

GROUND LEASE

_____ 2018

by and between

the CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
represented by the Mayor,
acting by and through the Mayor's Office of Housing and Community Development,

as Landlord

and

MARKET HEIGHTS 2, LP,
a California limited partnership

as Tenant

TABLE OF CONTENTS

Page

AMENDED AND RESTATED GROUND LEASE

This Amended and Restated Ground Lease (this “**Ground Lease**”) is dated as of, _____ 2018 (the “**Agreement Date**”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**” or “**Landlord**”), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (“**MOHCD**”), and MARKET HEIGHTS 2, LP, a California limited partnership, as tenant (the “**Tenant**”).

RECITALS

A. The City is the fee owner of the land located at 211 and 291 Putman Street in San Francisco, CA, and more particularly described in Attachment 1-A (the “**Site**”) and Attachment 1-B (the “**Easement Property**”) to this Ground Lease.

B. The Site and Easement Property was developed under that certain ground lease by and between the City and Boomerang Housing Corporation (“**Original Tenant**”), an affiliate of tenant, dated as of December 6, 1993 (the “**Original Ground Lease**”) and the Development Sublease dated December 6, 1993 (the “**Development Sublease**”) between Original Tenant, as sublandlord, and Boomerang Housing Associates, a California Limited Partnership (“**Development Subtenant**”), as amended. Under the Original Ground Lease and the Development Sublease, the Site and Easement Area were developed into a 46-unit affordable multifamily housing project with attendant common areas and facilities (collectively, the “**Existing Improvements**”).

C. Tenant desires to acquire the Site, Easement (as defined in Section 2.06 below), and Existing Improvements from Original Tenant and Development Subtenant to Rehabilitate (as defined in Section 1.31 below) the Existing Improvements, so that post-Rehabilitation the Site will contain forty-five (45) affordable residential units plus one (1) unrestricted manager’s unit, with 40,449 square feet of residential area, and 1,363 square feet of non-residential common areas that will include a community center, leasing office, laundry room, janitor room, electrical room, and kitchen (collectively, the “**Project**”). It is the Tenant’s intent that twenty-two (22) of the Project’s Residential Units will serve households earning no more than fifty percent (50%) of Area Median Income and twenty-three (23) of the Project’s Residential Units will serve households earning no more than sixty percent (60%) of Area Median Income.

D. With City’s consent, Tenant has assumed the Original Tenant’s rights and obligations under the Original Lease, and the Development Subtenant’s rights and obligations under the Development Sublease. City and Tenant now desire to amend and restate the Original Lease to, among other things, clarify Tenant’s obligations regarding the Rehabilitation and revise the affordability requirements for the Project.

E. On _____, the San Francisco Board of Supervisors and the Mayor approved Resolution No. _____, authorizing the City to enter into this amended and restated Ground Lease with the Tenant for the purpose of acquiring and Rehabilitating the Project.

F. The City believes that the fulfillment of the terms and conditions of this Ground Lease are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in full accord with the public purposes and provisions of applicable Laws (as defined in Section 1.15 below).

NOW THEREFORE, in consideration of the mutual obligations of the parties to this Ground Lease, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, and City grants to Tenant, and Tenant accepts, the Easement, each for the Term, and subject to the terms, covenants, agreements, and conditions set forth below, each and all of which the City and Tenant mutually agree.

ARTICLE 1 DEFINITIONS

Terms used herein have the meanings given them when first used or as set forth in this ARTICLE 1, unless the context clearly requires otherwise.

- 1.01 **Agreement Date** means the date first set forth above.
- 1.02 **Annual Rent** has the meaning set forth in the Section 4.01(a).
- 1.03 **Area Median Income** (or **AMI**) means median income as published annually by MOHCD, derived from the Income Limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as “Unadjusted Median Income.”
- 1.04 **Change** has the meaning set forth in Section 12.02.
- 1.05 **Completion** has the meaning given to that term in the Construction Disbursement Agreement (as amended, modified or supplemented from time to time) between Tenant and Capital One, National Association, a national banking association, in its capacity as the initial servicer of the Leasehold Mortgage.
- 1.06 **Easement** has the meaning set forth in Section 2.06.
- 1.07 **Easement Property** is the real property described in Attachment 1-B.
- 1.08 **Effective Date** means the date shown in the Memorandum of Ground Lease recorded against the Site, but in no event will the date be before the approval of the Ground Lease by the City’s Board of Supervisors and the Mayor.
- 1.09 **Farmers Market** means the farmers market operated by the City on City property adjacent to the Premises and the Easement Property.
- 1.10 **Farmers Market Property** is the real property on which the Farmers Market is located, which is adjacent to the Premises and the Easement Property, shown in Attachment 1-C.
- 1.11 **First Mortgage Lender** means any lender and its successors, assigns, and participants or other entity holding the first deed of trust on the Leasehold Estate.
- 1.12 **Ground Lease** means this Ground Lease, as amended from time to time.
- 1.13 **Improvements** means all physical construction, including all structures, fixtures, and other improvements, including without limitation the Existing Improvements, now existing or later constructed or rehabilitated on the Site and/or the Easement Property.
- 1.14 **Indemnification Obligations** means the obligations of Tenant to indemnify Landlord as provided in this Ground Lease or at Law.

- 1.15 **Laws** means all statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.
- 1.16 **Lease Year** means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the “First Lease Year” will commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the “Last Lease Year” will end upon the expiration of the Term.
- 1.17 **Leasehold Estate** means the estate held by the Tenant created by and pursuant to this Ground Lease.
- 1.18 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits from the Premises, or any portion thereof, that constitutes a lien on the Leasehold Estate and is approved in writing by the City.
- 1.19 **Lender** means any entity holding a Leasehold Mortgage.
- 1.20 **Loan Documents** means those certain loan agreements, notes, deeds of trust, declarations, and any other documents executed and delivered in connection with the Rehabilitation, construction, and permanent financing for the Project.
- 1.21 **MOHCD** means the City’s Mayor’s Office of Housing and Community Development.
- 1.22 **Partnership Agreement** means Tenant’s First Amended and Restated Agreement of Limited Partnership.
- 1.23 **Payment Date** means the date that Base Rent is due and payable under Section 4.02.
- 1.24 **Permitted Limited Partner** means Wincopin Circle LLLP and its successors and assigns as approved by City.
- 1.25 **Personal Property** means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Premises and that can be removed from the Premises without substantial economic loss to the Premises or substantial damage to the Premises and that is incident to the ownership, development, or operation of the Improvements on the Premises, belonging to Tenant, any Residential Occupant, any Non-residential Occupant, or any subtenant or other occupant of the Premises and/or in which Tenant, Residential Occupant, Non-residential Occupant, or any subtenant or other occupant has an ownership interest, together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.
- 1.26 **Premises** means the Site, the Easement Property, and all Improvements.
- 1.27 **Project** is defined in Recital C.
- 1.28 **Project Expenses** means the following costs, which may be paid from Project Income to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate and/or possessory interest taxes, assessments, and liability, fire, and other hazard insurance premiums; (b) salaries, wages, and other

compensation due and payable to the employees or agents of Tenant who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest, principal, or annual servicing fees, if any, on any construction or permanent financing secured by the Project; (d) annual bond financing-related monitoring fees payable to the City; an annual asset management fee in the amount of \$21,160, increasing by 3.5% annually; (e) all other expenses actually incurred by Tenant to cover routine operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (f) annual Base Rent payments; (g) any extraordinary expenses as approved in advance by the City; (h) deposits to reserves accounts required to be established under the Loan Documents and the Partnership Agreement, and (i) prior to Completion, costs of Rehabilitation in an amount not to exceed \$723,000. Project Fees are not Project Expenses.

1.29 **Project Fees** means a partnership management fee in the amount of \$21,150 increasing by 3.5% annually, payable to the Tenant's general partner.

1.30 **Project Income** means all revenue, income receipts, and other consideration actually received from the operation of the Project. Project Income includes, but is not limited to: all rents, fees, and charges paid by Residential Occupants or users of any portion of the Premises; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding, if applicable; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income does not include tenants' security deposits, loan proceeds, capital contributions, or similar advances.

1.31 **Rehabilitate** and **Rehabilitation** is the renovation of the Premises including the construction and other work set forth in ATTACHMENT 4.

1.32 **Residential Occupant** means any person or entity authorized by Tenant to occupy a residential unit on the Premises, or any portion thereof.

1.33 **Residential Unit** has the meaning set forth in Section 9.01.

1.34 **Site** is defined in Recital A.

1.35 **Subsequent Owner** means any successor (including a Lender or an affiliate or assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the Improvements who acquires such interest as a result of a foreclosure, assignment in lieu of foreclosure, or transfer from a Lender, its affiliate, and any successors to any such person or entity.

1.36 **Surplus Cash** means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 6.02(g) of this Ground Lease.

1.37 Whenever an Attachment is referenced, it means an attachment to this Ground Lease unless otherwise specifically identified. Whenever a section, article, or paragraph

is referenced, it is a reference to this Ground Lease unless otherwise specifically referenced.

ARTICLE 2 TERM; GRANT OF EASEMENT; FARMERS MARKET

2.01 Initial Term. The term of this Ground Lease will commence upon the Effective Date and will end seventy-five (75) years from that date (“**Term**”), unless extended under Section 2.02 below or earlier terminated as provided in this Ground Lease.

2.02 Option for Extension. Provided that the Tenant is not in default under the terms of this Ground Lease and the Loan Documents beyond any notice, grace, or cure period either at the time of giving of an Extension Notice (as defined below), as described in Section 2.03 below, or on the last day of the Term (the “**Termination Date**”), the Term may be extended at the option of the Tenant for one twenty-four (24)-year period (“**Extension Term**”), as provided in this Article below. If the Term is extended pursuant to this Section, all references in this Ground Lease to the “Term” will mean the Term as extended by this extension period.

2.03 Notice of Extension. Not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify the City in writing that it wishes to exercise its option to extend the term of this Ground Lease (an “**Extension Notice**”). Upon Tenant’s exercise of this option, the Initial Term will be extended for twenty-four (24) years from the original Termination Date for a total Ground Lease term not to exceed ninety-nine (99) years.

2.04 Rent During Extended Term. Rent for any extended term will be as set forth in ARTICLE 4.

2.05 Holding Over. Any holding over after expiration or earlier termination of the Term without the City’s written consent will constitute a default by Tenant and entitle the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City elects to accept one or more payments of Annual Rent. Failure to surrender the Premises in the condition required by this Ground Lease will constitute holding over until the conditions of surrender are satisfied.

2.06 Easement. City grants to Tenant for the Term of this Ground Lease a fifteen (15) foot non-exclusive easement for light, air, and overhang for eaves of the Improvements, the installation and operation of subsurface sewer pipes, including laterals and related improvements, and other subsurface uses typically required to support a housing development that do not interfere with surface uses of the Easement Property (the “**Easement**”), reserving the surface of the Easement Property for public use. The Site, the Easement Property, and the Farmers Market Property are shown generally in Attachment 1-C. Tenant shall repair any damage to the Easement Property (a) related to Tenant’s use of the Easement Property, (b) caused by Tenant or its agents, representatives, employees, contractors, or subcontractors or the occupants of the Project, (c) related to any maintenance, repair, or replacement of any Improvements, and (d) due to failure of or damage or destruction to any Improvements. Tenant shall not be responsible for maintenance of the Easement Property unrelated to any of the foregoing clauses (a) through (d).

2.07 Subject to Operation of Farmers Market. Tenant acknowledges that the Site and the Easement Property are adjacent to the Farmers Market Property, and that the City would not be entering into this Ground Lease but for Tenant's agreement not to unreasonably interfere with the operation of the Farmers Market. Tenant's rights under this Ground Lease are subject to City's use and operation of the Farmers Market Property, including, but not limited to, City's rights to lease, sell, or otherwise transfer all or a portion of the Farmers Market Property in accordance with applicable laws. Tenant's acknowledgements and waivers with respect to the Farmers Market are further specified in Sections 23.03 and 23.04 below.

ARTICLE 3 FINANCIAL ASSURANCE

Tenant acknowledges that in accordance with and as a condition to enter into this this Ground Lease, Tenant will provide evidence satisfactory to the City that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the Rehabilitation,

ARTICLE 4 RENT

4.01 Annual Rent.

4.01(a) Tenant will pay to the City Three Hundred Thirty Thousand Dollars (\$330,000) (the "**Annual Rent**") per year for each year of the Term of this Ground Lease. Annual Rent consists of Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as otherwise permitted by this Ground Lease) and without necessity of demand, notice or invoice.

4.01(b) If the Tenant elects to extend the term of this Ground Lease pursuant to ARTICLE 2 above, Annual Rent (along with any potential future adjustments) during any such extended term will be set by mutual agreement of the parties; provided, however, that Annual Rent during the extended term will in no event be less than the Annual Rent set forth in Section 4.01(a) above. If the parties cannot agree on Annual Rent for the extended term, either party may invoke a neutral third-party process and the parties will agree on a neutral third-party appraiser to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, after the neutral third party process, Tenant, in its sole discretion, may rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease.

4.02 Base Rent.

4.02(a) "**Base Rent**" means, in any given Lease Year, Fifteen Thousand Dollars (\$15,000) per annum; provided, however, subject to the Lender Protections provided in Article 26 below, that if the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.01, then Base Rent will be increased to the full amount of Annual Rent until such time as the default under Section 9.01 is cured. Base Rent will be due

and payable in arrears on January 31st of each Lease Year; but no Base Rent will be due until the third (3rd) anniversary of the Effective Date. Additionally, if a Subsequent Owner elects under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be adjusted as provided in Section 26.07.

4.02(b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of (a) through (d) in the definition of Project Expenses, above, and the City has received written notice from Tenant regarding its inability to pay Base Rent from Project Income at least sixty (60) days before the Base Rent due date, along with supporting documentation for Tenant's position that it is unable to pay Base Rent from Project Income, then the unpaid amount will be deferred and all deferred amounts will accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual will be due and payable each year from and to the extent of available Surplus Cash. Any Base Rent Accrual will be due and payable upon the earlier of (i) sale of the Project (but not a refinancing or foreclosure of the Project); or (ii) termination of this Ground Lease (unless a new lease is entered into with a mortgagee under Section 26.09 below).

4.02(c) If Tenant has not provided City with the required written notice and documentation under Section 4.02(b) in connection with its claim that it cannot pay Base Rent due to insufficient Project Income, and/or the City has reasonably determined that Tenant's claim that it is unable to pay Base Rent is not supported by such documentation, the City will assess a late payment penalty of two percent (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty will not apply to Base Rent Accrual that has been previously approved by the City under Section 4.02(b). The Tenant may request in writing that the City waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to ensure that Base Rent will be paid in the future. The City may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent. "**Residual Rent**" means, in any given Lease Year, Three Hundred Fifteen Thousand Dollars (\$315,000). Residual Rent will be due in arrears on June 30 following each Lease Year. Except as otherwise provided in Section 26.07(a), Residual Rent will be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent will not accrue. If in any year Surplus Cash is insufficient to pay the full amount of the Residual Rent, then Tenant will certify to the City in writing by June 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant will provide to City any supporting documentation reasonably requested by City to allow City to verify the insufficiency. If Base Rent is increased to the full Annual Rent as provided in Section 4.02(a) above, the Residual Rent will not be payable from Surplus Cash, but will be payable as Base Rent under Section 4.02(a) above for so long as the default under Section 9.01 remains uncured.

