 above) to a tenant household with a maximum tenant household income at or below 80 percent of AMI but above 50 percent of AMI.

“**Neighborhood**” means a contiguous area characterized by similar or compatible land uses, physical features, occupant characteristics and economic influences, often identified by a place name and with boundaries composed of major streets, barriers, or abrupt changes in land use, as such area may be defined by the City in the General Plan, ordinances or other documents.

“**Temporary Non-Compliance**” means a situation in which a Restricted Unit is in compliance with the provisions of this Agreement except that a tenant household’s income exceeds the maximum allowable income because of increases in household income subsequent to initial occupancy.

“**Very Low Income Unit**” means a Restricted Unit restricted according to the Schedule to a tenant household with a maximum tenant household income at or below fifty percent (50%) of AMI.

3. Initial occupancy

Owner must limit for the full Term of this Regulatory Agreement (except as otherwise provided in this Exhibit) the rental of Restricted Units only to tenant households with incomes no higher than the maximum tenant household income specified in the above Schedule, as such income level is certified prior to first occupancy by the tenant household. The applicable income limit shall be the maximum tenant household income for a household of a size equal to the actual size of the tenant household in accordance with the procedures set forth below, as shown in the table contained in 25 Cal. Code Reg. 6932, as amended from time to time. Owner must certify the income levels and other qualifications of applicants for Restricted Units prior to initial occupancy in conformance with the Income Determination Guidelines

contained in Exhibit D to the Regulatory Agreement. All income determinations shall be based on the projected household income of the tenant household for the next 12 months, not the income for the preceding year.

4. Determination of maximum rents

Owner must limit for the full term of this Regulatory Agreement the annual rents charged for Restricted Units only to the maximum annual rents specified in the above Schedule. The City shall determine the dollar amount for the income and rent limits set forth in the Schedule annually, for each percent-of-AMI category, based on determinations made by HUD, the and the California Department of Housing and Community Development. Maximum rents must be adjusted downwards by the appropriate allowance for tenant-paid utilities, as specified by the City.

5. Rent calculations adjusted for unit size

Maximum rents for Restricted Units shall be calculated according to the maximum annual rent limits in the Schedule with the following adjustments for household (unit) size:

- a) In adjusting the rent for unit size, the number of bedrooms in the Restricted Unit shall be the basis for the calculation of Affordable Housing Cost : studio - one person, one bedroom – two persons, two bedrooms - three persons, three bedrooms – four persons, four bedrooms - five persons, five bedrooms – six persons, six bedrooms – seven persons or as otherwise consistent with Health and Safety Code Sections 50052.5 and 50053 and the applicable regulations.
- b) Exhibit E to the Regulatory Agreement contains an illustrations of the calculation of the Affordable Rent for Lower Income Households renting an Assisted Unit. These illustrations assume that utility charges are paid by Borrower. If the Borrower elects otherwise, the Borrower shall deduct from the rents the current utility allowance amounts provided by City.
- c) This formula for establishing rents shall be used irrespective of the actual household size of the tenant household occupying the Restricted Unit.

6. Rents for units with rental assistance

For Restricted Units that are occupied by tenant households that receive Section 8 tenant-based vouchers or other tenant-based rental assistance, the maximum rent allowed will be the rent allowed under the Section 8 or other applicable rental assistance program, notwithstanding the maximum rents set forth in the Schedule, provided that the tenant household's total payment for rent plus an allowance for tenant-paid utilities does not exceed 30 percent of the tenant household's income.

7. Income recertification

Owner must recertify the income level and other qualifications of each tenant household in a Restricted Unit yearly on or before the anniversary date of the tenant household's first occupancy of the Restricted Unit. Each recertification must be submitted to the City for its review. Recertifications must comply

with the standards and procedures set forth in the Income Determination Guidelines contained in Exhibit D to the Regulatory Agreement. A Restricted Unit that is in Temporary Non-Compliance because of an increase in tenant household income shall not be deemed by the City as an Owner default under this Regulatory Agreement if Owner otherwise complies with this Regulatory Agreement. However, upon vacation of a Restricted Unit that is in Temporary Non-compliance, Owner must certify the income and other qualifications of any prospective new tenant household.

