

File No. 111116

Committee Item No. _____

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date November 8, 2011

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Ground Lease |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Joy Lamug

Date November 3, 2011

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Ground Lease - Redevelopment Agency Land - 25 Essex Street, Commonly Known as Rene
2 Cazenave Apartments]

3 **Resolution approving and authorizing the Redevelopment Agency of the City and**
4 **County of San Francisco to execute a lease of land at 25 Essex Street, Assessor's**
5 **Block No. 3749, Lot No. 064, southeast corner of Folsom and Essex Streets, commonly**
6 **known as Rene Cazenave Apartments, in the Transbay Redevelopment Project Area, to**
7 **25 Essex L.P., a California limited partnership, for 75 years for the purpose of**
8 **developing housing for very low-income formerly homeless residents.**

9
10 WHEREAS, The Redevelopment Agency of the City and County of San Francisco
11 (Agency) and the City desire to increase the City's supply of affordable housing and
12 encourage affordable housing development through financial and other forms of assistance;
13 and

14 WHEREAS, The City-owned parcel, which will be transferred to the Agency, located at
15 25 Essex Street, the southeast corner of Folsom and Essex Streets, Assessor's Block No.
16 3749, Lot No. 064, San Francisco, California, commonly known as Rene Cazenave
17 Apartments (Site), in the Transbay Redevelopment Project Area, is an underutilized lot
18 currently improved by a surface parking lot (Project); and

19 WHEREAS, The Agency Commission selected Folsom Essex, LLC, a California limited
20 liability corporation and affiliate of Community Housing Partnership and BRIDGE Housing, to
21 develop and operate the Project as housing units for very low-income formerly homeless
22 residents, and Folsom Essex, LLC subsequently formed 25 Essex, L.P. (Developer) to act as
23 owner of the building, consistent with the Project's funding requirements; and

24 WHEREAS, The Agency has provided Developer with financial assistance to leverage
25 equity from an allocation of low-income housing tax credits and other funding sources in order

1 to construct 119 affordable supportive housing units, one manager unit, common and support
2 service space, and neighborhood-serving commercial space, which financing require that the
3 Developer demonstrate site control; and

4 WHEREAS, The Agency has proposed a long-term ground lease agreement (Ground
5 Lease) with the Developer to allow the Developer to construct and operate improvements on
6 the Site while allowing the Agency to ensure that the affordability of the housing is maintained
7 over the long term; and

8 WHEREAS, The Developer's annual rent obligation for the Site shall be \$1.00, payable
9 from operating income as long as the City is providing an operating subsidy through the Local
10 Operating Subsidy Program (LOSP); and

11 WHEREAS, Pursuant to the Transbay Redevelopment Plan, the Board of Supervisors
12 shall approve the sale or lease of any property acquired by the Agency pursuant to the
13 Transbay Option Agreement in a manner consistent with the standards and procedures that
14 govern the Agency's disposition of property acquired with tax increment moneys and that
15 appear in Section 33433 of the California Community Redevelopment Law; and

16 WHEREAS, Notice of the public hearing has been published consistent with Health and
17 Safety Code Section 33433; and

18 WHEREAS, The Agency prepared and submitted a report consistent with the
19 requirements of Section 33433 of the Health and Safety Code, including a copy of the
20 proposed Ground Lease, and a summary of the transaction describing the cost of the Ground
21 Lease to the Agency, the value of the property interest to be conveyed, the lease price and
22 other information was made available for the public inspection; now, therefore, be it

23 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
24 does hereby find and determine that the lease of the Property from the Agency to 25 Essex,
25 L.P., a California limited partnership: 1) will provide housing for very low-income formerly

1 homeless residents; 2) is consistent with the implementation plan for the Transbay
2 Redevelopment Project Area adopted pursuant to Section 33490 of the California Health and
3 Safety Code; 3) achieves affordability for very low-income households through the proposed
4 structure of the lease, including an annual rent value of \$1 plus \$751,999, payable from
5 "surplus cash," or operating income that is in excess of operating expenses; and 4) includes
6 consideration to be received by the Agency that is not less than the fair reuse value at the use
7 and with the covenants and conditions and developments costs authorized by the Ground
8 Lease; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors hereby approves and
10 authorizes the Agency to execute the Ground Lease of the Property from the Agency to 25
11 Essex, L.P., a California limited partnership, substantially in the form of the Ground Lease
12 lodged with the Agency General Counsel, and to take such further actions and execute such
13 documents as are necessary to carry out the Ground Lease on behalf of the Agency.