4.04 Triple Net Lease. This Ground Lease is a triple net lease and the Tenant will be responsible to pay all costs, charges, taxes, impositions, and other obligations related to the Premises accruing after the Effective Date. If the City pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by City. Failure to timely pay the additional rent will be a default by Tenant of this Ground Lease. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Ground Lease, or otherwise relieves Tenant from any of its obligations under this Ground Lease, or gives Tenant any right to terminate this Ground Lease in whole or in part.

ARTICLE 5 CITY COVENANTS

The City is duly created, validly existing and in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease. City covenants and warrants that the Tenant and its tenants will have, hold and enjoy, during the Term, peaceful, quiet, and undisputed possession of the Site and use of the Easement without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

ARTICLE 6 TENANT COVENANTS

Tenant covenants and agrees for itself and its successors and assigns to or of the Site, the Easement Property, or any part thereof, that:

6.01 Limited Partnership Authority. Tenant is a California limited partnership and has full rights, power, and authority to enter into and perform its obligations under this Ground Lease.

6.02 Use of Premises and Rents. During the Term of this Ground Lease, Tenant and its successors and assigns will comply with the following requirements:

6.02(a) Permitted Uses. Except as provided in Sections 26.06 and 26.07 of this Ground Lease, Tenant will devote the Site and the Easement Property to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in ARTICLE 9 below, which are the only uses permitted by this Ground Lease. Tenant acknowledges that that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable. Tenant acknowledges that under Section 5.1(c) of the Original Lease, in accordance with San Francisco Administrative Code Section 23.27 through 23.30, a Lot Line Window Agreement was recorded on December 14, 1993 as Instrument No. F-507158, encumbering the Premises, and Tenant, as successor-in-interest to the tenant under the Original Lease, and is bound by the Lot Line Window Agreement. Tenant further acknowledges the Declaration of Restrictions recorded August 20, 2008 as Instrument No. 2008-I633474-00 runs with the land and Tenant is bound by that Declaration of Restrictions.

6.02(b) Non-Discrimination. Tenant will not discriminate against or segregate any person or group of persons on account of race, color, creed,

religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation, or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, or any part thereof, and Tenant or any person claiming under or through it will not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Residential Occupants, subtenants, or vendees on the Premises, or any part thereof, except to the extent permitted by Law or required by funding source. Tenant will not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

6.02(c) Non-Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site must include the legend “Equal Housing Opportunity” in type or lettering of easily legible size and design, or as required by applicable Law.

6.02(d) Access for Disabled Persons. Tenant will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

6.02(e) Equal Opportunity Marketing Plan. No later than six (6) months before the Completion of the Rehabilitation, Tenant will submit a Fair Housing Marketing Plan to be approved by the City. Any Fair Housing Marketing Plan must follow the City’s marketing requirements for such plans.

6.02(f) Lead Based Paint. Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

6.02(g) Permitted Uses of Surplus Cash. All annual Project Income, before the calculation of Surplus Cash, will be used to pay Project Expenses, including but not limited to Base Rent, and Project Fees. If the Tenant is in compliance with all applicable requirements and agreements under this Ground Lease, Tenant will then use any Surplus Cash to make the following payments in the following order of priority:

- (i) First to Base Rent Accrual payments, if any;
- (ii) Second, to replenish the operating reserve account, if necessary, up to the amount required by Lenders;
- (iii) Third, two-thirds (2/3) of remaining Surplus Cash to the City; provided, however, if the Project includes a deferred developer fee and Tenant is in compliance with MOHCD's policies, then fifty percent (50%) of remaining Surplus Cash to the City beginning on the initial Payment Date until and including the earlier of the year (i) of the fifteenth (15th) Payment Date, or (ii) in which all deferred developer fees have been paid to Developer; and

(iv) Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under the Partnership Agreement of Tenant, as it may be amended from time to time.

Notwithstanding the foregoing, Tenant and City agree that the distribution of Surplus Cash may be modified in an amendment to this Ground Lease based on the requirements of Lenders.

6.03 City Deemed Beneficiary of Covenants. In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that the City will be deemed beneficiary of the agreements and covenants provided in this ARTICLE 6 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of the City for the entire term of those agreements and covenants, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. The City will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 7 ANNUAL INCOME COMPUTATION, AND CERTIFICATION

Forty-five (45) days after recordation of an NOC (as defined in Section 10.12) by the Tenant for the Improvements, Tenant will furnish to the City a list of the persons who are and Residential Occupants of the Improvements, the specific unit that each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in Attachment 6, for each Residential Occupant. In addition, each Residential Occupant must be required to provide any other information, documents, or certifications deemed necessary by the City to substantiate the Residential Occupant's income. If any state or federal agency requires an income certification for Residential Occupants of the Improvements containing the above-referenced information, the City agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to the City regarding each Residential Occupant of the Improvements not later than twenty (20) business days after such Residential Occupant commences occupancy.

ARTICLE 8 CONDITION OF SITE—"AS IS"

8.01 Acknowledgement of No Representation or Warranty. Tenant acknowledges and agrees that Tenant is familiar with the Premises and the Easement Property, the Premises is being leased and accepted in its "as-is" condition, without any improvements or alterations by the City, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Tenant further represents and warrants that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the Easement Property and the suitability of the Premises and the Easement Property for Tenant's intended use. Tenant acknowledges and agrees that neither City nor any of

its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises and the Easement Property, the physical or environmental condition of the Premises and the Easement Property, or the present or future suitability of the Premises for Tenant's use, or any other matter whatsoever relating to the Premises and the Easement Property, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Premises and the Easement Property is being leased in an "AS IS" condition with respect to all matters.

8.02 Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

8.03 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances. Tenant is advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde, radon, mold, asbestos-containing materials, lead-based paint, and polychlorinated biphenyls (PCBs).

ARTICLE 9 PERMITTED AND PROHIBITED USES

9.01 Permitted Uses and Occupancy Restrictions. The permitted uses of the Project are limited to forty-five (45) units of affordable rental housing (plus one (1) unrestricted manager’s unit) (collectively, the “**Residential Units**”) and common areas as described in Recital B, above. Each of the current Residential Occupants of the Residential Units (except for the manager’s unit) who are temporarily displaced during any Rehabilitation activities will have the right to return to their Residential Unit after the Rehabilitation work on their Units is complete. Upon the Completion of the Rehabilitation, one hundred percent (100%) of the Residential Units, except the manager’s unit, in the Project will be occupied or held as follows: twenty-two (22) of the Residential Units will serve households earning no more than fifty percent (50%) of Area Median Income and twenty-three (23) of the Project’s Residential Units will serve households earning no more than sixty percent (60%) of Area Median Income. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease and by Lenders for so long as such restrictions are required by the applicable Lender.

9.02 Prohibited Uses. Except for uses of the Premises directly related to the Rehabilitation work performed in accordance with this Ground Lease, Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a “**Prohibited Use**” and collectively, “**Prohibited Uses**”), are inconsistent with this Ground Lease, are strictly prohibited and are considered Prohibited Uses:

- 9.02(a) any activity, or the maintaining of any object, that is not within the Permitted Use;
- 9.02(b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- 9.02(c) any activity or object that will overload or cause material damage to the Premises;
- 9.02(d) any activity that constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;
- 9.02(e) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- 9.02(f) any vehicle or equipment maintenance, including but not limited to, washing, fueling, changing oil, transmission or other automotive fluids;
- 9.02(g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;
- 9.02(h) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or
- 9.02(i) bars, retail liquor sales, marijuana sales, or any other uses that cater exclusively to adults.

ARTICLE 10 REHABILITATION WORK

10.01 Schedule of Performance. Tenant agrees to undertake and complete the Rehabilitation and all physical construction on the Site and the Easement Property, as provided in this Ground Lease, in accordance with the Schedule of Performance, Attachment 2

10.02 Reserved.

10.03 General Requirements and Rights of City. All construction documents, including but not limited to preliminary and final plans and specifications for the Rehabilitation (collectively the “**Construction Documents**”) must be prepared by a person registered in and by the State of California to practice architecture and must be in conformity with this Ground Lease, and all applicable Laws. The architect will use, as necessary, members of associated design professions, including engineers and landscape architects.

10.04 MOHCD Does Not Approve Compliance with Construction Requirements. MOHCD does not approve engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Tenant understands and agrees that City is entering into this Ground Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police

powers. Nothing in this Ground Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards, or commissions having jurisdiction over the Premises. By entering into this Ground Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

10.05 Construction to be in Compliance with Construction Documents and Law.

10.05(a) Compliance with Documents. The construction must be in compliance with the Construction Documents.

10.05(b) Compliance with Local, State and Federal Law. The Rehabilitation must be in compliance with all applicable Laws. Tenant understands and agrees that Tenant's use of the Premises and the Rehabilitation permitted under this Ground Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant may not seek any regulatory approval without first obtaining the written consent of City as Landlord under this Ground Lease. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and City will have no liability, monetary, or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval.

10.06 Issuance of Building Permits. Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection. MOHCD understands and agrees that Tenant may use the Fast Track method of permit approval for the Rehabilitation.

10.07 Performance and Payment Bonds. Before commencement of any Rehabilitation construction, Tenant will deliver to City performance and payment bonds, each for the full value of the cost of Rehabilitation construction, which bonds will name the City as co-obligee, or such other Completion security which is acceptable to the City. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and City as co-obligees.

10.08 Times for Construction. Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate and the Easement or any part thereof, that Tenant and such successors and assigns will promptly begin and diligently prosecute to Completion the

Rehabilitation, and that the Rehabilitation will be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by the City.

10.09 Force Majeure. For the purposes of any of the provisions of this Ground Lease, and notwithstanding anything to the contrary, neither the City nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and Completion of the Rehabilitation, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials or labor, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, will be extended for the period of the delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and its causes in writing within thirty (30) days after the beginning of any delay and requested an extension for the reasonably estimated period of the delay; and, provided further, that this paragraph does apply to, and nothing contained in this paragraph will extend or will be construed to extend, the time of performance of any of Tenant's obligations to be performed before the commencement of the Rehabilitation construction, and the failure to timely perform pre-commencement of construction obligations will not extend or be construed to extend Tenant's obligations to commence, prosecute, and complete Rehabilitation in the manner and at the times specified in this Ground Lease.

10.10 Reports. Commencing when Rehabilitation commences and continuing until Completion of the Rehabilitation, Tenant will make a report in writing to the City every month, in such detail as may reasonably be required by the City, as to the actual progress of the Tenant with respect to the construction. The form of this report is attached to this Ground Lease as Attachment 7.

10.11 Access to Site. As of the Effective Date and until the City issues a certificate of occupancy, Tenant will permit access to the Site to the City whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever City believes that emergency access is required. After the City's issuance of a certificate of occupancy, access to the Premises will be governed by ARTICLE 24, below.

10.12 Notice of Completion. Promptly upon Completion of all Rehabilitation construction in accordance with the provisions of this Ground Lease, Tenant will file a Notice of Completion ("NOC") and record the NOC in the San Francisco Recorder's Office. Tenant will provide the City with a copy of the recorded NOC.

10.13 Completion of Improvements by New Developer. If a Lender or a successor thereto forecloses, obtains an assignment in lieu of foreclosure, or otherwise realizes

upon the Premises and undertakes the Rehabilitation (“**New Developer**”) (a) the New Developer will not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the Completion of the Rehabilitation but will only be required to complete the Rehabilitation with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the City, (b) the New Developer will only be required to complete the Rehabilitation in accordance with all applicable building codes and ordinances, and the Construction Documents with such changes that are mutually agreed upon by the City and the New Developer under the following clause (c); and (c) City and New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to ARTICLE 10 of this Ground Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 11 RESERVED.

ARTICLE 12 CHANGES TO THE IMPROVEMENTS

12.01 Post-Completion Changes. The City has a particular interest in the Project and in the nature and extent of the permitted changes to the Improvements. Accordingly, it imposes the following control on the Premises: during the term of this Ground Lease: neither Tenant, nor any voluntary or involuntary successor or assign, may make or permit any Change (as defined in Section 12.02) in the Improvements, unless the express prior written consent for any change has been requested in writing from the City and received, and, if received, upon such terms and conditions as the City may reasonably require. The City agrees not to unreasonably withhold or delay its response to such a request.

12.02 Definition of Change. “**Change**” means any alteration, modification, addition, and/or substitution of or to the Premises, and/or the density of development that differs materially from that which existed upon the Completion of construction of the Rehabilitation in accordance with this Ground Lease. “Change” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Project, or as may be required in an emergency to protect the safety and well-being of the Project’s Residential Occupants.

12.03 Enforcement. Subject to ARTICLE 19 hereof, City will have any and all remedies in law or equity (including, without limitation, restraining orders, injunctions, and/or specific performance), judicial or administrative, to enforce the provisions of this ARTICLE 12, including, without limitation, any threatened or actual breach or violation of this Section.

ARTICLE 13 TITLE TO IMPROVEMENTS

City acknowledges that, prior to the Effective Date, fee title to the Existing Improvements was vested in Development Subtenant and was conveyed by Development Subtenant to Tenant, and that fee title to the Improvements is vested in Tenant for the Term. It is the intent of the Parties that this Ground Lease and the Memorandum of Lease will create a constructive notice of severance of the Improvements from the land without the necessity of a deed from Lessor to Lessee. City and Tenant hereby agree that fee title to the Improvements will remain vested in Tenant during the Term, subject to Section 14.01 below; provided, however,

that, subject to the rights of any Lenders and as further consideration for the City entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements will vest in the City without further action of any party, without any obligation by the City to pay any compensation to Tenant, and without the necessity of a deed from Tenant to the City. Notwithstanding the foregoing, if requested by the City, upon expiration or sooner termination of this Ground Lease, Tenant will execute and deliver to the City an acknowledged and good and sufficient grant deed conveying to the City Tenant's fee interest in the Improvements. City acknowledges and agrees that any and all depreciation, amortization, and tax credits for federal or state tax purposes relating to the Improvements, fixtures therein and other property relating thereto will be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

ARTICLE 14 ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE

14.01 Assignment, Sublease, or Other Conveyance by Tenant. Subject to ARTICLE 49 below, Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s) or affiliates or designees of Lender(s) as provided in this Ground Lease, or allow any person or entity to occupy or use all or any part of the Site or the Easement Property, other than leases to Residential Occupants and the manager in the ordinary course of business, and it may not contract or agree to do any of the same, without the prior written approval of the City, which approval will not be unreasonably withheld or delayed. Tenant will provide any background or supporting documentation that the City may require in assessing Tenant's request for approval.

14.02 Assignment, Sublease, or Other Conveyance by City. The parties acknowledge that any sale, assignment, transfer, or conveyance of all or any part of the City's interest in the Premises or this Ground Lease, is subject to this Ground Lease. The City will require that any purchaser, assignee, or transferee expressly assume all of the obligations of the City under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease will not be affected by any such sale, and Tenant will attorn to any such purchaser or assignee. For the avoidance of doubt, Landlord may not mortgage its fee estate unless there is an express subordination of the fee mortgage to the Tenant's Leasehold Estate. If Landlord mortgages its interest in its fee estate during the term of any Lender's loan, Tenant may not subordinate the Ground Lease to the lien of that mortgage.

ARTICLE 15 TAXES

Tenant agrees to pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges on the Premises that become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site or the Easement Property. Tenant will not permit any such taxes, charges, or other assessments to become a defaulted lien on the Site or the Easement Property or the Improvements thereon or thereunder; provided, however, that in the event any such tax, assessment, or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer

the payment thereof so long as the validity or amount thereof is contested by Tenant in good faith and without expense to the City. If Tenant contests a tax, assessment, or other similar charge, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom, and if Tenant is unsuccessful in any such contest, Tenant will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. The City will furnish such information as Tenant may reasonably request in connection with any such contest, provided that such information is in the City's possession or control or is otherwise available to the public. City hereby consents to and will reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, or on Tenant's interest therein.

