

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 (AFFORDABLE
HOUSING DENSITY BONUSES AND INCENTIVES) FOR
THE MERIDIAN APARTMENTS PROJECT LOCATED AT
961-971 MERIDIAN AVENUE, AND DELEGATING
SIGNATURE AUTHORITY TO THE CITY MANAGER**

FILE NO. SP19-064

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 November 12, 2019, an application (File No. SP19-064) was filed by the applicant, Drew Walstrum, a representative of ROEM West, Inc., for a Special Use Permit to allow the demolition of all buildings and structures on-site including two residential buildings and accessory structures totaling approximately 7,057 square feet, and a warehouse totaling approximately 10,663 square feet, the removal of twenty-nine (29) ordinance-size trees and twelve non-ordinance-size trees, and the construction of an approximately 255,048-square foot mixed-use building consisting of 233 100% affordable housing units (excluding two market rate manager’s units) and 1,780 square feet of ground-floor retail with an alternative parking arrangement, and qualifying incentives under the State Density Bonus Laws requesting a vehicle parking reduction and a reduced front setback from 10 feet to 7 feet along Meridian Avenue, on an approximately 2.09-gross acre site, located on the west side of Meridian Avenue between Fruitdale Avenue and Curci Drive (961-971 Meridian Avenue), San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the proposed project is 100% affordable (excluding two market-rate manager's units) and is restricted to 80% 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 Special Use Permit, the applicant must enter into, and the City Council must approve, a Regulatory Agreement with the City that meets the requirements of the Density Bonus Law and 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 includes 100% affordable units consisting of 80% low income with residents earning no more than 30% to 80% AMI, and two unrestricted Manager's units.
2. Pursuant to San José Municipal Code Section 20.190.070, the project is eligible for the following development incentives which are reflected in the Regulatory Agreement and the SUP for File No. SP19-064:
 - a. A parking reduction from 389 parking spaces to a minimum 113 parking spaces; and
 - b. A setback reduction along Meridian Avenue from a 10-foot setback to a 7-foot setback.

3. 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

EXHIBIT "A"

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

961-971 Meridian Avenue

DENSITY BONUS

RENTAL RESTRICTION

THE CITY OF SAN JOSE

AND

Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the will of Santina LaBarbera, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sal J. LaBarbera under the Sal J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91

**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 28th day of April, 2020, is made by and between the City of San José, a municipal corporation (the "City"), and **Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sal J. LaBarbera under the Sal J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91** (separately or together referred to as "Owner"), pursuant to City conditions of approval for permit number (File No. SP19-064), approved on April 28, 2020.

RECITALS

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

A. Owner is developing a 233-unit new rental housing project on property located at 961-971 Meridian Avenue 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 231 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 of the area median income adjusted for family size appropriate for the unit. The Owner will seek tax credit under Section 42 of the Internal Revenue Code for this affordable housing project. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements shall prevail.

“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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements shall prevail.

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

“Owner” means Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the Santana M. LaBarbera Revocable Trust, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sal J. LaBarbera under the Sal J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91

“Project” means the development of the Property for residential and other uses as described in the attached **Exhibit C** and the following permits: File No. SP19-064.

“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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements allowing the lowest affordable level shall prevail.

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 José 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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements allowing the lowest income eligibility shall prevail.

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).

E. In the event the Project has not been constructed in any manner and Special Use Permit No. SP19-064 expire, this Regulatory Agreement shall be null and void since Special Use Permit No. SP19-064 granting the incentives described herein would have expired and the Project has not been implemented in any manner. Further, at any time prior to the expiration of Special Use Permit No. SP19-064, the Owner, or its authorized representative, may seek revocation of Special Use Permit No. SP19-064 and this Regulatory Agreement pursuant to San José Municipal Code Section 20.100.380. The City will use its good faith effort to support such revocation in such instances where Special Use Permit SP19-064 has not been implemented.

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 31, 2023; The projected date for commencement of marketing is October 31, 2022 and the projected date of occupancy is April 1, 2023; provided, however, the parties acknowledge and agree that these are projected dates and in no way shall cause a default in the event not met.

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. For purposes of clarification of the foregoing, "excessive or continuing" shall mean vacancies that exceed sixty (60) days.

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 2019-2020, the fee is \$38.75 per unit to City.