Transbay Block 11A

GROUND LEASE

by and between

**REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

as Landlord

and

25 ESSEX, LP, a California limited partnership

as Tenant

Dated as of _____

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Attachments to Ground Lease

1. Legal Description of Site
2. Schedule of Performance
3. Agency Consent of Leasehold Mortgage
4. Operational Rules for Certificate Holders' Priority
5. Small Business Enterprise Agreement
6. Income Certification Form
7. Prevailing Wage Provisions
8. Agency's Minimum Compensation Policy
9. Agency's Health Care Accountability Policy
10. Scope of Development
11. Approved Project Cash Flow
12. Mayor's Office of Housing Asset Management Fee and
Partnership Management Fee Policy

FORM OF GROUND LEASE

This GROUND LEASE ("Ground Lease") is entered into as of _____, by and between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, as Landlord, and 25 ESSEX, LP, a California limited partnership as Tenant under this Ground Lease.

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Agency has undertaken a program to redevelop and revitalize blighted areas in the City and County of San Francisco (the "City"), and in this connection has adopted a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").

B. In accordance with the Law, the City and County of San Francisco (the "**City**"), acting through its Board of Supervisors, approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006. In cooperation with the City, the Agency is responsible for implementing the Transbay Redevelopment Plan (the "**Redevelopment Plan**").

C. The Redevelopment Plan has a significant affordable housing component. State law requires that at least 35% of all new housing units developed within the Project Area must be affordable housing, or approximately 950 of the 2,650 units. In order to meet the various housing needs of very low, low and moderate-income residents, the Agency supports the development of a wide variety of affordable housing types including family rental housing, senior housing, first-time homeowner housing, and supportive housing.

D. The Landlord is the fee owner of the land described in Exhibit A attached hereto ("Site"), which is located within the Project Area.

E. On October 27, 2008, the Agency, in collaboration with the San Francisco Department of Public Health Housing and Urban Health Unit (“DPH-HUH”), issued a Housing Development with Intensive Supportive Services Request for Proposals (the “RFP”) for applicants to develop, own, and operate (including the provision of intensive supportive services), approximately 100-120 studio and one-bedroom units of supportive housing for extremely low-income and formerly homeless individuals referred by DPH-HUH on Transbay Block 11A (the “Project”), located at the southeast corner of Folsom and Essex Streets (the “Site”) in the Project Area.

F. The Agency selected the applicant team consisting of BRIDGE Housing, Community Housing Partnership, Leddy Maytum Stacy Architects, and the University of California San Francisco’s Citywide Case Management Program. BRIDGE Housing and Community Housing Partnership have formed 25 Essex, LP, a California limited partnership, to act as developer for the Project.

G. At its meeting on August 4, 2009, the Agency Commission, through Resolutions numbered 2009-92 and 2009-93, authorized the Agency Executive Director to execute an Exclusive Negotiations Agreement (“ENA”) and a Predevelopment Loan with 25 Essex, LP, a California limited partnership, to enable 25 Essex, LP to pursue predevelopment activities for the construction and management of the Project.

H. At its meeting on June 15, 2010, the Agency Commission, through Resolutions numbered 2010-87 and 2010-88, approved the schematic design for the Project along with an First Amendment to the ENA to adjust the Schedule of Performance.

I. At its meeting on October 19, 2010, the Agency Commission, through Resolution number 127-2010, authorized the Agency Executive Director to execute Development

and Disposition Agreement (the “**DDA**”) and a Ground Lease (the “**Ground Lease**”) with the Tenant related to the Project Site.

J. At its meeting on February 15, 2011, the Agency Commission, through Resolution numbers 10-2011 and 11-2011, authorized the Agency Executive Director to execute two Loan Agreements (the “**Loans**” or “**Loan Agreements**”) with the Tenant to enable the Tenant to pursue remaining development activities for the construction and management of the Project.

K. The Landlord, on the basis of the foregoing and the undertakings of the Tenant pursuant to this Ground Lease, is willing to lease the Site to the Tenant for the purpose of developing and operating the Project in accordance with the provisions of this Ground Lease.

NOW THEREFORE, in consideration of the mutual obligations of the Parties, the Landlord hereby leases to Tenant, and Tenant hereby leases from the Landlord, the Site, for the Term (as defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which the Landlord and Tenant hereby 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. Agency means the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California and includes any successor public agency designated by or pursuant to law. The Agency is the owner of the Site and the Landlord.

1.02. **Agreement Date** means the date that this Ground Lease is deemed to be entered into, as set forth on the cover page.