ARTICLE 16 UTILITIES

From and after the Effective Date, Tenant will procure water and sewer service from the City and electricity, telephone, natural gas, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between the City and Tenant, Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. All electricity necessary for operations in the Premises must be purchased from San Francisco Public Utilities Commission ("SFPUC"), at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant will contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

ARTICLE 17 MAINTENANCE AND OPERATION

17.01 Maintenance. Tenant, at all times during the Term, will maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the City, including the exterior, interior, substructure, and foundation of the Improvements and all fixtures, equipment, and landscaping from time to time located on, in, or under the Premises or any part thereof. The City will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Site, the Easement Property, or any buildings or improvements now or hereafter located thereon. Tenant hereby waives all rights to make repairs at the City's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

17.02 City's Consent for Work Requiring a Permit. Tenant will not make, or cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard, or regulation without first obtaining the City's prior written consent and a permit therefor.

17.03 Facilities Condition Report. Every five (5) years beginning on the fifth anniversary date of the issuance of the receipt of a certificate of occupancy for all Residential Units, Tenant will deliver to the City a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant

and the City, describing at a minimum the condition and integrity of the Premises, including the Improvements, the foundation and structural integrity of the buildings, and all utilities systems serving the buildings (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If the City reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then the City will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address the City's concerns. If Tenant fails to provide a Facilities Condition Report to City every five (5) years, then the City after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of the City's choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by the City.

17.04 City's Right to Inspect. Without limiting ARTICLE 24 below, the City may make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises and other areas as required by this Ground Lease in a condition as good as, or better than, their condition at the Completion of the Rehabilitation, excepting ordinary wear and tear.

17.05 City's Right to Repair. If Tenant fails to maintain or to promptly repair any damage as required by this Ground Lease (subject to the notice and cure provisions in Section 19.03, except in the event of an emergency as reasonably determined by City), the City may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse the City for all costs of the repair.

17.06 Operation. Following Completion of the Rehabilitation, Tenant will maintain and operate the Project in a manner consistent with the maintenance and operation of a safe, clean, well-maintained project located in San Francisco. Tenant will be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require others to provide), services as necessary and appropriate to the uses to which the Project are put, including (a) repair and maintenance of the Improvements; (b) utility and telecommunications (including internet/Wi-Fi) services to the extent, if any, customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and grounds keeping; (e) security services with on-site personnel for the Premises; and (f) sufficient lighting at night for pedestrians along pathways. Tenant will use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Notwithstanding the foregoing, any Residential Unit may remain unoccupied but only to the extent permitted under any applicable regulatory agreements, housing assistance payment contract, and applicable Law.

ARTICLE 18 LIENS

Tenant will use its best efforts to keep the Premises free from any liens arising out of any work performed or materials furnished by itself or its subtenants. If Tenant does not cause a lien to be released of record or bonded-around within twenty (20) days following written notice from the City of the imposition of the lien, the City will have, in addition to all other remedies provided in this Ground Lease and by Law, the right (but not the obligation) to cause the lien to be released by any means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it in connection therewith, will be payable to the City by Tenant on demand. Notwithstanding the foregoing, Tenant will have the right, upon posting of an adequate bond or other security, to contest any lien, and the City will not seek to satisfy or discharge the lien unless Tenant has failed so to do within ten (10) days after the final determination of the validity of the lien. If Tenant contests a lien, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom. The provisions of this Section will not apply to any liens arising before the Effective Date that are not the result of Tenant's contractors, consultants, or activities.

ARTICLE 19 GENERAL REMEDIES

19.01 Application of Remedies. The provisions of this ARTICLE 19 govern the parties' remedies for breach of this Ground Lease.

19.02 Breach by City. If Tenant believes that the City has materially breached this Ground Lease, Tenant must first notify the City in writing of the purported breach, giving the City one hundred twenty (120) days from receipt of such notice to cure the breach. If the City does not cure the breach within the 120-day period, or, if the breach is not reasonably susceptible to cure within that one hundred twenty (120) day period, begin to cure within one hundred twenty (120) days and diligently prosecute then cure to completion, then Tenant will have all of its rights at law or in equity by taking any or all of the following remedies: (a) terminating in writing this entire Ground Lease with the written consent of each Lender; (b) prosecuting an action for damages; (c) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law or equity.

19.03 Breach by Tenant.

19.03(a) Default by Tenant

Subject to the notice and cure rights under Sections 19.03(b) and 19.04, any of the following events each constitute a basis for the City to take action against Tenant:

- (i) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.01;
- (ii) Tenant voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease or otherwise approved by the City;
- (iii) From and after the Effective Date, Tenant, or its successor in interest, fails to pay real estate taxes or assessments on the Premises or any part thereof before delinquency, or places on the Site or Easement

Property any encumbrance or lien unauthorized by this Ground Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments not have been paid, or the encumbrance or lien removed or discharged within the time period provided in ARTICLE 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in ARTICLE 15 and ARTICLE 18;

(iv) Tenant is adjudicated bankrupt or insolvent or makes a transfer to defraud its creditors, or makes an assignment for the benefit of creditors, or brings or is brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the proceedings within sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days;

(v) Tenant breaches any other material provision of this Ground Lease; or

(vi) Tenant fails to pay any portion of Annual Rent when due in accordance with the terms and provisions of this Ground Lease.

19.03(b) Notification and City Remedies. Upon the happening of any of the events described in Section 19.03(a) above, and before exercising any remedies, the City will notify Tenant, the Permitted Limited Partners, and each Lender in writing of the Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 38, giving Tenant sixty (60) days from the giving of the notice to cure such breach, failure, or act. If Tenant does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within that sixty (60) day period, does not begin to cure within sixty (60) days and diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.04 and ARTICLE 26, the City will have all of its rights at law or in equity, including, but not limited to

(i) the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Ground Lease in full force and effect and the City may enforce all of its rights and remedies under this Ground Lease, including the right to collect rent when due. During the period Tenant is in default, the City may enter the Premises without terminating this Ground Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to the City for all reasonable costs that the City incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises

required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as the City deems advisable, subject to any restrictions applicable to the Premises. Tenant will pay the City the rent due under this Ground Lease on the dates the rent is due, less the rent the City receives from any reletting. If the City elects to relet, then rentals received by the City from the reletting will be applied in the following order: (1) to reasonable attorneys' and other fees incurred by the City as a result of a default and costs if suit is filed by the City to enforce its remedies; (2) to the payment of any costs of maintaining, preserving, altering, repairing, and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property and Changes; (3) to the payment of rent due and unpaid; (4) the balance, if any, will be paid to Tenant upon (but not before) expiration of the Term. If that portion of the rentals received from any reletting during any month that is applied to the payment of rent, is less than the rent payable during the month, then Tenant must pay the deficiency to the City. The deficiency will be calculated and paid monthly. No act by the City allowed by this Section will terminate this Ground Lease unless the City notifies Tenant that the City elects to terminate this Ground Lease. After Tenant's default and for as long as the City does not terminate Tenant's right to possession of the Premises by written notice, if Tenant obtains the City's consent Tenant will have the right to assign or sublet its interest in this Ground Lease, but Tenant shall not be released from liability and the assignment or subletting will not serve to cure the default;

(ii) the City may terminate Tenant's right to possession of the Premises at any time. No act by the City other than giving notice of termination to Tenant will terminate this Ground Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the City's initiative to protect the City's interest under this Ground Lease will not constitute a termination of Tenant's right to possession. If the City elects to terminate this Ground Lease, then the City has the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Annual Rent and any additional charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. The City's efforts to mitigate the damages caused by Tenant's breach of this Ground Lease will not waive the City's rights to recover damages upon termination;

(iii) The right to have a receiver appointed for Tenant upon application by the City to take possession of the Premises and to apply any rental

collected from the Premises and to exercise all other rights and remedies granted to the City under this Ground Lease;

(iv) seeking specific performance of this Ground Lease; or

(v) in the case of default under Section 19.03(a)(i), increasing the Base Rent to the full amount of the Annual Rent.

Notwithstanding the foregoing, (A) the provisions of this Section 19.03 are subject to ARTICLE 26 below, and (B) beginning on the Effective Date and continuing until the expiration of the 15-year tax credit “compliance period” (as defined in Section 42 of the Internal Revenue Code, as amended) for the Project (which “compliance period” begins upon Completion of the Rehabilitation), the City may only terminate this Ground Lease for a default by Tenant under Section 19.03(a)(vi) above.

19.04 Rights of Permitted Limited Partner.

19.04(a) If a Permitted Limited Partner cannot cure a default due to an automatic stay in Bankruptcy court because the general partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

19.04(b) The City will not exercise its remedy to terminate this Ground Lease if a Permitted Limited Partner is attempting to cure the default and the cure requires removal of the managing general partner, so long as the Permitted Limited Partner is proceeding diligently to remove the managing general partner in order to effect a cure of the default.

19.04(c) Unless otherwise provided for in this Ground Lease, any limited partner that is not the Permitted Limited Partner identified in ARTICLE 38 wishing to become a Permitted Limited Partner must provide five (5) days written notice to the City in accordance with the notice provisions of this Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant and all of the Tenant’s partners. The limited partner will become a Permitted Limited Partner upon the expiration of the five-day period. A limited partner will not be afforded the protections of this Section with respect to any default occurring before the limited partner becomes a Permitted Limited Partner.

19.05 City’s Right to Cure Tenant’s Default. If Tenant defaults in the performance of any of its obligations under this Ground Lease, the City may at any time thereafter after notice and expiration of the applicable cure period (except in the event of an emergency as determined by the City, in which case the may act when the City determines necessary), remedy the default for Tenant’s account and at Tenant’s expense. Tenant will pay to the City as additional Base Rent, promptly upon demand, all sums expended by the City, or other costs, damages, expenses, or liabilities incurred by the City, including reasonable attorneys’ fees, in remedying or attempting to remedy the default. Tenant’s obligations under this Section will survive the termination of this Ground Lease. Nothing in this Section implies any duty of the City to do any act that Tenant is obligated to perform under any provision of this Ground Lease, and the City’s cure or attempted cure of Tenant’s default will not constitute a waiver of Tenant’s default or any rights or remedies of the City on account of the default.

19.06 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or the City takes possession of the Premises by reason of any default of Tenant hereunder.

19.07 Remedies Not Exclusive. The remedies set forth in Section 19.03(b) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of the City now or later allowed by Law. Tenant's obligations hereunder will survive any termination of this Ground Lease.

ARTICLE 20 DAMAGE AND DESTRUCTION

20.01 Insured Casualty. If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant under this Ground Lease, Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof before such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to complete the restoration, then Tenant, with the written consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (a) the date of such damage or destruction, or (b) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. If Tenant is required or elects to restore the Improvements, then all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease will, subject to any applicable rights of Lenders, be used by Tenant for that purpose and Tenant will make up from its own funds or obtain additional financing as reasonably approved by the City any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost. If Tenant elects to terminate this Ground Lease as provided under this Section 20.01, or elects not to restore the Improvements, then the insurance proceeds will be divided in the order set forth in Section 20.03. If Tenant restores the Improvements as provided in this Section, any insurance proceeds remaining after restoration is completed shall, subject to the applicable rights of any Lender, be retained by Tenant and be considered Project Income.

20.02 Uninsured Casualty. If (a) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost to complete the restoration is not covered by insurance required to be carried under this Ground Lease; and (b) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (c) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender, terminate this Ground Lease upon ninety (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant will notify the City promptly and not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval will not be unreasonably withheld or delayed. If Tenant terminates this Ground Lease under this Section 20.02, then all insurance proceeds and damages payable by reason of the casualty

will be divided among City, Tenant, and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured or underinsured casualty, then Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition before the damage or destruction in accordance with the provisions of Section 20.01 and will, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds to do so.

20.03 Distribution of the Insurance Proceeds. If Tenant elects to terminate and surrender as provided in either Sections 20.01 or 20.02, then the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder will be as follows:

20.03(a) First to the Lenders, in order of their priority, to control, disburse or apply to any outstanding loan amounts in accordance with the terms their respective Leasehold Mortgages and applicable Law;

20.03(b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying property, and for the cost of any work or service required by any Law, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

20.03(c) Third, to compensate City for any diminution in the value (as of the date of the damage or destruction) of the Site caused by or arising from the damage or destruction; and

20.03(d) The remainder to Tenant.

20.04 Clean-up of Site. If Tenant terminates this Ground Lease under the provisions of Sections 20.01 or 20.02, then Tenant must all clean up and remove all debris from the Premises and adjacent and underlying property and leave the Premises in a clean and safe condition and in compliance with all Laws upon surrender, as described in in Section 20.03(b). If the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.03(b), then Tenant must pay the portion of the costs not covered by the insurance proceeds.

20.05 Waiver. Tenant and the City intend that this Ground Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, the City and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

ARTICLE 21 DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION

21.01 Damage to Person or Property—General Indemnification. City will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Site or the Easement Property, unless arising from the active gross negligence or willful misconduct of the City or any of its commissioners, officers, agents, or employees. Tenant will defend, hold

harmless, and indemnify the City including, but not limited to, its boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising from the Site, the Easement, this Ground Lease, Tenant’s or any occupant’s tenancy, Tenant’s or any occupant’s use of the Site, including adjoining sidewalks and streets, and any of Tenant’s or any occupant’s operations or activities thereon or connected thereto; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Ground Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and the City’s costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within any indemnity provision set forth in this Ground Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant’s obligations under this Article will survive the termination or expiration of this Ground Lease.

21.02 Hazardous Substances—Indemnification.

21.02(a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under, or from the Site.

21.02(b) For purposes of this Section 21.02, the following definitions apply:

(i) “**Hazardous Substance**” has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Ground Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“**PCBs**”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include substances that occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the

ordinary course of construction and operation of a residential development, provided they are used and stored in accordance with all applicable Laws.

(ii) "**Environmental Law**" means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Ground Lease.

(iii) "**Release**" means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

21.03 Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to the City, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (a) any act or omission of persons occupying adjoining premises or any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Site or Easement Property defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other City property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Ground Lease before the Effective Date and (i) any other acts, omissions, or causes.

21.04 Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Ground Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Ground Lease will remain effective. Therefore, with respect to the Claims released in this Ground Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the

release at the time this Ground Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

21.05 Insurance. The Indemnification requirements under this Ground Lease, or any other agreement between the City and Tenant, will in no way be limited by any insurance requirements under any such agreements.

21.06 Survival. The provisions of ARTICLE 21 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 22 INSURANCE

22.01 Insurance. The Tenant must maintain insurance meeting the requirements of this Article.

22.01(a) Insurance Requirements for Tenant. During the term of this Ground Lease, Tenant will procure and maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any work hereunder by the Tenant, its agents, representatives, employees, contractors, or subcontractors and the Tenant's use and occupancy of the Premises.

22.01(b) Minimum Scope of Insurance. Coverage must be at least as broad as:

- (i) Insurance Services Office Commercial General Liability coverage (form CG 00 01—"Occurrence") or other form approved by the City's Risk Manager.
- (ii) Insurance Services Office Automobile Liability coverage, code 1 (form CA 00 01—"Any Auto") or other form approved by the City's Risk Manager.
- (iii) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
- (iv) Professional Liability Insurance: Tenant will require that all architects, engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors, and omissions. Tenant will provide the City with copies of consultants' insurance certificates showing that coverage.
- (v) Insurance Services Office Property Insurance coverage (form CP 10 30 60 95—"Causes of Loss—Special Form") or other form approved by the City's Risk Manager.
- (vi) Crime Policy or Fidelity Bond covering the Tenant's officers and employees against dishonesty with respect to the use of City funds.