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
Department of Planning, Building, and Code Enforcement
200 E. Santa Clara Street, 3rd Floor Tower
San José, CA 95113
Attn.: Maira Blanco, Planner

Copy to:
City of San José
City Attorney's Office
200 E. Santa Clara Street, 16th Floor
San José, CA 95113

OWNERS: La Barbera, Michael Trustee & Et. Al.
c/o Terracommercial Real Estate
873 Blossom Hill Road
San Jose, CA 95123

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, and shall comply with all of the following:

- (1) For modification initiated by the development proponent:
 - a. Following approval of the Planning application, but prior to issuance of a building permit for the development, an applicant may submit written request to modify the development permit. The modification must confirm with all of the following:

1. The change will not modify the project's consistency with objective development standards considered as part of the project's review;
2. The change will not conflict with a plan, ordinance or policy addressing community health and safety; and
3. The change will not result in modifications to the concessions, incentives or waivers to development standards approved pursuant to density bonus law.

Upon receipt of the request, the City shall determine if the requested modification is consistent with the City's objective development standards in effect when the development was approved. A request for modification shall be submitted through a Permit Adjustment application. This Permit and the related Regulatory Agreement may be modified or amended by the City upon application by the Owner, but any such modification shall be submitted through a Permit Adjustment application. This Permit and the related Regulatory Agreement may be modified or amended by the City upon application by the Owner, but any such modification or amendment shall not change the project or Owner's obligations in any manner that would not comply with Section 35 of the Agreement.

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.

“OWNERS”

Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sal J. LaBarbera under the Sal J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91

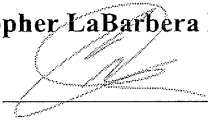
Michael T. LaBarbera Legacy Trust

By: _____

Name: Michael T. LaBarbera

Title: Trustee of the Michael T. LaBarbera Legacy Trust

Christopher LaBarbera Legacy Trust

By:  _____

Name: Christopher LaBarbera

Title: Trustee of the Christopher LaBarbera Legacy Trust

Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: _____

Name: Michael T. LaBarbera

Title: Trustee of Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: _____

Name: Marie Hedges

Title:

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

"OWNERS"

Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sai J. LaBarbera under the Sai J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91

Michael T. LaBarbera Legacy Trust

By: 

Name: Michael T. LaBarbera

Title: Trustee of the Michael T. LaBarbera Legacy Trust

Christopher LaBarbera Legacy Trust

By: _____

Name: Christopher LaBarbera

Title: Trustee of the Christopher LaBarbera Legacy Trust

Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: 

Name: Michael T. LaBarbera

Title: Trustee of Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: _____

Name: Marie Hedges

Title: _____

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"OWNERS"

Michael T. LaBarbera, Trustee of the Michael T. LaBarbera Legacy Trust, Christopher LaBarbera, Trustee of the Christopher LaBarbera Legacy Trust, Michael T. LaBarbera, Trustee of the Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust, and Marie Hedges; Stella LaBarbera, Trustee under the 1991 Marion LaBarbera Living Trust, Stella LaBarbera, Trustee under the 1991 Stella LaBarbera dated January 29, 1991; and Marie Hedges; Sal J. LaBarbera under the Sal J. LaBarbera 1988 Revocable Trust dated December 21, 1988, Marie T. Porfido, as Trustee under The Marie T. Porfido 2010 Family Trust, Stella LaBarbera, Trustee under The LaBarbera Living Trust dated 1-29-91, Stella LaBarbera, Trustee of the 1991 Stella LaBarbera Living Trust dated 1-29-91

Michael T. LaBarbera Legacy Trust

By: _____

Name: Michael T. LaBarbera

Title: Trustee of the Michael T. LaBarbera Legacy Trust

Christopher LaBarbera Legacy Trust

By: _____

Name: Christopher LaBarbera

Title: Trustee of the Christopher LaBarbera Legacy Trust

Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: _____

Name: Michael T. LaBarbera

Title: Trustee of Marie Hedges GST Trust created under the Santina M. LaBarbera Revocable Trust

By: 

Name: Marie Hedges

Title:

The 1991 Stella LaBarbera Living Trust

By: _____

Name: Stella LaBarbera

Title: Trustee under the 1991 Stella LaBarbera Living Trust

By: Marie Hedges

Name: Marie Hedges

Title:

"CITY"

CITY OF SAN JOSE, a municipal corporation

By: _____

Name: _____

APPROVED as to form and legality:

By: _____

Sr. Deputy City Attorney

Name: _____

The 1991 Marion LaBarbera Living Trust dated 1-29-91

By: _____

Name: Stella LaBarbera

Title: Trustee under the 1991 Marion LaBarbera Living Trust dated 1-29-91

The 1991 Stella LaBarbera Living Trust

By: _____

Name: Stella LaBarbera

Title: Trustee under the 1991 Stella LaBarbera Living Trust

Sal J. LaBarbera 1988 Revocable Trust

By: _____

Name: Sal J. LaBarbera

Title: Trustee under the Sal J. LaBarbera 1988 Revocable Trust

The Marie T. Porfido 2010 Family Trust

By: _____



Name: Marie T. Porfido

Title: Trustee under the Marie T. Porfido 2010 Family Trust

The 1991 Marion LaBarbera Living Trust dated 1-29-91

By: _____

Name: Stella LaBarbera

Title: Trustee under the 1991 Marion LaBarbera Living Trust dated 1-29-91

The 1991 Marion LaBarbera Living Trust dated 1-29-91

By: Stella La Barbera ttee

Name: Stella LaBarbera

Title: Trustee under the 1991 Marion LaBarbera Living Trust dated 1-29-91

The 1991 Stella LaBarbera Living Trust

By: Stella La Barbera

Name: Stella LaBarbera

Title: Trustee under the 1991 Stella LaBarbera Living Trust

Sal J. LaBarbera 1988 Revocable Trust

By: Sal J. LaBarbera

Name: Sal J. LaBarbera

Title: Trustee under the Sal J. LaBarbera 1988 Revocable Trust

The Marie T. Porfido 2010 Family Trust

By: _____

Name: Marie T. Porfido

Title: Trustee under the Marie T. Porfido 2010 Family Trust

The 1991 Marion LaBarbera Living Trust dated 1-29-91

By: Stella La Barbera ttee

Name: Stella LaBarbera

Title: Trustee under the 1991 Marion LaBarbera Living Trust dated 1-29-91

The 1991 Stella LaBarbera Living Trust

By: Stella La Barbera

Name: Stella LaBarbera

Title: Trustee under the 1991 Stella LaBarbera Living Trust

By: _____

Name: Marie Hedges

Title: _____

"CITY"

CITY OF SAN JOSE, a municipal corporation

By: _____

Name: _____

APPROVED as to form and legality:

By: _____

Sr. Deputy City Attorney

Name: _____

CALIFORNIA 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.

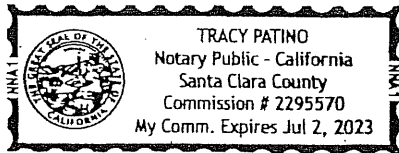
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael T. LaBarbera
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.

Place Notary Seal and/or Stamp Above

Signature Tracy Patino
Signature of Notary Public

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): _____

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☐ Other: _____

Signer is Representing: _____

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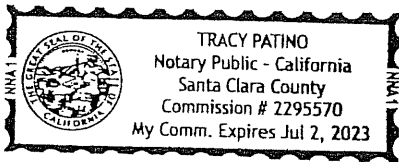
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Christopher LaBarbera
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.



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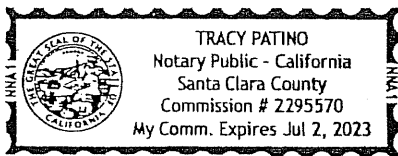
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael T. LaBarbera
Name(s) of Signer(s)

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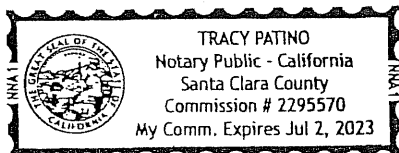
State of California

County of Santa Clara

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Marie Hodges
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.



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Signature

Tracy Patino
Signature of Notary Public

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Signer is Representing: _____

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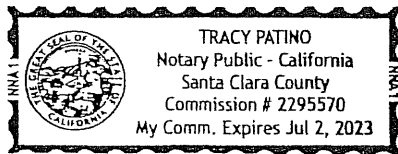
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Marie Hedges
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.



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State of California

County of

Santa Clara

On

April 7, 2020

Date

before me,

Tracy Patino, Notary Public

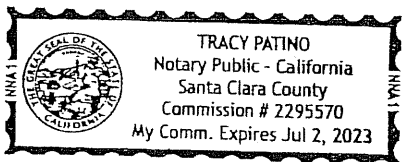
Here Insert Name and Title of the Officer

personally appeared

Marie T. Portido

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.



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WITNESS my hand and official seal.

Signature

Tracy Patino
Signature of Notary Public

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☐ Individual

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

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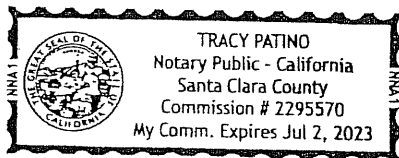
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stella LaBarbera
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.