1.03. **Area Median Income** (“AMI”) means the median household or family income for San Francisco County, adjusted solely for household size, as determined pursuant to Section 50093 of the California Health and Safety Code.

1.04. **Construction Documents** is defined in Article 10.01.

1.05. **DDA** means the Disposition and Development Agreement entered into by Tenant and Landlord, with respect to the Project, and dated October 19, 2010.

1.06. **Effective Date** means the date that the memorandum of Ground Lease is recorded pursuant to Article 49.

1.07. **First Lease Payment Year** means the year in which the Project receives a Certificate of Occupancy for all residential units.

1.08. **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.

1.09. **Ground Lease** means this Ground Lease of the Site to the Tenant from the Landlord, as amended from time to time.

1.10. **Improvements** mean all physical construction, including all structures, fixtures and other improvements to be constructed on the Site.

1.11. **Landlord** means the Agency and its successors and assigns.

1.12. **Lease Year** means each calendar year during the term hereof, beginning on January 1 and ending on December 31, provided that the “**First Lease Year**” shall commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the “**Last Lease Year**” shall end upon the expiration of the term hereof.

1.13. Leasehold Estate means the estate held by the Tenant pursuant to and created by this Ground Lease.

1.14. Leasehold Mortgage means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, including but not limited to the deeds of trust securing the First Mortgage Lender and which are part of the Loan Documents, and any assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this Ground Lease and have been approved in writing by the Landlord.

1.15. Lender means any entity holding a Leasehold Mortgage.

1.16. Loan Agreement has the meaning set forth in Recital J

1.17. Loan Documents means those certain loan agreements, notes, deeds of trust and declarations and any other documents executed and delivered in connection with the construction and permanent financing for the Project.

1.18. Local Operating Subsidy Program (“LOSP”) means any program of the City and/or County of San Francisco that provides operating income to the Project to offset costs associated with the provision of housing and services to very low-income formerly homeless residents.

1.19. LOSP Subsidy Year means any Lease Year in which the Project receives a payment under the LOSP.

1.20. Occupant means any person or entity authorized by Tenant to occupy a residential unit on the Site, or any portion thereof.

1.21. Premises mean the Site together with any Improvements thereon.

1.22. Project means the multi-use development, consisting of approximately 120 units of affordable housing plus community serving retail space, support services spaces, common and

other ancillary uses on the Site. If indicated by context, **Project** means the leasehold interest in the Site and the fee interest in the Improvements on the Site.

1.23. Project Expenses means all charges incurred by Tenant in the operation of the Project including but not limited to: (a) lease payments, utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums; (b) salaries, wages and any 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 and principal, if any, on any construction or permanent financing secured by the Project; (d) all other expenses 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; (e) any extraordinary expenses as approved in advance by the Agency; (f) deposits to reserves accounts required to be established under the Loan Documents, and an asset management fee of \$17,200 per year increasing 3.5% annually, which fee may be revised based on the Mayor's Office of Housing Asset Management Fee and Partnership Management Fee Policy (attached hereto as Attachment 12) by notice from the Agency's Executive Director for Housing prior to the completion of the Improvements.

1.24. Project Income means all revenue, income receipts, and other consideration actually received from the operation of leasing the Improvements and Project. Project Income shall include but not be limited to: all rents, fees and charges paid by tenants; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding, if to the Tenant; commercial lease income; 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 shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

1.25. **Redevelopment Requirements** is defined in Article 10.02 (a).

1.26. **Site** means the real property shown in the Site Legal Description, Attachment 1.

1.27. **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, deed in lieu of foreclosure, or transfer from a Lender, its affiliate, and any successors to any such person or entity.

1.28. **Subsidy Reserve Account** means a checking account maintained by Tenant for the purpose of maintaining any Local Operating Subsidy Program funds that were not used during a given LOSP Subsidy Year to be used in the next LOSP Subsidy Year, which shall be held in a bank or savings and loan institution acceptable to the Agency as a segregated account insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program, and used only for those purposes that are approved by LOSP.

1.29. **"Surplus Cash"** means the excess of Project Income over Project Expenses. All permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(g) of this Ground Lease.

1.30. **Tenant** means the 25 ESSEX LP, a California limited partnership (or a Subsequent Owner, where appropriate).

1.31. **Very Low-Income Households** means households earning no more than FIFTY PERCENT (50%) of Area Median Income based on actual household size as established by the Agency.