22.01(c) Minimum Limits of Insurance. Tenant must maintain limits no less than:

- (i) General Liability: Commercial General Liability insurance with no less than Two Million Dollars (\$2,000,000) combined single limit per

occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for blanket contractual liability (including tort liability and of another party and Tenant's liability of injury or death to persons and damage to property set forth in Section 21.01 above) (which may be satisfied in whole or in part through an umbrella policy); personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on, alteration or improvement to the Site or Easement Property with risk of explosion, collapse, or underground hazards.

(ii) Automobile Liability: Business Automobile Liability insurance with no less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage, including owned, hired, and non-owned auto coverage, as applicable.

(iii) Workers' Compensation and Employers Liability: Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(iv) Professional Liability: Professional Liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors, and omissions of Tenant's architects, engineers, and surveyors. If the Professional Liability Insurance provided by the architects, engineers, or surveyors is "claims made" coverage, Tenant must assure that these minimum limits are maintained for no less than three (3) years beyond Completion of the Rehabilitation, construction, or remodeling.

(v) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less than Seventy-Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss.

(vi) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year; this coverage must be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant's contractor, provided that the policy must be "claims made" coverage and Tenant must require Tenant's contractor to maintain these minimum limits for no less than three (3) years beyond Completion of the Project.

(vii) Property Insurance:

(1) Before Rehabilitation:

a. Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the then-current replacement cost of all improvements before commencement of any construction or other Rehabilitation work and City property in the care, custody, and control of the Tenant or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

b. During the course of Rehabilitation:

i. Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the then-current replacement cost of all completed improvements and City property in the care, custody, and control of the Tenant or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

ii. Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Tenant as dual obligees or other completion security approved by the City in its sole discretion.

(2) Upon Completion of Rehabilitation:

a. Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the then-current replacement value of all improvements and City property in the care, custody, and control of the Tenant or its contractor. For rehabilitation/construction projects that are unoccupied by Residential Occupants, Tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

b. Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site or Easement Property that is used by Tenant for heating, ventilating, air-conditioning, power generation, and similar purposes, in an amount not less than one hundred percent (100%) of the actual then-current replacement value of such machinery and equipment.

22.01(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of \$25,000 must be declared to and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer will reduce or eliminate the deductibles or self-insured retentions with respect to the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Tenant must procure a financial

guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

22.01(e) Other Insurance Provisions. The policies must contain, or be endorsed to contain, the following provisions:

- (i) General Liability and Automobile Liability Coverage: The "City and County of San Francisco and their respective commissioners, members, officers, agents, and employees" are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of the Tenant related to the Project; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project; and automobiles owned, leased, hired, or borrowed by the Tenant for the operations related to the Project. The coverage may not contain any special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents, or employees.
- (ii) Workers' Compensation and Property Insurance: The insured will agree to waive all rights of subrogation against the "City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees" for any losses in connection with this Project.
- (iii) Claims-made Coverage: If any of the required insurance is provided under a claims-made form, Tenant will maintain such coverage continuously throughout the term of this Ground Lease and, without lapse, for a period of three years beyond the expiration of this Ground Lease, to the effect that, if occurrences during the contract term give rise to claims made after expiration of the Ground Lease, then those claims will be covered by the claims-made policies.
- (iv) All Coverage. Each insurance policy required by this Article must:
 - (1) Be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to City, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice will be given.
 - (2) Contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.
 - (3) For any claims related to this Ground Lease, the Tenant's insurance coverage will be primary insurance with respect to the City and its commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the City or its commissioners, members, officers, agents, or employees will be in excess of the Tenant's insurance and will not contribute with it.
 - (4) The Tenant's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City and its commissioners, members, officers, agents, or employees.

(6) Approval of Tenant's insurance by the City will not relieve or decrease the liability of Tenant under this Ground Lease.

(7) The City reserves the right to require an increase in insurance coverage if the City determines that conditions (including, but not limited to, property conditions, market conditions, or commercially reasonable practice) show cause for an increase, unless Tenant demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Tenant.

22.01(f) Acceptability of Insurers. All insurers must have a Best's rating of no less than A-VIII or as otherwise approved by the City's Risk Manager.

22.01(g) Verification of Coverage. Tenant will furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause at the commencement of this Ground Lease and annually thereafter. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

22.01(h) Contractor, Subcontractors, and Consultants Insurance. Tenant must include all subcontractors and consultants as additional insureds under its policies or furnish separate certificates and endorsements for each. Tenant will require the subcontractor(s) and consultants to provide all necessary insurance and to name the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees and the Tenant as additional insureds. All coverage for subcontractors and consultants will be subject to all of the requirements stated herein unless otherwise approved by the City's Risk Manager.

ARTICLE 23 COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01 Compliance with Legal Requirements. From and after the Effective Date, Tenant will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Site or Easement Property (as related to the Easement). If Tenant contests any of the foregoing, Tenant will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Tenant indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

23.02 Regulatory Approvals.

23.02(a) Tenant understands and agrees that the City is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency with certain police powers. Tenant understands and agrees that neither entry by the City into this Ground Lease nor any approvals given by the City under this Ground Lease will be deemed to imply that Tenant has thereby obtained any required approvals from City departments, boards, or commissions that have jurisdiction over the Premises. By entering into this Ground Lease, the City is in no way modifying or limiting the obligations of Tenant to develop the Project in accordance with all Laws and as provided in this Ground Lease.

23.02(b) Tenant understands that the Rehabilitation of the Improvements on the Premises and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning Administrator and the Department of Building Inspection. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Tenant will not seek any regulatory approval without first obtaining MOHCD's approval, which approval may not be unreasonably withheld or delayed. Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of conditions or restrictions in connection with its efforts obtain a permit from any other regulatory agency if the City is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of the City whether on or off of the Premises, unless in each instance MOHCD has approved the conditions previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining [any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

23.02(c) With MOHCD's prior written consent, Tenant will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Ground Lease, Tenant must indemnify, defend, and hold harmless the City and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the active gross negligence or willful misconduct of the City or any other Indemnified Party.

23.03 Specific Covenants Regarding Farmers Market.

23.03(a) Protection from Damage. At all times during the Term of this Ground Lease, Tenant shall protect the Farmers Market from any damage, injury, or physical disturbance resulting from the Project. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair any such damage to the Farmers Market at Tenant's sole expense.

23.03(b) Interference. In no event shall any construction of the Improvements or activities on the Premises physically interfere in any manner with the use and operation of the Farmers Market. The City and Tenant acknowledge that Tenant's activities on the Easement Property may involve excavation. Tenant agrees that, at all times when construction work is not in progress on the Easement Property, any excavation will be completely covered with metal plates which will allow parking over their surface. Following completion of any construction on the Easement Property, Tenant will fill and repave any excavated areas in a manner satisfactory to the City's Director of Property, which allows use of the Easement Property for surface parking.

23.03(c) Taximeter Testing. Tenant shall not interfere in any way with taximeter testing on the Farmers Market Property, nor shall Tenant damage any power source to the taximeter shed.

23.03(d) Scavenger Bins. Tenant shall not interfere in any way with the use of the scavenger bins on the Farmers Market Property.

23.03(e) Parking. Tenant may allow its contractors, subcontractors, laborers, materialmen, and other individuals related to Rehabilitation of the Improvements to park vehicles on the Farmers Market Property and the Easement Property to the same extent as permitted by the general public, which, as of the date of this Ground Lease, is between 6:00 p.m. on Sunday and 3:00 a.m. on the following Saturday (which the City may change from time to time), and in accordance with any applicable parking restrictions. In no event shall any vehicles associated with Rehabilitation be parked on any portion of the Farmers Market Property or the Easement Property for any period of time prohibited by the City, which is, as of the date of this Ground Lease, between the hours of 3:00 a.m. and 6:00 p.m. on any Saturday or Sunday (which the City may change from time to time) during the Term. Tenant shall be fully responsible for any vehicles so parked. Tenant shall pay to the City, upon demand, a fine of \$1,000 per day for each vehicle parked on the Farmers Market Property in violation of this Section 23.03(e), without any further notice or demand by City. Tenant shall inform its contractors and all other agents, representatives, and employees of the restrictions of this Section 23.03(e). Tenant shall also include this restriction in any Sublease. The fines provided in this Section 23.03(e) shall apply only during Rehabilitation and any Changes, and shall not apply to any vehicles of Residential Subtenants or their guests.

23.04 Acknowledgement and Waiver.

23.04(a) Tenant acknowledges the following:

(i) The Farmers Market is owned and operated by the City. The Market operates Saturdays and Sundays from approximately 6:00 a.m. to 6:00 p.m., as may be changed by the City from time to time. Vehicles and individuals may begin set-up of stalls at 3:00 a.m. or earlier. The set-up, operation, and closing of the Farmers Market, by their nature, involve large amounts of noise, traffic, light, dirt, and refuse. Tenant is aware of such characteristics.

(ii) In the absence of an agreement to the contrary, the uses of the Farmers Market, as well as any expansion of or modification to the Farmers Market, may give rise to suits by Tenant, Residential Subtenants or other individuals against City for nuisance, inverse condemnation or similar causes of action.

23.04(b) Tenant acknowledges and understands that it is the City's objective to maintain the maximum flexibility possible with respect to the continuation of the Farmers Market. Except as set forth below, it is not Tenant's intent to use the regulatory or judicial process in a manner which would interfere with City's objectives. Therefore, as partial consideration for the lease of the Premises and grant of the Easement to Tenant and Tenant's authority to rehabilitate the Improvements and operate the Project, Tenant hereby waives and relinquishes all rights, if any, to commence or maintain a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property or similar claims arising out of the normal use and operation of the Farmers Market; provided however that this waiver does not preclude an action to cause the Farmers Market to be operated as required by any law, permit, rule, or regulation applicable to such operation.

23.04(c) Tenant is aware that any future expansion or modification of or addition to the Farmers Market that exists as of the Effective Date may require certain regulatory approvals. Such approvals may provide for a procedure that allows members of the public to provide comments to the appropriate regulatory agency before the agency takes any final action. Once a final action is taken by the appropriate regulatory agency, Tenant, absent an agreement to the contrary, may have a right to commence a legal action or administrative or regulatory appeal to set aside or otherwise nullify the action taken by the regulatory agency. Except as provided in Section 23.04(f) with respect to any continuation, expansion, or modification of or additions to any Farmers Market operation, Tenant waives and relinquishes its right to commence or maintain a legal action or regulatory or administrative appeal which would challenge the validity of, seek to overturn or nullify any regulatory action necessary for the continuation, expansion, or modification of or addition to the Market.

23.04(d) The foregoing waiver and release is made by Tenant in consideration of the City's entering into this Ground Lease and is intended by the Parties to be an agreement that precludes the exercise by Tenant of rights that it may otherwise have at law or pursuant to regulatory procedures.

23.04(e) Tenant is in no way waiving its right to provide comments, whether in writing or in the form of oral testimony, to any regulatory agency that is considering taking one of the actions set forth above or to provide the same at any hearing of any administrative appeal of such an action.

23.04(f) Notwithstanding the provisions of this Section 23.04, Tenant is in no way waiving its right to commence or maintain (i) a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property or similar claim or (ii) any regulatory or administrative appeal, if in either case the City seeks to materially modify the type of activities associated with the Farmers Market as of the Effective Date, other than temporary construction activities in connection with any expansion or modification of the Farmers Market, and other than activities resulting from any increase in the number of stalls in the Farmers Market and/or any change or increase in the hours and/or days of operation of the Farmers Market.

23.04(g) Tenant acknowledges that Sections 23.03 and 23.04 of the Lease amend and restate Section 10.9 of the Original Lease and that, pursuant to Section 10.9 of the Original Lease, a Declaration and Acknowledgment was recorded on December 14, 1993 as Instrument No. F507159 encumbering the Site, acknowledging the characteristics and restrictions related to the Farmers Market, and Tenant, as successor-in-interest to the tenant under the Original Lease, and is bound by that Declaration and Acknowledgment. Tenant shall disclose the contents of the Declaration and Acknowledgment to any Transferee of the Premises, each of which shall, prior to such sale or Transfer, acknowledge the contents of said declaration and acknowledgment in writing.

23.04(h) Tenant shall specifically require each Residential Subtenant, prior to occupancy of a Unit, to acknowledge the restrictions in this Section 23.04 in the sublease for a Unit.

ARTICLE 24 ENTRY

24.01 The City reserves for itself and its authorized representatives the right to enter the Site at all reasonable times during normal business hours upon not less than forty-eight (48) hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the occupants, tenants, and others lawfully permitted on the Site, for any of the following purposes:

24.01(a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);

24.01(b) to determine whether Tenant is in compliance with its Ground Lease obligations and to cure or attempt to cure any Tenant default;

24.01(c) to serve, post, or keep posted any notices required or allowed under any of the provisions of this Ground Lease;

24.01(d) to do any maintenance or repairs to the Premises that the City has the right or the obligation, if any, to perform hereunder; and

24.01(e) to show the Premises to any prospective purchasers, brokers, Lenders, or public officials, or, during the last year of the Term of this Ground Lease, exhibit the Premises to prospective tenants or other occupants, and to post any reasonable “for sale” or “for lease” signs in connection therewith.

24.02 In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises and alter or remove any Improvements or Tenant’s personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

24.03 The City will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City’s entry onto the Premises, except to the extent damage arises out of the active gross negligence or willful misconduct of the City or its agents. The City will be responsible for any losses resulting from its active gross negligence or willful misconduct and will repair any resulting damage promptly.

24.04 Tenant will not be entitled to any abatement in Annual Rent if the City exercises any rights reserved in this Section, subject to Section 24.03 above.

24.05 The City will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant’s use of the Premises as permitted by this Ground Lease.

ARTICLE 25 MORTGAGE FINANCING

25.01 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the City in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or Rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements as part of the Rehabilitation; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. The City acknowledges and accepts Capital One, National Association as the initial funding lender, to be replaced, at permanent conversion, by Bellwether Real Estate Capital, LLC (“Bellwether”) as the permitted permanent lender and its successor and/or assigns, including, but not limited to, the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), and consents to the Leasehold Mortgage running to U.S. Bank, National Association associated with the construction loan to Tenant for the Project and no further consent from the City is required. The City acknowledges that

Tenant intends that Freddie Mac provide permanent financing upon Completion of the Rehabilitation, and, provided that there are no material changes to the terms of the permanent loan from what the City has reviewed, the City consents to the Leasehold Mortgage associated with the Freddie Mac permanent loan to Tenant for the Project and no further consent from the City will be required. City further acknowledges that Development Subtenant has provided subordinate financing to Tenant for the purposes set forth in this Section and, provided that there are no material changes to the terms of the loan from what the City has reviewed, the City consents to the Leasehold Mortgage associated with the Development Subtenant subordinate financing to Tenant for the Project and no further consent from the City will be required.

25.02 Lender Not Obligated to Construct. A Lender, including the successors, assigns, or designees of the Lender, is not obligated to complete the Rehabilitation or to guarantee such completion; and no covenant or any other provision of this Ground Lease may be construed to obligate the Lender or its successors, assigns, or designees. However, if the Lender undertakes to complete or guarantee the completion of the construction of the Improvements, except as provided in Section 26.06(b), nothing in this Ground Lease will be deemed or construed to permit or authorize the Lender or its successors, assigns, or designees to devote the Site or Easement Property or any portion thereof to any uses, or to Rehabilitate any Improvements on the Site or Easement Property, other than those uses or Improvements authorized under Section 9.01 and any reasonable modifications in plans proposed by the Lender or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion under Section 10.13. Except as provided in Section 26.06(b), to the extent any Lender or its successors in interest wish to change such uses or construct different improvements, Lender or its successors in interest must obtain the advance written consent of the City.