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Signature of Notary Public

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Signer is Representing: _____

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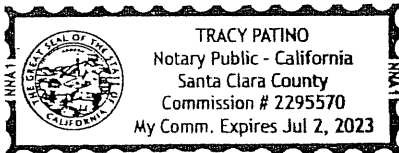
State of California

County of Santa Clara }

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stella LaBarbera
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.



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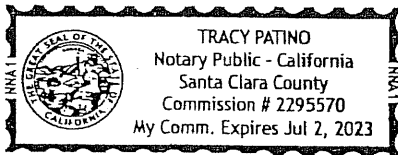
State of California

County of Santa Clara

On April 7, 2020 before me, Tracy Patino, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Sal J. LaBarbera
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.



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On April 7, 2020

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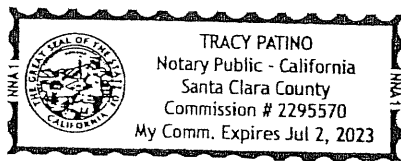
Here Insert Name and Title of the Officer

personally appeared

Stella LaBarbera

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.



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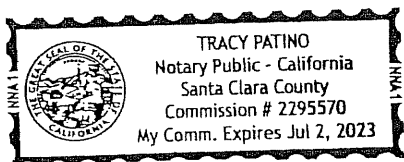
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Name(s) of Signer(s)

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☐ 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

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

PARCEL 1 (APN: 284-03-015):

Beginning at a point in the center line of Meridian Road, distant thereon 30.94 feet Southerly from the Northeasterly corner of that certain 16.59 acre tract of land described in the Deed from Salvatore La Barbera, et ux, to Peter A. Barbera, et al, dated July 10, 1947 and recorded November 26, 1947 in Book 1452, Official Records, at Page 263; running thence Southerly along the said center line of Meridian Road 112.00 feet to a point distant thereon 160.00 feet Northerly from the Southeasterly corner of said 16.59 acre tract; running thence Westerly and parallel with the Northerly line of the said 16.59 acre tract, 153.00 feet; running thence Northerly and parallel with the said center line of Meridian Road, 112.00 feet; running thence Easterly and parallel with the Northerly line of said 16.59 acre tract, 153.00 feet to the Point of Beginning.

PARCEL 2 (APN: 284-03-016):

Beginning at a point in the centerline of Meridian Road, (66 feet wide) at the Northeasterly corner of that 6 acre tract of land described in the Deed from Charles E. Parks, et ux, to Fannie F. Caldwell, dated September 23, 1880 and recorded in Book 57 of Deeds, at Page 133; thence Westerly along the Northerly line of said 6 acre tract, 220 feet to the point of intersection thereof with an Easterly line of that certain parcel of land described in the Deed from Salvatore LaBarbera, et ux, to Peter A. LaBarbera, et al, recorded November 26, 1947 in Book 1452 of Official Records, at Page 263; thence along said Easterly and a Southerly line of said last described parcel of land, North 160 feet and East 220 feet to a point in the centerline of said Meridian Road; thence South along said centerline, 160 feet to the Point of Beginning.

PARCEL 3 (APN: 284-03-049):