8. Rent increases

- 8.1 Owner may adjust the rent for a Restricted Unit no more than once in a twelve-month period. Rent may be increased only if (a) the tenant household's is a very low income household and their income upon recertification exceeds the maximum annual income specified in the Schedule, and then only to rent allowed for a lower income household, or (b) the maximum annual rent as calculated in accordance with Section 4 for the Restricted Unit has increased because of changes in AMI.
- 8.2 At least 90 calendar days prior to increasing rents on any Restricted Unit, Owner shall submit to the City for review and approval a written request for such increase. The tenant household must be given at least 60 days written notice prior to any rent increase. Notwithstanding the above, rent adjustments are subject to any rent provisions of the current lease or rental agreement with the tenant household.

9. Ensuring that the proper number of Restricted Units are provided at each level

Any time a Restricted Unit is vacated, the property manager must determine what adjustments need to be made to bring the Project back into compliance with rent categories in the Schedule. Adjustments made in accordance with Section 9 may require redesignation of the rent category of the vacated Restricted Unit to maintain the unit mix established in the Schedule. Prior to changing rent categories on any Restricted Unit, Owner shall submit to the City for review and approval a written request for such change upon receipt of the tenant household's intent to vacate the unit.

If no adjustments can be made, the Restricted Unit shall then be considered to be in Temporary Non-Compliance until the tenant household vacates the unit, at which time a new income-qualified tenant household must occupy the Restricted Unit and pay the rent required for that Restricted Unit according to the Schedule.

A Restricted Unit that is in Temporary Non-Compliance under this Section shall not be deemed by the City as an Owner default under this Regulatory Agreement if Owner otherwise complies with this Regulatory Agreement.

EXHIBIT D
INCOME CERTIFICATION

The Owner is responsible for verifying the income eligibility of Restricted Unit tenants (i.e., that income does not exceed income limits) based on the following methodology and definitions.

1) Household Composition

The Household is comprised of all eligible individuals who are currently living together at the same address and will continue to be living together in the Restricted Unit. New household members cannot be added to the application to income qualify for an Restricted Unit after initial submission of an application. In addition, the following individuals are not counted as part of the household: foster children, unborn children, children who are subject to a shared-custody agreement in which the child resides with the household less than 50% of the time, children being pursued for legal custody or adoption who are not yet living with the household at the time of application, and non-related live-in care-takers.

To be considered an Eligible Household Member, an individual must comply with the above criteria and meet one of the following criteria:

- i. All household members who are 18 years of age or more (adult household members) must be included on the application to rent the Rental Inclusionary Unit; or
- ii. Any minor individual who is a dependent listed on the most recent year's tax returns of an adult household member. All household members who are under 18 years of age must be the legal dependent of an adult household member.

2) Household Income Limits

To establish the eligibility of households who intend to occupy Restricted Unit, limits are set on the amount of income that households (including all Eligible Household Members) can earn. These limits are based on the number of Eligible Household Members; the family size to be used for determining the Household Income Limit is the number of Eligible Household Members.

The Ordinance requires that on-site Restricted Units be rented to Lower Income households and Very Low Income households, as defined below. Please refer to 25 Cal. Code Reg Section 6932 for the current Lower and Very Low Income Household Income Limits in Santa Clara County by family size. The City of San Jose Housing Department annually publishes income limits for the City and posts these on its website.

3) Gross Annual Household Income

For income eligibility purposes, the gross annual income (income before deductions or exemptions) received by all members of the household 18 years of age or older (except for non-related live-in caretakers paid by an outside source who are not considered household members) will be determined as described below. The gross annual income is determined by calculating the household's total current monthly income and then multiplying that total by 12.

In the event that current monthly income deviates by more than 15% from the preceding 12-month average, the gross annual income will be determined by combining the preceding half year's gross income with one-half year's gross income at the current level.

4) Types of Income

- i. All wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services, before payroll deductions;
- ii. The net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness, or any allowance for depreciation of capital assets);
- iii. Interest and dividends (including income from assets – see Excluded Income section below);
- iv. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;
- v. Payments in lieu of earnings, such as unemployment, disability compensation, and severance pay;
- vi. The maximum amount of public assistance available to household members, other than the amount of assistance specifically designated for shelter and utilities;
- vii. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the home;
- viii. All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of household or spouse; and
- ix. Any earned income tax credit to the extent that it exceeds income tax liability.