25.03 Failure of Lender to Complete Rehabilitation. In any case where six (6) months after assumption of obligations under Section 25.02 above, a Lender or its successors, assigns, or designees (as applicable), having first exercised its option to complete the Rehabilitation, has not proceeded diligently with the Rehabilitation, the City will have all the rights against the Lender it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 10.13 of this Ground Lease.

25.04 Default by Tenant and City's Rights.

25.04(a) Right of City to Cure a Default or Breach by Tenant under a Leasehold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, the City may, at its option, cure such breach or default during the one hundred ten (110) days after the date that the Lender files a notice of default. In such event, the City will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. The City will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by this Ground Lease, including any lien contemplated because of advances yet to be made. After ninety

(90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable loan documents, the City will also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to all Lenders' and Permitted Limited Partner's written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage and the assignee meeting all reasonable underwriting standards of the Leasehold Mortgage.

25.04(b) Notice of Default to City. Tenant will use its best efforts to require Lender to give the City prompt written notice of any default or breach of the Leasehold Mortgage and each Leasehold Mortgage will provide for that notice to the City and s contain the City's right to cure as above set forth.

25.05 Cost of Mortgage Loans to be Paid by Tenant. Tenant covenants and affirms that it will bear all of the costs and expenses in connection with (a) the preparation and securing of any Leasehold Mortgage, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26 PROTECTION OF LENDER

26.01 Notification to City. Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this ARTICLE 26, Tenant will cause each Lender to give written notice to the City of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute City's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The City hereby acknowledges that each Capital One, National Association, as initial funding lender, and Freddie Mac, as permanent lender, and is deemed to have given written notice as a Lender.

26.02 Lender's Rights to Prevent Termination Subject to the terms and conditions of Section 26.03 below, each Lender has the right, but not the obligation, at any time before termination of this Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Ground Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants and conditions of this Ground Lease to prevent a termination of this Ground Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Lender.

26.03 Lender's Rights When Tenant Defaults. If any event of default under this Ground Lease occurs and is continuing, and is not cured within the applicable cure period, the City will not terminate this Ground Lease or exercise any other remedy, including but not limited, the ability of Landlord to cause the full amount of Annual Rent to be converted to Base Rent in the event of noncompliance with Section 9.01, unless it first gives written notice of the event of default to Lender; and

26.03(a) If the event of default is a failure to pay a monetary obligation of Tenant, Lender will have sixty (60) days from the date of written notice is given (or deemed given, each as provided in ARTICLE 38 below) by City to Lender to cure the default; or

26.03(b) If the event of default is not a failure to pay a monetary obligation of Tenant, Lender will have one-hundred twenty (120) days of written notice is given (or deemed given, each as provided in ARTICLE 38 below) by City to Lender, to either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site and the Easement in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default will be remedied or deemed remedied in accordance with Section 26.04 below. If, due to the nature of the default the default is not capable of cure within one-hundred twenty (120) days, then Lender may request from the City an extended period and the reasons for the extended period. City will not unreasonably withhold its approval of such a request.

26.03(c) All rights of the City to terminate this Ground Lease as the result of the occurrence of any uncured event of default is subject to, and conditioned upon, the City having first given Lender written notice of the event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under Sections 19.04(b) or 26.06(b).

26.03(d) If the Ground Lease terminates because of a default by Tenant, Lender shall have a right to request a new lease as provide in Section 26.08(c) below..

26.04 Default That Cannot be Remedied by Lender. Any event of default under this Ground Lease that in the nature thereof cannot be remedied by Lender or its assignee or designee will be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (a) within one-hundred twenty (120) days after receiving notice from the City setting forth the nature of such event of default, Lender has acquired Tenant's Leasehold Estate or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Lender is diligently prosecuting any such proceedings to completion, (c) Lender has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than Indemnification Obligations) in accordance with Section 26.03, and (d) after gaining possession of the Improvements, Lender diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Ground Lease.

26.05 Court Action Preventing Lender's Foreclosure. If Lender is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of

foreclosure, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, then the City agrees to enter into a new ground lease with the Lender (or its designee) on the same terms set forth in this Ground Lease. For purpose of this Article, if there is more than one Lender, the City will offer the new lease to each Lender in the order of priority until accepted.

26.06 Lender's Rights to Record, Foreclose, and Assign. The City hereby agrees with respect to any Leasehold Mortgage, that:

26.06(a) the Lender may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from City, which approval will not be unreasonably withheld, conditioned, or delayed, and if the Subsequent Owner has elected to maintain the use restrictions of ARTICLE 9, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code so that the Premises receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available). Furthermore, Lender may acquire title to the Leasehold Estate in any lawful way, and if the Lender becomes the assignee, then Lender may sell and assign said Leasehold Estate subject to City approval (which may not be unreasonably withheld, conditioned, or delayed) and to the City's rights under Section 25.04.

26.06(b) each Subsequent Owner must take said Leasehold Estate subject to all of the provisions of this Ground Lease, and must, so long as and only so long as it is the owner of the Leasehold Estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section 26.07 below, the Subsequent Owner may operate and maintain forty-six (46) residential units without any limitations on the rents charged or the income of the occupants thereof, subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance;

26.06(c) the City will mail or deliver to any Lender that has an outstanding Leasehold Mortgage a duplicate copy of all notices that the City may give to Tenant under this Ground Lease; and

26.06(d) any Permitted Limited Partners of Tenant will have the same rights as any Lender under Sections 26.02, 26.03, and 26.06(c), and any reference to a Lender in those sections will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of any Lender.

26.06(e) Notwithstanding any term to the contrary contained herein, for so long as Freddie Mac is the First Mortgage Lender with respect to the Leasehold Estate, the consent of Landlord shall not be required in connection with

commencement of a foreclosure or deed in lieu of foreclosure by the First Mortgage Lender or for the first assignment following the First Mortgage Lender's acquisition of Tenant's interest in the Premises through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, provided, however, that any such assignment shall be to an entity (Subsequent Owner) controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available) and such entity (Subsequent Owner) shall have elected to maintain the use restrictions of ARTICLE 9. Any subsequent assignment or transfer of this Ground Lease shall require the reasonable consent of Landlord.

26.07 Ground Lease Rent after Lender Foreclosure or Assignment. From and after the time that the Subsequent Owner acquires title to the Leasehold Estate, Annual Rent will be set as follows:

26.07(a) Any accrued Annual Rent at the time of foreclosure will be forgiven by the City, and will not be an obligation of the Lender, its assignee, or the Subsequent Owner. After foreclosure or assignment of the Leasehold Estate to the Lender in lieu of foreclosure, if the Lender continues to operate the Project subject to the use and occupancy restrictions of Section 9.01, then Annual Rent otherwise due may, at the option of the Lender, be deferred until the earlier of the date of the Lender's sale or assignment of the Project to a Subsequent Owner that does not agree to operate the Project subject to such restrictions or the date that is sixty (60) days after Lender ceases to operate the Project in accordance with those restrictions. All deferred Annual Rent will accrue, with simple interest at six percent (6%) per annum, until paid.

26.07(b) If the Subsequent Owner exercises its rights under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent will be increased to the new fair market rent under this Section 26.07(b) and the provisions of Section 6.02(g) will be suspended; provided, however, that the City will be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by households with earning less than Area Median Income, as the City and the Subsequent Owner may agree. The fair market rental value will be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process

to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. But, after the neutral third party process, the Lender, in its sole discretion, may rescind its written notification of intent to not comply with Section 9.01 of this Ground Lease.

26.08 Permitted Uses After Lender Foreclosure. Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the uses specified in the building permit with all addenda, as approved by the City's Department of Building Inspection.

26.09 Preservation of Leasehold Benefits. Until such time as a Lender notifies the City in writing that the obligations of the Tenant under its loan documents have been satisfied, the City agrees:

26.09(a) That, subject to Section 19.03(b), the City will not voluntarily cancel or surrender this Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or amend this Ground Lease to materially increase the obligations of the Tenant or the rights of the City under this Ground Lease, without the prior written consent of the Lender (which may not be unreasonably withheld or delayed);

26.09(b) That the City will not enforce against a Lender any waiver or election made by the Tenant under this Ground Lease that has a material adverse effect on the value of the Leasehold Estate without the prior written consent of the Lender (which will not be unreasonably withheld or delayed);

26.09(c) That, if a Lender makes written request to the City for a new ground lease within fifteen (15) days after Lender receives written notice of termination of this Ground Lease, then the City will enter a new ground lease with the Lender (or its designee) commencing on the date of termination of this Ground Lease and ending on the normal expiration date of this Ground Lease, on substantially the same terms and conditions as this Ground Lease and subject to the rent provisions set forth in Section 26.07, and with the same priority as against any subleases or other interests in the Premises; so long as the Lender (or its designee) cures all unpaid monetary defaults under this Ground Lease (other than Indemnification Obligations), through the date of such termination;

26.09(d) That the City will provide reasonable prior notice to each Lender of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit each Lender to participate the proceedings as an interested party.

26.10 No Merger. The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, and the Easement will not merge with the fee interest in the Easement Property, notwithstanding ownership of the Easement and the fee by the same person, without the prior written consent of each Lender.

26.11 City Bankruptcy.

26.11(a) If a bankruptcy proceeding is filed by or against the City, the City will immediately notify each Lender of the filing and will deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Lender.

26.11(b) The City acknowledges that (i) the Tenant seeks to Rehabilitate the Existing Improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the Leasehold Estate and the Easement. Therefore, the City waives its right to sell (i) the City's fee interest in the Site under section 363(f) of the Bankruptcy Code, free and clear of the Leasehold Estate, and (ii) the City's fee interest in the Easement Property under section 363(f) of the Bankruptcy Code, free and clear of the Easement.

26.11(c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as follows:

- (i) the Tenant will be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the Leasehold Estate;
- (ii) if Tenant does not so object, each Lender will have the right to so object on its own behalf or on behalf of the Tenant; and
- (iii) in connection with any such sale, the Tenant will not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it has received and paid to each Lender the outstanding balance under its respective loan.

26.11(d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in, or consent to any bankruptcy, insolvency, receivership, or court proceeding concerning the Leasehold Estate.

26.12 Limitation on Liability. First Mortgage Lender shall be limited at all times to the value of its respective leasehold interests under this Ground Lease and to the Improvements. In the event of a foreclosure of the Leasehold Mortgage, First Mortgage Lender (i) except for nonmonetary defaults that are continuing after foreclosure, shall only be liable to Landlord for acts and omissions during the period in which First Mortgage Lender is the holder of title to the Leasehold Estate, and (ii) shall be automatically released by Landlord from the acts and omissions of Tenant occurring prior to its acquisition of title and the Leasehold Estate.

26.13 Extension Term. Notwithstanding any default under the Ground Lease (other than those which Subsequent Owner is required to cure pursuant to the terms and conditions hereof) or any default under the Loan Documents, from and after the time that the Subsequent Owner acquires title to the Leasehold Estate, such Subsequent Owner will have the right to extend the Term for the Extension Term upon delivery of an Extension Notice pursuant to the terms of Section 2.03.]

ARTICLE 27 CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Ground Lease, there is any condemnation of all or any part of the Premises or any

interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this ARTICLE 27, subject to the rights of any Lender. Accordingly, Tenant waives any right to terminate this Ground Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated

27.02 Notice. In case of the commencement of any proceedings or negotiations that might result in a condemnation of all or any portion of the Premises during the Term, the party learning of such proceedings will promptly give written notice of the proceedings or negotiations to the other party. The notice will describe with as much specificity as is reasonable, the nature and extent of such condemnation or the nature of such proceedings or negotiations and of the condemnation that might result, as the case may be.

27.03 Total Taking. If the Site and Easement Property is totally taken by condemnation, this Ground Lease will terminate on the date the condemnor has the right to possession of the Site.

27.04 Partial Taking. If any portion of the Site, or portion of the Easement Property necessary for the function of the Premises, is taken by condemnation, this Ground Lease will remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate under this paragraph by giving notice to the City within thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. Tenant's termination notice must include the date of termination, which date may not be earlier than thirty (30) days or later than six (6) months after the date of Tenant's notice; except that this Ground Lease will terminate on the date the condemnor has the right to possession of the Site (or necessary portion of the Easement Property) if that date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within the thirty (30) day notice period, this Ground Lease will continue in full force and effect.

27.05 Effect on Rent. If any portion of the Improvements is taken by condemnation and this Ground Lease remains in full force and effect, then on the date of taking the rent will be reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of the Improvements taken bears to the total value of the Improvements immediately before the date of the taking.

27.06 Restoration of Improvements. If there is a partial taking of the Improvements and this Ground Lease remains in full force and effect under Section 27.04, then Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

27.07 Award and Distribution. Any compensation awarded, paid, or received on a total or partial condemnation of the Premises or threat of condemnation of the Premises will belong to and be distributed in the following order:

27.07(a) First, to pay the balance due on any outstanding Leasehold Mortgages and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals, and lease residuals, to the extent provided therein; and

27.07(b) Second, to the Tenant in an amount equal to the then fair market value of Tenant's interest in the Improvements and its Leasehold Estate (including, but not limited to, the value of Tenant's interest in all subleases to occupants of the Site) and the value of the Easement, such value to be determined as it existed immediately preceding the earliest taking or threat of taking of the Site; and;

27.07(c) Third, to the Landlord.

27.07(d) Notwithstanding anything to the contrary set forth in this Section, any portion of the compensation awarded that has been specifically designated by the condemning authority or in the judgment of any court to be payable to the City or Tenant on account of any interest in the Site or Easement Property or the Improvements separate and apart from the condemned land value, the value of the City's reversionary interest in the Improvements, Easement Property, Tenant's Leasehold Estate, or the value of the Improvements on the Site and Easement Property for the remaining unexpired portion of the Term, will be paid to the City or Tenant, as applicable, as so designated by the condemning authority or judgment.

27.08 Payment to Lenders. In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date when any compensation resulting from a condemnation or threatened condemnation is to be paid to Tenant, the award will be disposed of as provided in the Leasehold Mortgages.

27.09 Temporary Condemnation. If there is a condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, this Ground Lease will remain in full force and effect, there will be no abatement of Rent, and the entire award will be payable to Tenant.

27.10 Personal Property; Goodwill. Notwithstanding Section 27.07, the City will not be entitled to any portion of any award payable in connection with the condemnation of the Personal Property of Tenant or any of its subtenants, or any moving expenses, loss of goodwill or business loss or interruption of Tenant, severance damages with respect to any portion of the Premises remaining under this Ground Lease, or other damages suffered by Tenant.

ARTICLE 28 ESTOPPEL CERTIFICATE

The City or Tenant, as the case may be, will execute, acknowledge, and deliver to the other and/or any Lender or a Permitted Limited Partner, promptly upon request, its certificate certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets, or defenses against the enforcement by the City or Tenant to be performed or observed and, if so, specifying them, and (d) whether there are then existing any

defaults by Tenant or the City in the performance or observance by Tenant or the City of any agreement, covenant, or condition on the part of Tenant or the City to be performed or observed under this Ground Lease, and whether any notice has been given to Tenant or the City of any default that has not been cured and, if so, specifying the uncured default.

ARTICLE 29 SURRENDER AND QUITCLAIM

29.01 Surrender.

29.01(a) Upon expiration or earlier termination of this Ground Lease, Tenant will surrender to the City the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for Casualty or Condemnation as described in ARTICLE 20 and ARTICLE 27). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Ground Lease. The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Ground Lease and any other encumbrances created or approved in writing by the City. On or before the expiration or earlier termination of this Ground Lease, Tenant at its sole cost will remove from the Premises, and repair any damage caused by removal of, Personal Property, including any signage. Improvements and Changes will remain at the Premises as City property and title to the Improvements and any Changes will be conveyed to the City as provided in ARTICLE 13 above.