Beginning at a stake marked P.M. 2 standing at the Southwesterly corner of the one acre tract conveyed by Charles E. Parks et ux to James Madden et al by deed dated April 26, 1880 and recorded in Liber 55 of Deeds, Page 232, Records of Santa Clara County, California, and being on the Northerly line of a right of way Thirty (30) feet wide known as McKinley Avenue, thence South 89° 30' West and along the Northerly line of said right of way 10.46 chains to a stake marked G. K. standing at the Southeasterly corner of the 20 acre tract conveyed by Edward H. Lenox to James H. Kelly by Deed recorded on September 12, 1873 in Liber 30 of Deeds, Page 317, Records of Santa Clara County, California; thence North 0° 8' West, 11.28 chains to a stake marked S. I. standing at the Southwesterly corner of the 9.02 acre tract conveyed by Charles E. Parks et ux, to Edwin H. Snedaker, by Deed dated October 26, 1880 and recorded in Liber 57 of Deeds, Page 334, Records of Santa Clara County, California; thence East 20.92 chains to the center of the Meridian Road, and the Southeasterly corner of the 7.018 acre tract conveyed by Charles E. Parks et ux to Charles Oeckel by Deed dated December 1, 1882 and recorded in Liber 65 of Deeds, Page 578, Records of Santa Clara County, California; thence Southerly along the center line of the Meridian Road, 4.59 chains to the Northeasterly corner of the Six acre tract conveyed by Charles E. Parks et ux to Fannie F. Caldwell by Deed dated September 23, 1880 and recorded in Liber 57 of Deeds, Page 133, Records of Santa Clara County, California; thence West 10.46 chains to the Northwesterly corner of said Six acre tract; thence South 6.69 chains to the place of beginning, and containing 16.59 acres, and being a portion of Los Coches Rancho, and being the same premises deeded to Salvatore La Barbera by Paola Volpe, Teresa Volpe, Pasquale Belardi and Carmela Belardi by Deed dated December 22, 1919 and recorded December 22, 1919 in Book 499 of Deeds Page 432. Excepting therefrom that portion of said land lying within the following described Parcels A and B: Parcel A: Beginning at a point in the center line of Meridian Road, distant thereon 30.94 feet Southerly from the Northeasterly corner of that certain 16.59 acre tract of land described in the Deed from Salvatore La Barbera, et ux, to Peter A. Barbera, et al, dated July 10, 1947 and recorded November 26, 1947 in Book 1452, Official Records, at Page 263; running thence Southerly along the said center line of Meridian Road 112.00 feet to a point distant thereon 160.00 feet Northerly from the Southeasterly corner of said 16.59 acre tract; running thence Westerly and parallel with the Northerly line of the said 16.59 acre tract, 153.00 feet; running thence Northerly and parallel with the said center line

of Meridian Road 112.00 feet; running thence Easterly and parallel with the Northerly line of said 16.59 acre tract, 153.00 feet to the point of beginning. Parcel B: Beginning at a point in the centerline of Meridian Road, (66 feet wide) at the Northeasterly corner of that 6 acre tract of land described in the Deed from Charles E. Parks, et ux, to Fannie F. Caldwell, dated September 23, 1880 and recorded in Book 57 of Deeds, at Page 133, thence Westerly along the Northerly line of said 6 acre tract, 220 feet to the point of intersection thereof with an Easterly line of that certain parcel of land described in the Deed from Salvatore La Barbera, et ux, to Peter A. La Barbera, et al, recorded November 26, 1947 in Book 1452 of Official Records, at Page 263; thence along said Easterly and a Southerly line of said last described parcel of land; North 160 feet and East 220 feet to a point in the centerline of said Meridian Road; thence South along said centerline, 160 feet to the point of beginning. Also excepting therefrom that portion of said Land lying Westerly of the most Easterly boundary of Tract 7451 and its extension.

EXHIBIT B
DENSITY BONUSES AND INCENTIVES GRANTED

The proposed project is a 100% affordable housing project for households earning between 30% to 80% 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. Based on the information and documents provided by the Owner, the proposed project is eligible for the following concessions and incentives:

1. Incentive One: City's Parking Incentive, Reduction in required parking –The Owner requests that the 231 restricted units use the parking ratio identified in Table 20-290 of the San Jose Municipal Code. By implementing these reduced parking ratios, the development shall provide 113 vehicle parking spaces (a reduction from 389 vehicle spaces).
2. Incentive Two: Reduced Setback on Meridian Avenue – The R-M Multiple Residence District requires a front setback of 10 feet. Along Meridian Avenue, the project shall provide a 7-foot front setback. This incentive reduces the front setback requirement from 10 feet to 7 feet.

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	Number of Restricted Units	Affordability Type <i>[check one per row]</i>		Maximum Tenant Household Income	Maximum Tenant Annual Rent
		Very Low Income	Low Income		
1 Bedroom	164	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Up to 80% of AMI	30-80% of AMI
2-3 Bedroom	67	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Up to 80% of AMI	30-80% of AMI
Total Restricted Units	231				
Total Non-Restricted Units	2				
Total Project Units	233				

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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements allowing the lowest income level to qualify shall prevail.

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 house hold 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.

In the event there is a conflict between this Agreement and the requirements of Section 42 of the

Internal Revenue Code, the more restrictive requirements allowing the lowest rent increase shall prevail.

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 a 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 a 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 José 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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements shall prevail.

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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements shall prevail.

When the total of the Household's assets exceeds 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:

- i. Ordinary household effects including furniture, fixtures, and personal property;
- ii. Automobiles used for personal use; and

- iii. 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 May 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 \$83,150.00.

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 May 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. In the event there is a conflict between this Agreement and the requirements of Section 42 of the Internal Revenue Code, the more restrictive requirements shall prevail.