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

(a) Initial Term. The term of this Ground Lease shall commence upon the Effective Date and shall end seventy-five (75) years from that date (the “**Term**”), unless extended pursuant to subsection (b) below.

(b) Option for Extension. Provided that the Tenant is not in default of the terms of its obligations to the Agency either at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the last day of the term (the “**Termination Date**”), the term of this Ground Lease may be extended at the option of the Tenant for 24 year period as provided below.

(c) Notice of Extension. Not later than one hundred eighty (180) days prior to the Termination Date, the Tenant may notify the Landlord in writing that it wishes to exercise its option to extend the term of this Ground Lease (an “**Extension Notice**”). The extended term shall be for 24 years from the Termination Date, which option the Tenant may exercise only once, for a total Ground Lease term of not to exceed ninety-nine (99) years.

(d) Rent During Extended Term. Rent for any extended term will be as set forth in Article 4.

ARTICLE 3. FINANCING

Tenant shall submit to the Landlord in accordance with the dates specified in the Schedule of Performance, (Attachment 2), for approval by the Landlord, evidence satisfactory to the Landlord that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Improvements in accordance with this Ground Lease, as is acceptable to the Landlord.

ARTICLE 4. RENT

4.01. Annual Rent

(a) To the extent Base Rent and Residual Rent are due pursuant to Section 4.02 and 4.03, Tenant shall pay the Landlord Seven Hundred Fifty Two Thousand and No/100 Dollars (\$752,000.00) (the “**Annual Rent**”) per year for each year of the term of this Ground Lease, which shall be equal to ten percent (10%) of appraised value of the Site. Such dollar amounts shall be redetermined on the fifteenth anniversary of the date of the First Lease Payment Year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of the appraised value of the Site, as determined by an MAI appraiser selected by and at the sole cost of the Landlord. Annual Rent consists of Base Rent and Residual Rent, as defined in Sections 4.02 and 4.03 below, without offset of any kind (except as permitted by this Lease) and without necessity of demand, notice or invoice.

(b) If the Tenant elects to extend the term of this Ground Lease pursuant to Article 2 above, Annual Rent during any such extended term shall be set by mutual agreement of the parties, taking into account the affordable housing restrictions contained in Section 9.02, project debt (including any surplus cash debt obligations) and the annual income expected to be generated by the Project. If the parties cannot agree on the amount of Annual Rent during any extended term, the parties shall invoke a neutral third-party process and shall 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 taking into account the affordable housing restrictions contained in Section 9.02, project debt (including any surplus cash debt obligations) and the annual income expected to be generated by the Project or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the neutral third party process and the

determination of the new fair market rent, Tenant, in its sole discretion may rescind the Extension Notice if it does not wish to extend the term of this Ground Lease. The costs associated with such third-party process shall be paid for solely by Landlord.

4.02. Base Rent

(a) “**Base Rent**”, means, in any given Lease Year that is a LOSP Subsidy Year, ONE DOLLAR (\$1.00) per annum. In any given Lease Year that is not a LOSP Subsidy Year Base rent means FIFTEEN THOUSAND DOLLARS (\$15,000) per annum. Base Rent shall be due and payable in arrears on January 31st of each Lease Year, however no base rent shall be due until after completion of the Improvements. The first Base Rent payment shall be due on January 31st of the calendar year following the First Lease Payment Year; and provided, further, that in the event that the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.02, Base Rent shall be increased to the full amount of Annual Rent.

(b) If the Project does not have sufficient Project Income (as defined in Section 1.24) to pay Base Rent in any given Lease Year that is not a LOSP Subsidy Year and the Agency has received written notice from Tenant regarding its inability to pay Base Rent from Project Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without interest until paid (“**Base Rent Accrual**”). The Base Rent Accrual shall be due and payable each year from and to the extent Surplus Cash is available to make such payments and, in any event, upon the earlier of sale of the Project or termination of this Ground Lease.

(c) If Tenant has not provided Agency with written notice that it cannot pay Base Rent due to insufficient Project Income, the Agency shall assess a late payment penalty of two percent (2%) for each month or any part thereof that any Base Rent payment is delinquent. The Tenant may request in writing that the Agency 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 Agency 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 remedy such failure to pay.