29.01(b) If the Premises is not surrendered at the end of the Term or sooner termination of this Ground Lease, and in accordance with the provisions of this ARTICLE 29, Tenant will continue to be responsible for the payment of Annual Rent until the Premises is surrendered in accordance with this ARTICLE 29., and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of the City to obtain possession of the Premises; any loss or liability resulting from any Claim against the City made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to the City due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

29.01(c) No act or conduct of the City or MOHCD, including, but not limited to, the acceptance of the keys to the Premises, will constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from the City to Tenant confirming termination of this Ground Lease and surrender of the Premises by Tenant will constitute acceptance of the surrender of the Premises and accomplish a termination of this Ground Lease.

29.02 Quitclaim. Upon the expiration or earlier termination of this Ground Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or the City, become the property of the City, free and clear of the Easement and all liens

and without payment therefor by the City, as provided in ARTICLE 13. Upon expiration or sooner termination of this Ground Lease, Tenant must surrender the Site and the Easement Property to the City and, at the City's request, will execute, acknowledge, and deliver to the City a good and sufficient quitclaim deed or other instrument disclaiming any interest of Tenant in the Premises.

29.03 Abandoned Property. Any items, including Personal Property, not removed by Tenant will be deemed abandoned. The City may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Tenant waives all Claims against the City for any damages resulting from the City's retention, removal, and disposition of abandoned Personal Property; provided, however, that Tenant will be liable to the City for all costs incurred in storing, removing, and disposing of abandoned Personal Property and repairing any damage to the Premises resulting from its removal. Tenant agrees that the City may elect to sell abandoned Personal Property and offset against the sales proceeds the City's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

29.04 Survival. Tenant's obligation under this ARTICLE 29 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 30 EQUAL OPPORTUNITY

In the selection of all contractors and professional consultants for the Project, Tenant must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time, and with the requirements of the Small Business Enterprise Program ("**SBE Program**") as set forth in that certain Small Business Enterprise Program manual dated July 1, 2015, as it may be amended from time to time, according to the procedures established by the City's Contract Monitoring Division. The Project must comply with the training, hiring, and contracting requirements of Section 3 of the Housing and Community Development Act of 1968 and of the San Francisco Section 3 program as administered by MOHCD. Federal Section 3 requirements state that contracts and opportunities for job training and employment be given, to the greatest extent feasible, to local low-income residents. Local residents for this project are San Francisco residents. In addition, this project will be required to comply with hiring requirements as incorporated into the local Section 3 program and in conjunction with the City's low-income hiring requirements under San Francisco's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83).

ARTICLE 31 CITY PREFERENCE PROGRAMS

To the extent permitted by applicable Law, Tenant agrees to comply with the requirements of the City's current housing preference programs, as amended from time to time; provided, however, that such requirements will apply only to the extent permitted by the requirements of non-City funding approved or benefits (including, but not limited to, requirements for low-income housing tax credits under Sections 42 and 142 of the Internal Revenue Code of 1986, as amended, and any implementing rules or restrictions) approved by the City for the Project.

ARTICLE 32 LABOR STANDARDS PROVISIONS

Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant agrees that any person performing labor in the Rehabilitation of the Project and any Change to the Premises that Tenant performs or causes to be performed under this Ground Lease, will be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant will include in any contract for construction or demolition in the Rehabilitation of the Project a requirement that all persons performing labor under the contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports for all persons performing labor in the Rehabilitation of the Project or any Change to the Premises.

ARTICLE 33 CONFLICT OF INTEREST

No commissioner, official, or employee of the City may have any personal or financial interest, direct or indirect, in this Ground Lease, and any such commissioner, official, or employee may not participate in any decision relating to this Ground Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 34 NO PERSONAL LIABILITY

No commissioner, official, or employee of the City will be personally liable to Tenant or any successor in interest in the event of any default or breach by the City or for any amount that may become due to Tenant or its successors or on any obligations under the terms of this Ground Lease. No Permitted Limited Partner of Tenant shall be personally liable to City or any successor in interest in the event of any default or breach by Tenant or for any amount which may become due to City or its successors or for any obligations under the terms of this Ground Lease.

ARTICLE 35 ENERGY CONSERVATION

Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the Rehabilitation of the Improvements.

ARTICLE 36 WAIVER

The waiver by the City or Tenant of any term, covenant, agreement or condition in this Ground Lease will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition in this Ground Lease, and no custom or practice that may grow up between the parties in the administration of this Ground Lease may be construed to waive or to lessen the right of the City or Tenant to insist upon the performance by the other in strict accordance with the its terms. The subsequent acceptance of rent or any other sum by the City will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement, or condition of this Ground Lease, other than the failure of Tenant to pay the particular rent or other sum accepted, regardless of the City's knowledge of the preceding breach at the time of acceptance of such rent or other sum. Any waiver by the City or Tenant of any term or provision of this Ground Lease must be in writing.

ARTICLE 37 TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as the City may deem necessary, Tenant will make available to the City and its authorized representatives for examination all records, reports, data, and information made or kept by Tenant regarding its activities or operations on the Site and Easement Property. Nothing contained in this Ground Lease will entitle the City to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by Law to do so, the City will respect the confidentiality requirements of Tenant in regard to the lists above of the names of Residential Occupants of the Premises furnished by Tenant under to ARTICLE 7 above.

ARTICLE 38 NOTICES AND CONSENTS

All notices, demands, consents, or approvals that may be given or are required to be given by either party to the other under this Ground Lease must be in writing and will be deemed to have been fully given when delivered in person to such representatives of Tenant, and the City, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed

if to Tenant at: Market Heights 2, LP
 c/o Bernal Heights Neighborhood Center
 515 Cortland Avenue
 San Francisco, CA 94110
 Attention: Executive Director

With a copy to: Devine & Gong, Inc.
 1970 Broadway Street
 Oakland, CA 94612
 Attention: Chan U Lee

And a copy to: Wincopin Circle LLLP
 c/o Enterprise Community Asset Management, Inc.
 70 Corporate Center
 11000 Broken Land Parkway, Suite 700
 Columbia, Maryland 21044
 Attention: Asset Management/General Counsel

if to the City at: San Francisco Mayor's Office of Housing and Community
 Development
 One South Van Ness Avenue, 5th Floor
 San Francisco, California 94103
 Attention: Director
 Re: Market Heights Apartments

or to such other address with respect to either party as that party may from time to time designate by notice to the other given under the provisions of this ARTICLE 38. Any notice given under this ARTICLE 38 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email but no notice will be deemed binding or given if given solely by email.

ARTICLE 39 HEADINGS

Any titles of the paragraphs, articles, and sections of this Ground Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

ARTICLE 40 SUCCESSORS AND ASSIGNS

This Ground Lease will be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground Lease, it means and includes their respective successors and assigns; provided, however, that the City will have no obligation under this Ground Lease to, and no benefit of this Ground Lease will accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Ground Lease. If and when the City sells the Site to any third party, City will require such third party to assume all of the City's obligations under this Ground Lease arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

ARTICLE 41 TIME

Time is of the essence in the enforcement of the terms and conditions of this Ground Lease.

ARTICLE 42 PARTIAL INVALIDITY

If any provisions of this Ground Lease are determined to be illegal or unenforceable, that determination will not affect any other provision of this Ground Lease and all the other provisions of this Ground Lease will remain in full force and effect.

ARTICLE 43 APPLICABLE LAW; NO THIRD PARTY BENEFICIARY

This Ground Lease is governed by and construed under the laws of the State of California. Other than the benefits and rights afforded to the Permitted Limited Partner and the Lenders, this Ground Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 44 ATTORNEYS' FEES

If either the City or Tenant fails to perform any of its obligations under this Ground Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Ground Lease, the defaulting party or the party non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Ground Lease (whether or not such action is prosecuted to a judgment). For purposes of this Ground Lease, reasonable attorneys' fees of the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" also includes, without limitation, all fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

ARTICLE 45 EXECUTION IN COUNTERPARTS

This Ground Lease and any memorandum hereof may be executed in counterparts, each of which will be considered an original, and all of which will constitute one and the same instrument.

ARTICLE 46 BROKERS

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Ground lease or the Leasehold Estate. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the party through whom the broker or finder makes a claim will be responsible for such commission or fee and will indemnify, defend, and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Ground Lease.

ARTICLE 47 RECORDATION OF MEMORANDUM OF GROUND LEASE

This Ground Lease may not be recorded, but a memorandum of this Ground Lease will be recorded in the form attached hereto as Attachment 5 ("**Memorandum of Ground Lease**"). The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent purchasers and mortgagees.

ARTICLE 48 SURVIVAL

Termination or expiration of this Ground Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Ground Lease, the ability to collect any damages or sums due, and it will not

affect any provision of this Ground Lease that expressly states it will survive termination or expiration of this Ground Lease.

ARTICLE 49 TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site, the Easement, or Improvements or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Residential Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion, (c) transfers from Tenant to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Tenant or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Tenant to an investor under the tax credit syndication of the Project and transfers of any limited partner interest in Tenant to affiliates of Tenant's investor limited partner; (f) any transfer by foreclosure or assignment in lieu of foreclosure; or (g) the grant or exercise of an option agreement between Borrower and Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by the City. Any other transfer, assignment, encumbrance, or lease without the City's prior written consent will be voidable and, at the City's election, constitute a default under this Agreement. The City's consent to any specific assignment, encumbrance, lease, or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Ground Lease.

ARTICLE 50 CITY PROVISIONS

50.01 Non-Discrimination.

50.01(a) **Covenant Not to Discriminate.** In the performance of this Ground Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

50.01(b) **Subleases and Other Subcontracts.** Tenant must include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to the subtenant or other subcontractor in substantially the form of Section 50.01(a) above. In addition, Tenant must incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)–(k), and 12C.3 of the San Francisco Administrative Code and must require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.01(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits (collectively “**Core Benefits**”), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity under state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

50.01(d) Condition to Lease. As a condition to this Ground Lease, Tenant must execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Commission.

50.01(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Ground Lease as though fully set forth herein. Tenant must comply fully with and be bound by all of the provisions that apply to this Ground Lease under those Chapters of the Administrative Code, including, but not limited to, the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Ground Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

50.02 MacBride Principles—Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

50.03 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, certifies that it knows of no facts that would constitute a violation of those provisions and agrees that if Tenant becomes aware of any such fact during the term of this Ground Lease Tenant will immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, that Tenant believes any officer or employee of the City presently has or will have in this Ground Lease or in the

performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, will constitute grounds for City's termination and cancellation of this Ground Lease.

50.04 Charter Provisions. This Ground Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Ground Lease unless and until a resolution of the City's Board of Supervisors has been duly enacted approving this Ground Lease. Therefore, any obligations or liabilities of the City under this Ground Lease are contingent upon enactment of a resolution, and this Ground Lease will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws. Approval of this Ground Lease by any City department, commission, or agency may not be deemed to imply that a resolution will be enacted or create any binding obligations on the City.

50.05 Tropical Hardwood/Virgin Redwood Ban. Under Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not use any items in the rehabilitation, development, or operation of the Premises or otherwise in the performance of this Ground Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

50.06 Tobacco Product Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products will be allowed on the Premises. The foregoing prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, or on any sign. The foregoing prohibition will not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

50.07 Pesticide Ordinance. Tenant must comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**"), which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (c) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Ground Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant must comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing in this Ground Lease will prevent Tenant, acting through the City, from seeking a determination from the City's

Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

50.08 Compliance with City's Sunshine Ordinance. Tenant understands and agrees that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Ground Lease and any and all records, information and materials submitted to the City hereunder are public records subject to public disclosure. Tenant hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with this Ground Lease as required by Law. Further, Tenant specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Tenant's performance under this Ground Lease as a passive meeting.

50.09 Notification of Limitations on Contributions. Through its execution of this Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

50.10 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground Lease by reference and made a part of this Ground Lease as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Ground Lease have the meanings assigned to them in Chapter 12Q. Notwithstanding this requirement, City recognizes that the residential housing component of the Improvements is not subject to the HCAO.

50.10(a) For each Covered Employee, Tenant must provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

50.10(b) If Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, Tenant will have no obligation to comply with Section 50.10(a) above.

50.10(c) Tenant's failure to comply with the HCAO will constitute a material breach of this Ground Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the City's written notice of a breach of this Ground Lease for violating the HCAO or, if the breach cannot reasonably be cured within the 30-day period and Tenant fails to commence efforts to cure within the 30-day period, or thereafter fails diligently to pursue the cure to completion, then the City

will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

50.10(d) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

50.10(e) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

50.10(f) Tenant must keep itself informed of the current requirements of the HCAO.

50.10(g) Tenant must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subtenants, as applicable.

50.10(h) Tenant must provide City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

50.10(i) The City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with the City when it conducts audits.

50.10(j) If Tenant is exempt from the HCAO when this Ground Lease is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with the City to reach \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and MOHCD to be equal to or greater than \$75,000 in the fiscal year.

50.11 Public Access to Meetings and Records. If Tenant receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant must comply with and will be bound by all the applicable provisions of that Chapter. By executing this Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph will constitute a material breach of this Ground Lease. Tenant further acknowledges that such material breach of this Ground Lease will be grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

50.12 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating

to resource-efficient City buildings and resource-efficient pilot projects. Tenant will comply with the applicable provisions of such code sections as those sections may apply to the Premises.

50.13 Drug Free Work Place. Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its agents, or assigns will be deemed a material breach of this Ground Lease.

50.14 Preservative Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Ground Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

50.15 Nondisclosure of Private Information. Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "**Nondisclosure of Private Information Ordinance**"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated and made a part of this Ground Lease as though fully set forth. Capitalized terms used in this section and not defined in this Ground Lease have the meanings assigned to those terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

50.15(a) Neither Tenant nor any of its subcontractors will disclose Private Information, unless one of the following is true:

- (i) The disclosure is authorized by this Ground Lease;
- (ii) Tenant received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

50.15(b) Any disclosure or use of Private Information authorized by this Ground Lease must be in accordance with any conditions or restrictions stated in this Ground Lease. Any disclosure or use of Private Information authorized by a Contracting Department must be in accordance with any conditions or restrictions stated in the approval.

50.15(c) Private Information means any information that: (1) could be used to identify an individual, including, without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

50.15(d) Any failure of Tenant to comply with the Nondisclosure of Private Information Ordinance will be a material breach of this Ground Lease. In such an event, in addition to any other remedies available to it under equity or law, City may terminate this Ground Lease, debar Tenant, or bring a false claim action against Tenant.

50.16 Graffiti. Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Tenant will remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within forty-eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards, and fencing surrounding construction Premises, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code section 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*). Any failure of Tenant to comply with this section of this Ground Lease will constitute an event of default of this Ground Lease.

50.17 Incorporation. Each and every provision of the San Francisco Administrative Code described or referenced in this Ground Lease is hereby incorporated by reference as though fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease relating to any such code provision will be governed by ARTICLE 19 of this Ground Lease, unless (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is specifically addressed by the applicable code section.

50.18 Food Service Waste Reduction. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Ground Lease as though fully set forth herein. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/ Compostable or Recyclable Disposable Food Service Ware. Tenant acknowledges that Chapter 16 imposes fines that are currently: One Hundred Dollars (\$100.00) for the first breach, Two Hundred Dollars (\$200.00) for the second breach in the same year, and Five Hundred Dollars (\$500.00) for subsequent breaches in the same year. Any fines imposed under Chapter 16 will not be considered a penalty under this Ground Lease, but rather monetary damages sustained by City because of Tenant's failure to comply Chapter 16.