5) Excluded Income

- i. Casual, sporadic or irregular gifts;
- ii. Amounts that are specifically for, or in reimbursement of, medical expenses;
- iii. Lump sum additions to household assets (as defined in the Assets section below), such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains, and settlement for personal losses;
- iv. Monies received for educational scholarships paid either directly to students, or to the educational institution, as well as amounts paid by the Government to a Veteran of the U.S. Armed Forces for use in meeting the costs of tuition, fees, books, and equipment. Any money received over and above the associated educational costs listed are not exempt and considered income;
- v. Special pay to a person in the U.S. Armed Forces who is head of household who is deployed and exposed to hostile fire;
- vi. Foster child care payments;
- vii. The value of benefits received from the Supplemental Nutrition Assistance Program.
- viii. Payments to volunteers under the Domestic Volunteer Service Act of 1973;

- ix. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes;
- x. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
- xi. Payments received from the Job Training Partnership Act; and
- xii. Income derived from the disposition of funds of the Grand River band of Ottawa Indians.

6) Determination of Income from Assets

To determine a Household's income eligibility for occupancy of a Restricted Unit, a percentage of the Household's assets (as defined in the Assets section below) shall be added to the Household income only when the Household's assets exceed the annual Income Limit for the Household. Please refer to the Housing Department website for current income limits.

When the total of the Household's assets exceed the Income Limit for the Household, then the amount of income attributed to these assets shall be computed as the higher of:

- i. The actual annual income generated from the assets; or
- ii. 2.5% of all assets in excess of the Household Income Limit.

7) Assets

Assets are defined as:

- i. Cash savings, including but not limited to bank accounts, credit union accounts, certificates of deposit, and money market funds;
- ii. Marketable securities, stocks, bonds and other forms of capital investment;
- iii. Inheritance and lump sum insurance payments, already received;
- iv. Settlements for personal or property damage already received;
- v. Equity in real estate including residential and commercial property and unimproved land; and
- vi. Other personal property that is readily convertible into cash.

The following are not considered assets:

- 1. Ordinary household effects including furniture, fixtures, and personal property;
- 2. Automobiles used for personal use; and
- 3. Cash, securities, stocks, bonds, and other forms of capital held in a tax deferred retirement plan recognized by the Federal Internal Revenue Service.

EXHIBIT E
SAMPLE CALCULATION OF AFFORDABLE RENT

The following hypothetical illustrates the calculation of Affordable Housing Cost **for Low Income Households** who are **Renting** a studio unit with a family size of 2 persons in Santa Clara County.

Assumptions.

1. Restricted Unit for Low Income Households (Max Income 80% AMI).
2. Actual Family Size -2 Persons (for purposes of this example)
3. Assumed Family Size - 1 Person)
4. Person or Family need not have the maximum income for a Person or Family in the income category (adjusted for family size).
5. Electricity charges are separately metered and directly billed to the tenants by PG&E.

As of January 2019, pursuant to 25 CCR Section 6932, the maximum income level for a Low Income Household with a family size of 2 in Santa Clara County is \$75,600.00.

Pursuant to 25 CCR Section 6918, Rent includes, among other things, payment for use or occupancy of a housing unit and charges or fees charged or passed through by the landlord other than security deposits. Pursuant to Section 50053 of the Health and Safety Code, the Rent paid by a Low Income Household shall not exceed 30% of 60% of the area median income (“AMI”) adjusted for family/unit size (based on the number of bedrooms in the unit not the actual family size). (Note: 60% of AMI is not shown on the chart in 25 CCR 6932 and is determined as 60% of Median Income.)

CALCULATION OF RENT CHARGEABLE:

52,590.00	[60% of AMI adjusted for family/unit size (studio =1 person)]
X .30	[Rent cannot exceed 30% of 60% of area median income]
\$15,777.00	

\$ 1,314.75 divided by 12 [to calculate the maximum monthly Rent]

-\$ 174.00 [Assumed allowance for an all electric studio apartment.]

\$ 1,140.75 [Maximum Rent after reasonable allowance for electric charges.]

As this hypothetical illustrates, as of January 2019 no Low Income Household in a studio Restricted unit that pays its own electric bill, water, trash and sewage should be charged or pay Rent in excess of \$1,314.75 per month minus a reasonable allowance for those tenant paid utilities; this amount may be adjusted as the CCR Sections above are amended or the reasonable allowance amount is adjusted.