50.19 Local Hire Requirements. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Improvements and Changes (as defined in Section 12.02 above) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (*i.e.*, whether the work is a "**Covered Project**").

Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each contract must name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Ground Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

50.20 Criminal History in Hiring and Employment Decisions.

50.20(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Site or Easement Property.

50.20(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of a portion or all of the Premises, if any, and will require all subtenants to comply with its provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.20(c) Tenant and subtenants (if any) may not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

50.20(d) Tenant and subtenants (if any) may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Section 50.20(c) above. Tenant and subtenants (if any) may not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

50.20(e) Tenant and subtenants (if any) will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Site or Easement Property, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

50.20(f) Tenant and subtenants (if any) will post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Site, Easement Property, and at other workplaces within San Francisco where interviews for job opportunities at the Site or Easement Property occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Site and Easement Property or other workplace at which it is posted.

50.20(g) Tenant and subtenants (if any) understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Ground Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, termination, or suspension in whole or in part of this Ground Lease.

50.20(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

50.21 Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Ground Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, contact the City's Office of Labor Standards Enforcement.

50.22 Sugar-Sweetened Beverage Prohibition. Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Ground Lease.

50.23 Taxes, Assessments, Licenses, Permit Fees and Liens.

50.23(a) Tenant recognizes and understands that this Ground Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

50.23(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the Leasehold Estate created and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of

which must be paid when the same become due and payable and before delinquency.

50.23(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

50.23(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Ground Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Ground Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

50.24 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 50.24 will be deemed a material breach of this Ground Lease. Without limiting Landlord’s other rights and remedies under this Ground Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

50.25 San Francisco Packaged Water Ordinance. Tenant agrees to comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Tenant shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Tenant obtains a waiver from the City’s Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

50.26 All-Gender Toilet Facilities. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact MOHCD for guidance.

ARTICLE 51 COMPLETE AGREEMENT

There are no oral agreements between Tenant and the City affecting this Ground Lease, and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings between Tenant and the City with respect to the lease of the Site or grant of the Easement.

ARTICLE 52 AMENDMENTS

Neither this Ground Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by all Lenders and the party against which the enforcement of the change, waiver, discharge, or termination is sought. From the Effective Date through the 15-year tax credit compliance period, none of the following may be amended without the written consent of Permitted Limited Partner: ARTICLE 19, ARTICLE 20, or Sections 26.02, 26.03, or 26.06. No waiver of any breach will affect or alter this Ground Lease, but each and every term, covenant, and condition of this Ground Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Ground Lease, including, without limitation, amendments to or modifications to the exhibits to this Ground Lease, will be subject to the mutual written agreement of City and Tenant and all Lenders, and City's agreement may be made upon the sole approval of the City's Director of Property, or his or her designee; provided, however, material amendments, or modifications to this Ground Lease (a) changing the legal description of the Site or Easement Property, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Site or Easement Property from the uses authorized under this Ground Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Ground Lease will additionally require the approval of the City's Board of Supervisors.

ARTICLE 53 ATTACHMENTS

The following are attached to this Ground Lease and by this reference made a part hereof:

- 1-A. Legal Description of the Site
- 1-B. Legal Description of the Easement Property
- 1-C. Depiction of Site, Easement Property, and Farmers Market Property
2. Schedule of Performance
3. City Consent of Leasehold Mortgage
4. Rehabilitation
5. Memorandum of Ground Lease
6. Form of Income Certification Form
7. Form of Rehabilitation Progress Report

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS GROUND LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS GROUND LEASE

UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS GROUND LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS GROUND LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS GROUND LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS GROUND LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS GROUND LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

IN WITNESS WHEREOF, the Tenant and the City have executed this Ground Lease as of the day and year first above written.

TENANT:

Market Heights 2, LP,
a California limited partnership

By: RPMH LLC,
a California limited liability company,
its managing general partner

By: Boomerang Housing Corporation,
a California nonprofit public benefit corporation,
its managing member

By: _____
Gina Dacus
Executive Director

By: Devine Bernal, LLC,
a California limited liability company,
its administrative general partner

By: Devine & Gong, Inc.,
a California corporation,
its manager

By: _____
Chan U Lee
President

CITY AS LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Kate Hartley
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: _____

Deputy City Attorney

ATTACHMENT 1-A
LEGAL DESCRIPTION OF THE SITE
(211 & 291 Putnam Street)

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF PUTNAM STREET WITH THE SOUTHERLY LINE OF TOMPKINS AVE.; THENCE FROM SAID POINT OF BEGINNING, EASTERLY AND ALONG SAID SOUTHERLY LINE, EAST 499.500 FEET TO THE WESTERLY LINE OF PERALTA AVENUE; THENCE SOUTHERLY ALONG SAID WESTERLY LINE SOUTH 6.296 FEET TO A POINT THEREON; THENCE LEAVING SAID WESTERLY LINE SOUTH 85° 00' 00" WEST 301.313 FEET; THENCE TANGENT TO THE PRECEDING COURSE ON THE ARC TO THE LEFT HAVING A RADIUS OF 143 FEET AND A CENTRAL ANGLE OF 48° 46' 50" THROUGH AN ARC LENGTH OF 121.748 FEET; THENCE TANGENT TO THE PRECEDING CURVE ON THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 163 FEET AND A CENTRAL ANGLE OF 27° 43' 10" THROUGH AN ARC LENGTH OF 78.859 FEET; THENCE TANGENT TO THE PRECEDING CURVE SOUTH 8° 30' 00" WEST 250.620 FEET; THENCE TANGENT TO THE PRECEDING COURSE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 90 FEET AND A CENTRAL ANGLE OF 40° 15' 25" THROUGH AN ARC LENGTH OF 63.235 FEET TO A POINT ON THE ABOVE DESCRIBED EASTERLY LINE OF PUTNAM STREET, SAID POINT BEING LOCATED SOUTHERLY ALONG SAID EASTERLY LINE SOUTH 41.975 FEET FROM THE INTERSECTION OF SAID EASTERLY LINE WITH THE SOUTHERLY LINE OF OGDEN AVENUE; THENCE NORTHERLY ALONG SAID EASTERLY LINE NORTH 464.975 FEET TO THE POINT OF BEGINNING.

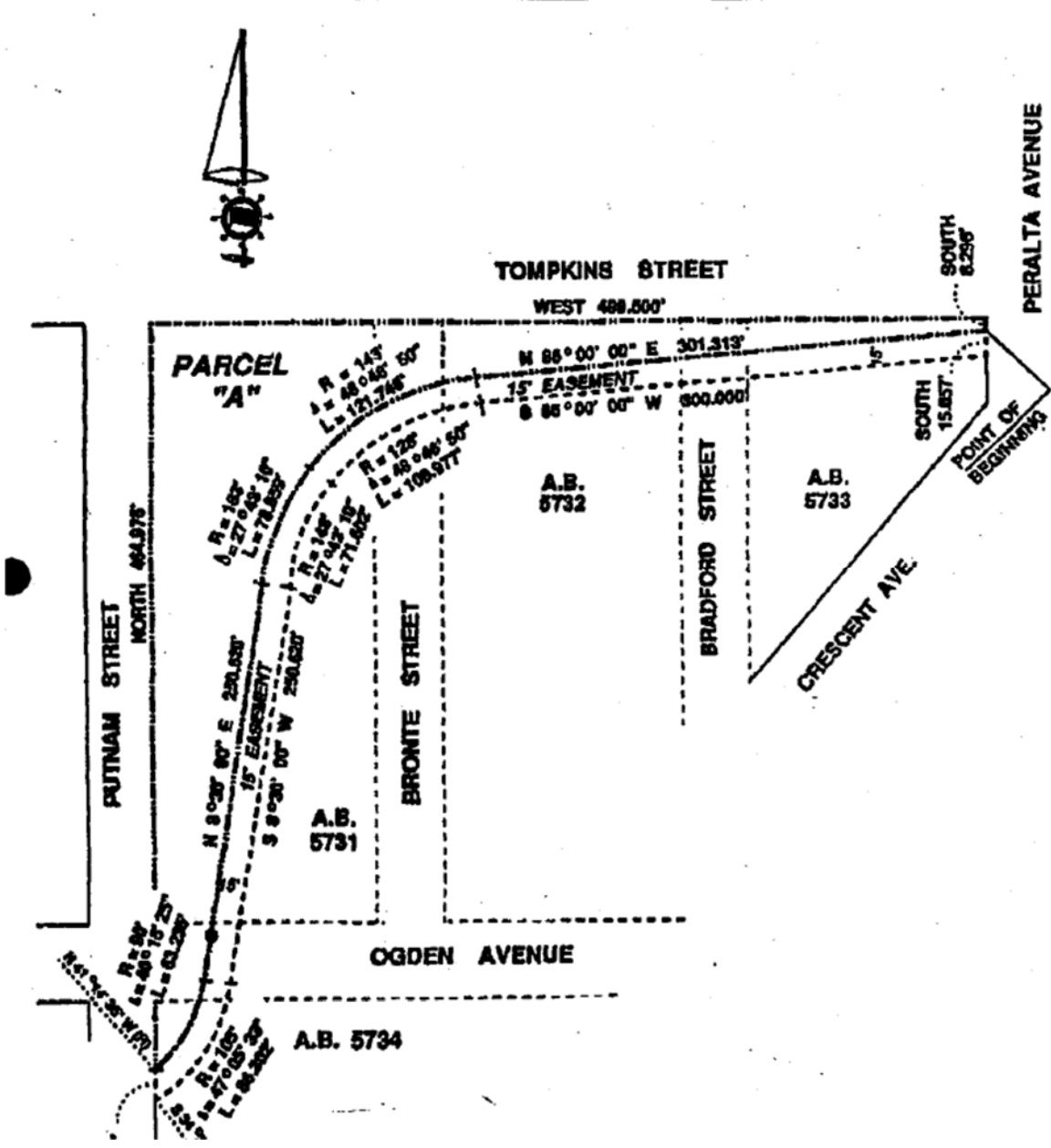
RESERVING TO THE CITY, ITS SUCCESSORS AND ASSIGNS, ANY AND ALL WATER RIGHTS, RIPARIAN RIGHTS, WATER STOCK, AND MINERAL RIGHTS RELATING TO SAID PARCELS AND RESERVING ACCESS AS SET FORTH IN THE GROUND LEASE.

APN: LOT 2, BLOCK 5731 APN: LOT 2, BLOCK 5731

ATTACHMENT 1-B
EASEMENT PROPERTY

BEGINNING AT A POINT ON THE WESTERLY LINE OF PERALTA AVENUE, LOCATED SOUTH 6.296 FEET FROM THE SOUTHERLY LINE OF TOMPKINS AVENUE; THENCE FROM SAID POINT OF BEGINNING, SOUTHERLY ALONG SAID WESTERLY LINE, SOUTH 20.076 FEET TO A POINT THEREON; THENCE LEAVING SAID WESTERLY LINE SOUTH 85° 00'00" WEST 299.562 FEET; THENCE TANGENT TO THE PRECEDING COURSE ON THE ARC OF CURVE TO THE LEFT HAVING A RADIUS OF 123 FEET AND A CENTRAL ANGLE OF 48° 46' 50" THROUGH AN ARC LENGTH OF 104.720 FEET; THENCE TANGENT TO THE PRECEDING CURVE ON THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 143 FEET AND A CENTRAL ANGLE OF 27° 43'10" THROUGH AN ARC LENGTH OF 69.18 3 FEET; THENCE TANGENT TO THE PRECEDING CURVE SOUTH 8° 30'00" WEST 250.620 FEET; THENCE TANGENT TO THE PRECEDING COURSE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 110 FEET AND A CENTRAL ANGLE OF 47° 05' 33" THROUGH AN ARC LENGTH OF 93.801 FEET TO A POINT ON EASTERLY LINE OF PUTNAM STREET; THENCE NORTHERLY ALONG SAID EASTERLY LINE NORTH 24.954 FEET TO A POINT THEREON; THENCE LEAVING SAID EASTERLY LINE FROM A TANGENT THAT BEARS NORTH 48° 45' 25" EAST ON THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 90 FEET AND A CENTRAL ANGLE OF 40° 15' 25" THROUGH AN ARC LENGTH OF 63.235 FEET; THENCE TANGENT TO THE PRECEDING CURVE NORTH 8° 30' 00" EAST 250.620 FEET; THENCE TANGENT TO THE PRECEDING CURVE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 163 FEET AND A CENTRAL ANGLE OF 27° 43' 10" THROUGH AN ARC LENGTH OF 78.859 FEET; THENCE TANGENT TO THE PRECEDING CURVE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 143 FEET AND A CENTRAL ANGLE OF 48° 46' 50" THROUGH AN ARC LENGTH OF 121.748 FEET, THENCE TANGENT TO THE PRECEDING CURVE NORTH 85° 00' 00" EAST 301.313 FEET TO THE POINT OF BEGINNING.

ATTACHMENT 1-C
DIAGRAM OF THE PREMISES, THE EASEMENT PROPERTY,
AND THE FARMERS MARKET PROPERTY



ATTACHMENT 2
SCHEDULE OF PERFORMANCE

- a) Commence Rehabilitation no later than February 28, 2019
- b) Complete Rehabilitation no later than October 31, 2020
- c) Achieve one-hundred percent (100%) occupancy by Jan. 1, 2020 (including the return of all existing Residential Occupants)

ATTACHMENT 3

FORM OF CITY CONSENT OF LEASEHOLD MORTGAGE

Date:

Mayor's Office of Housing and Community Development of the
City and County of San Francisco
Attn: Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: Market Heights Apartments, 211 and 291 Putnam Street, San Francisco
(LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Under Section 25.01 of the _____ Ground Lease, dated _____, 20__, between the City and County of San Francisco ("City") and Market Heights 2, LP, a California limited partnership, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender:

Principal Amount:

Interest:

Term:

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to the review and approval by the City. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which the City deems necessary.

Sincerely,

Market Heights 2, LP,
a California limited partnership

By: RPMH LLC,
a California limited liability company,
its managing general partner

By: Boomerang Housing Corporation,
a California nonprofit public benefit corporation,
its managing member

By: _____
Gina Dacus
Executive Director

By: Devine Bernal, LLC,
a California limited liability company,
its administrative general partner

By: Devine & Gong, Inc.,
a California corporation,
its manager

By: _____
Chan U Lee
President

enc.

By signing this letter, the City consents to the leasehold mortgage, under the terms and conditions of Section 25.01 of the _____ Ground Lease, dated _____, 20__.

Mayor's Office of Housing and Community Development

Kate Hartley, Director

ATTACHMENT 4

Rehabilitation

The scope of work for the rehabilitation will include the following:

Common area interior & building system improvements:

- Playground and playground surface replacement in existing common courtyard.
- Site furnishing and landscaping replacement in existing common courtyard.
- Community Room space addition in existing crawlspace including resident kitchen and accessible toilet rooms.
- Rental office and laundry room area remodel accommodating to be connected to new Community Room.
- One water heater replacement out of three total on the property.
- Selective interior light fixture replacement with LED fixtures.
- Metal handrail and fencing replacement at common courtyard.
- Photovoltaic power generation system installation on roof for domestic hot water heating.
- Mailbox replacement.

Unit Interior Improvements (selective replacement per unit interior replacement schedule based on unit evaluation):

- Unit Alterations for full accessibility compliance with Chapter 11B of the California Building Code at (3) units (6.5%). Waiver Request submitted for reduction below 10%.
- Retrofit for audio-visual accessibility compliance with Chapter 11B of the California Building Code at (2) units (4%+).
- Interior paint at all units.
- Kitchen cabinet, countertop, sink, and fixtures replacement at all units.
- Selective appliance replacement.
- Toilet replacement with ultra-low flow toilets at all units.
- Selective tub/shower, tub/shower surround, lavatory, fixture replacement.
- Selective bathroom accessory replacement.
- Selective flooring replacement with vinyl plank flooring.
- Selective window replacement.
- Selective window covering replacement.
- Selective unit entry and interior door replacement.
- Selective interior light fixture replacement with LED fixtures.
- Smoke/CO1 detector replacement at hall and bedrooms.
- Selective unit stair handrail replacement.

All common and public areas will be modified as required for full accessibility, with new accessible ramp provided to the new community room.

Sustainability upgrades include a 10% energy improvement, which includes installation of photovoltaic power generation system for domestic hot water heating, replacement of unit bath exhaust fans with energy efficient model with humidistat, and replacement of interior lighting

with LED fixtures. Indoor air quality improvements include installation of hard flooring instead of carpet throughout and use of CARB 2 compliant and no added formaldehyde cabinetry at all cabinets.

ATTACHMENT 5
FORM OF MEMORANDUM OF LEASE

Free Recording Requested under
Government Code Section 27383

When recorded, mail to:

Mayor's Office of Housing and Community Development
of the City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California.94103
Attn: Director

MEMORANDUM OF AMENDED AND RESTATED GROUND LEASE

This Memorandum of Amended and Restated Ground Lease ("Memorandum") is entered into as of _____, 20__, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and Market Heights 2, LP, a California limited partnership ("Tenant"), with respect to that certain Amended and Restated Ground Lease (the "A&R Lease") dated _____, 20__, between City and Tenant.

Under the A&R Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The A&R Lease will commence on _____ (referred to in the A&R Lease as the Effective Date) and will end on the date which is 75 years from the date set forth above, subject to a 24 year option to extend, unless terminated earlier or extended pursuant to the terms of the A&R Lease.

The A&R Lease amends, restates, and supersedes in its entirety that certain ground lease by and between the City and Boomerang Housing Corporation ("Original Tenant"), dated as of December 6, 1993 (the "Original Lease") and the Development Sublease dated December 6, 1993 (the "Development Sublease") between Original Tenant, as sublandlord, and Boomerang Housing Associates, a California Limited Partnership ("Development Subtenant"), each as amended. Immediately prior to the Effective Date of the A&R Lease, the Original Tenant assigned all of its estate, right, title, and interest in the Original Lease, as tenant, to Tenant, and Development Subtenant assigned all of its estate, right, title, and interest in the Development Sublease, as tenant, to Tenant, and Tenant assumed the same.

It is the intent of the parties to the A&R Lease that the A&R Lease creates a constructive notice of severance of the Improvements (as defined in the A&R Lease), without the necessity of a deed from City to Tenant, which Improvements are and will remain real property.

Tenant acknowledges that under Section 5.1(c) of the Original Lease, in accordance with San Francisco Administrative Code Section 23.27 through 23.30, a Lot Line Window Agreement was recorded on December 14, 1993 as Instrument No. F-507158, encumbering the Premises, and Tenant, as successor-in-interest to the tenant under the Original Lease, and is bound by the Lot Line Window Agreement.

Tenant further acknowledges the Declaration of Restrictions recorded August 20, 2008 as Instrument No. 2008-I633474-00 runs with the land and Tenant is bound by that Declaration of Restrictions.

Tenant further acknowledges that Sections 23.03 and 23.04 of the A&R Lease amend and restate Section 10.9 of the Original Lease and that, pursuant to Section 10.9 of the Original Lease, a Declaration and Acknowledgment was recorded on December 14, 1993 as Instrument No. F507159 encumbering the Site, acknowledging the characteristics and restrictions related to the Farmers Market, and Tenant, as successor-in-interest to the tenant under the Original Lease, and is bound by the Declaration and Acknowledgment. Tenant shall disclose the contents of the Declaration and Acknowledgment to any Transferee of the Premises, each of which shall, prior to such sale or Transfer, acknowledge the contents of said declaration and acknowledgment in writing.

This Memorandum incorporates herein all of the terms and provisions of the A&R Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and will not be construed to alter, modify, amend, or supplement the A&R Lease, of which this is a memorandum.

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts will be deemed an original of this Memorandum.

Executed as of _____, 20__ in San Francisco, California.

TENANT:

Market Heights 2, LP,
a California limited partnership

By: RPMH LLC,
a California limited liability company,
its managing general partner

By: Boomerang Housing Corporation,
a California nonprofit public benefit corporation,
its managing member

By: _____
Gina Dacus
Executive Director

By: Devine Bernal, LLC,
a California limited liability company,
its administrative general partner

By: Devine & Gong, Inc.,
a California corporation,
its manager

By: _____
Chan U Lee
President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Kate Hartley
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 6

FORM OF TENANT INCOME CERTIFICATION

See Attached 7 Pages

PART V. DETERMINATION OF INCOME ELIGIBILITY			
TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 \$ 	Unit Meets Federal Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% Unit Meets Deeper Targeting Income Restriction at: <input type="checkbox"/> Other _____%	RECERTIFICATION ONLY: Current Federal LIHTC Income Limit x 140%: \$ _____ Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Current Federal LIHTC Income Limit per Family Size: \$ _____ If Applicable, Current Federal Bond Income Limit per Family Size: \$ _____ Household Income as of Move-in: \$ _____	Household Size at Move-in: _____		

PART VI. RENT			
Tenant Paid Monthly Rent: \$ _____ Monthly Utility Allowance: \$ _____ Other Monthly Non-optional charges: \$ _____ GROSS MONTHLY RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges) \$ 	Federal Rent Assistance: \$ _____ *Source: _____ Non-Federal Rent Assistance: \$ _____ (*0-8) Total Monthly Rent Assistance: \$ _____	*Source of Federal Assistance 1 **HUD Multi-Family Project Based Rental Assistance (PBRA) 2 Section 8 Moderate Rehabilitation 3 Public Housing Operating Subsidy 4 HOME Rental Assistance 5 HUD Housing Choice Voucher (HCV), tenant-based 6 HUD Project-Based Voucher (PBV) 7 USDA Section 521 Rental Assistance Program 8 Other Federal Rental Assistance 0 Missing ** (PBRA) Includes: Section 8 New Construction/Substantial Rehabilitation; Section 8 Loan Management; Section 8 Property Disposition; Section 202 Project Rental Assistance Contracts (PRAC)	
Maximum Federal LIHTC Rent Limit for this unit: \$ _____ If Applicable, Maximum Federal & State LIHTC Bond Rent Limit for this unit: \$ _____ Unit Meets Federal Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% If Applicable, Unit Meets Bond Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% Unit Meets Deeper Targeting Rent Restriction at: <input type="checkbox"/> Other: _____%			

PART VII. STUDENT STATUS		
ARE ALL OCCUPANTS FULL TIME STUDENTS? <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, Enter student explanation* (also attach documentation) Enter 1-5	*Student Explanation: 1 AFDC / TANF Assistance 2 Job Training Program 3 Single Parent/Dependent Child 4 Married/Joint Return 5 Former Foster Care

PART VIII. PROGRAM TYPE				
Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.				
a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt Bond <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	e. _____ <input type="checkbox"/> <i>(Name of Program)</i> <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> OI**
**Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.				

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proof and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE _____
DATE

PART IX. SUPPLEMENTAL INFORMATION FORM

The California Tax Credit Allocation Committee (CTCAC) requests the following information in order to comply with the Housing and Economic Recovery Act (HERA) of 2008, which requires all Low Income Housing Tax Credit (LIHTC) properties to collect and submit to the U.S. Department of Housing and Urban Development (HUD), certain demographic and economic information on tenants residing in LIHTC financed properties. Although the CTCAC would appreciate receiving this information, you may choose not to furnish it. You will not be discriminated against on the basis of this information, or on whether or not you choose to furnish it. If you do not wish to furnish this information, please check the box at the bottom of the page and initial.

Enter both Ethnicity and Race codes for each household member (see below for codes).

TENANT DEMOGRAPHIC PROFILE						
HH Mbr #	Last Name	First Name	Middle Initial	Race	Ethnicity	Disabled
1						
2						
3						
4						
5						
6						
7						

The Following Race Codes should be used:

- 1 – White – A person having origins in any of the original people of Europe, the Middle East or North Africa.
- 2 – Black/African American – A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” apply to this category.
- 3 – American Indian/Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- 4 – Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent:
 - 4a – Asian India 4e – Korean
 - 4b – Chinese 4f – Vietnamese
 - 4c – Filipino 4g – Other Asian
 - 4d – Japanese
- 5 – Native Hawaiian/Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands:
 - 5a – Native Hawaiian 5c – Samoan
 - 5b – Guamanian or Chamorro 5d – Other Pacific Islander
- 6 – Other
- 7 – Did not respond. (Please initial below)

Note: Multiple racial categories may be indicated as such: 31 – American Indian/Alaska Native & White, 14b - White & Asian (Chinese), etc.

The Following Ethnicity Codes should be used:

- 1 – Hispanic – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Terms such as “Latino” or “Spanish Origin” apply to this category.
- 2 – Not Hispanic – A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- 3 – Did not respond. (Please initial below)

Disability Status:

- 1 – Yes
 - If any member of the household is disabled according to Fair Housing Act definition for handicap (disability):
 - A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment or being regarded as having such an impairment. For a definition of “physical or mental impairment” and other terms used, please see 24 CFR 100.201, available at http://www.fairhousing.com/index.cfm?method=page.display&pagename=regs_fhr_100-201.
 - “Handicap” does not include current, illegal use of or addiction to a controlled substance.
 - An individual shall not be considered to have a handicap solely because that individual is a transvestite.
- 2 – No
- 3 – Did not respond (Please initial below)

Resident/Applicant: I do not wish to furnish information regarding ethnicity, race and other household composition.

(Initials) _____
 (HH#) 1. 2. 3. 4. 5. 6. 7.

**INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION**

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Enter the type of tenant certification: Initial Certification (move-in), Recertification (annual recertification), or Other. If other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual income recertification's, this effective date should be no later than one year from the effective date of the previous (re)certification.
Move-In Date	Enter the most recent date the household tax credit qualified. This could be the move-in date or in an acquisition rehab property, this is not the date the tenant moved into the unit, it is the most recent date the management company income qualified the unit for tax credit purposes.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
TCAC#	Enter the project number assigned to the property by TCAC. Please include hyphens between the state abbreviation, four digit allocating year, and project specific number. For example: CA-2010-123
BIN #	Enter the building number assigned to the building (from IRS Form 8609).
Address	Enter the physical address of the building, including street number and name, city, state, and zip code.
If applicable, CDLAC#	If project is awarded 4% bonds please enter the project number assigned to the property by CDLAC. Please include hyphens between the state abbreviation, four digit allocating year, and project specific number. For example: 16-436
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.
Square Footage	Enter the square footage for the entire unit.
Vacant Unit	Check if unit was vacant on December 31 of requesting year. For example, for the collection of 2011 data, this would refer to December 31, 2011.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following definitions:

H Head of Household	S Spouse	U Unborn Child/Anticipated Adoption or Foster
A Adult Co-Tenant	O Other Family Member	
C Child	F Foster child(ren)/adult(s)	
L Live-in Caretaker	N None of the above	

Date of Birth	Enter each household member's date of birth.
Student Status	Enter "Yes" if the household member is a full-time student or "NO" if the household member is not a full-time student.
Last Four Digits of Social Security Number	For each tenant 15 years of age or older, enter the last four digits of the social security number or the last four digits of the alien registration number. If the last four digits of SSN or alien registration is missing, enter 0000. For tenants under age 15, social security number not required, although please enter 0000.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List each respective household member number from Part II. Include anticipated income only if documentation exists verifying pending employment. If any adult states zero-income, please note "zero" in the columns of Part III.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. If individual household member income is provided, list the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 0.06% and enter the amount in (J), Imputed Income.

Row (K)	<i>Enter the greater of the total in Column (I) or (J)</i>	
Row (L)	<i>Total Annual Household Income From all Sources</i>	<i>Add (E) and (K) and enter the total</i>

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V - Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current LIHTC Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size – specifically, the max income limit for the federal 50% or 60% set aside.
Current Bond Income Limit per Family Size	Enter the Current most restrictive Move-in Income Limit for the household size – specifically, the max income limit incorporating both federal and in some instances more restrictive state standards as reflected in the 50% or 60% set aside detailed in the Bond Regulatory Agreement.

Household Income at Move-in	For recertifications only. Enter the household income from the move-in certification.
Household Size at Move-in	Enter the number of household members from the move-in certification.
Current Federal LIHTC Income Limit x 140%	For recertifications only. Multiply the current LIHTC Maximum Move-in Income Limit by 140% and enter the total. 140% is based on the Federal Set-Aside of 20/50 or 40/60, as elected by the owner for the property, not deeper targeting elections of 30%, 40%, 45%, 50%, etc. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the LIHTC Income Limit per Family Size at Move-in date (above), then the available unit rule must be followed.
Unit Meets Federal Income Restriction at	Check the appropriate box for the income restriction that the household meets according to what is required by the federal set-aside(s) for the project.
Unit Meets Deeper Targeting Income Restriction	If your agency requires an income restriction lower than the federal limit, enter the percent required.

Part VI - Rent

Tenant Paid Monthly Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Federal Rent Assistance	Enter the amount of rent assistance received from a federal program, if any.
Non-Federal Rent Assistance	Enter the amount of non-federal rent assistance received, if any.
Total Monthly Rent Assistance	Enter the amount of total rent assistance received, if any.
Source of Federal Rent Assistance	If federal rent assistance is received, indicate the single program source.
Monthly Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other Monthly Non-Optional Charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Monthly Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges. The total may NOT include amounts other than Tenant Paid Rent, Utility Allowances and other non-optional charges. In accordance with the definition of Gross Rent in IRC §42(g)(2)(B), it may not include any rent assistance amount.
Maximum LIHTC Rent Limit for this unit	Enter the maximum allowable gross rent for the unit. This amount must be the maximum amount allowed by the Current Income Limit per Family Size – specifically, the max rent limit for the federal 50% or 60% set aside.
Maximum LIHTC Bond Rent Limit for this unit	Enter the maximum allowable gross rent for the unit. This amount must be the maximum amount allowed by the Current Income Limit per Family Size – specifically, the max rent incorporating both federal and in some instances more restrictive state standards as reflected in the 50% or 60% set aside detailed in the Bond Regulatory Agreement.
Unit Meets Federal Rent Restriction at	Indicate the appropriate rent restriction that the unit meets according to what is <u>required</u> by the federal set-aside(s) for the project.
Unit Meets Bond Rent Restriction at	Indicate the appropriate rent restriction that the unit meets according to what is <u>required</u> by the federal and state law for the project.
Unit Meets Deeper Targeting Rent Restriction at	If your agency requires a rent restriction lower than the federal limit, enter the percent required.

Part VII - Student Status

If all household members are full time* students, check "yes". Full-time status is determined by the school the student attends. If at least one household member is not a full-time student, check "no."

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
Tax Exempt Bond	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, select the appropriate box to indicate if the household is a VLI, LI or OI (at recertification) household.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

PART IX. SUPPLEMENTAL INFORMATION

Complete this portion of the form at move-in and at recertification's (only if household composition has changed from the previous year's certification).

Tenant Demographic Profile	Complete for each member of the household, including minors. Use codes listed on supplemental form for Race, Ethnicity, and Disability Status.
Resident/Applicant Initials	All tenants who wish not to furnish supplemental information should initial this section. Parent/Guardian may complete and initial for minor child(ren).

ATTACHMENT 7
FORM OF REHABILITATION PROGRESS REPORT