4.03. Residual Rent

(a) "Residual Rent" means, in any given Lease Year, Seven Hundred Thirty Seven Thousand and No/100 Dollars (\$737,000.00). Residual Rent shall be due in arrears on April 15th following each Lease Year payable only to the extent that there is Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent shall not accrue. Furthermore, Residual Rent shall not be due during any Lease Year prior to the First Lease Payment Year or any Lease Year which is a LOSP Subsidy Year; provided, however, that if there is Surplus Cash available to pay Residual Rent during any given LOSP Subsidy Year, such funds will be placed in the Subsidy Reserve Account up to an amount not to exceed \$737,000.00. Tenant shall certify to the Landlord in writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to Landlord any supporting documentation reasonably requested by Landlord to allow Landlord to verify the insufficiency.

4.04. Triple Net Lease

This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs, charges, taxes, impositions and other obligations related thereto. If the Landlord pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Landlord 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 Landlord. Failure to timely pay the additional rent shall be an event of default.

ARTICLE 5. LANDLORD COVENANTS

The Landlord is duly created and validly existing in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease. Agency covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the lease term, peaceful, quiet and undisputed possession of the Site leased 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, or any part thereof, that:

6.01. 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 Site and Rents

During the term of this Ground Lease, Tenant and such successors and assigns shall comply with the following requirements:

6.02(a) Permitted Uses

Except as provided in Sections 26.06 and 26.07, Tenant shall devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground Lease.

6.02(b) Non-Discrimination

Tenant shall 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 Site or the Improvements, or any part thereof, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Occupants, subtenants or vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or required by funding source. Tenant shall 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 shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size and design.

6.02(d) Access for Disabled Persons

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

Tenant shall submit a Fair Housing Marketing Plan to be approved by the Agency. The Fair Housing Marketing Plan must follow the Agency's marketing requirements for such plans.

6.02(f) Lead Based Paint

Tenant agrees to comply with the regulations issued by the Secretary of HUD 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

At the end of each Lease Year following the Completion Date, Tenant shall calculate Surplus Cash. If the Tenant is found by the Agency to be in compliance with all applicable requirements and agreements, Tenant shall use Surplus Cash to make the following payments:

- (a) First to current and accrued Base Rent payments, second to deferred developer fee as allowable under the approved project cash flow, attached hereto as Attachment 11, and third to partnership management fee in the amount of \$17,200 increasing at an annual rate of 3.5% (which amount may be revised pursuant to Section 1.23 of this Ground Lease);
- (b) Then one-third (1/3) of remaining Surplus Cash to Tenant as an incentive management fee in an amount not to exceed \$500 per unit per year; and
- (c) The remaining two-thirds (2/3) of Surplus Cash, together with any remaining Surplus Cash after payment of the Tenant's incentive management fee, shall be allocated to the Agency. The Agency's portion of Surplus Cash will be applied first to Residual Rent, and if any Surplus Cash remains, to repayment of the Loan Agreement.

Notwithstanding the above, both Parties agree that the Distribution of Surplus Cash may be modified based on the requirements of other Lenders.

6.03. Landlord Deemed Beneficiary of Covenants

In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that the Landlord shall be deemed beneficiary of the agreements and covenants provided in this Article 6 for and 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. Such agreements and covenants shall run in favor of the Landlord for the entire period during which such agreements

and covenants shall be in force and effect, without regard to whether the Landlord has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Landlord shall have the 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 a Notice of Completion (as defined in Section 10.13) by the Tenant for the Improvements, and not later than December 31st of each year thereafter, Tenant will furnish to the Landlord a list, in the form set forth in Attachment 6, of all of the names of the persons who are Occupants of the Improvements, the specific unit which each person occupies, the household income of the Occupants of each unit, the household size and the rent being charged to the Occupants of each unit. If any state or federal agency requires an income certification for Occupants of the Improvements containing the above-referenced information, the Landlord agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Ground Lease.

ARTICLE 8. CONDITION OF SITE - "AS IS"

Neither the Landlord, nor any employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Site, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set

forth explicitly in this Ground Lease, and the Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied; it being expressly understood that the Site is being leased in an "AS IS" condition with respect to all matters.

ARTICLE 9. IMPROVEMENTS AND PERMITTED USES

9.01. Scope of Development and Schedule of Performance

Tenant agrees to undertake and complete all physical construction on the Site, if any, as approved by the Landlord, in accordance with the Schedule of Performance, Attachment 2 and the Scope of Development, Attachment 10.

9.02. Permitted Uses and Occupancy Restrictions

The permitted uses of the Project are limited to approximately one hundred twenty (120) residential dwelling units including one (1) manager's unit(s) ("**Residential Units**"), common areas and ground floor commercial space. Upon the completion of construction, one hundred percent (100%) of the Residential Units, in the Project shall be occupied or held vacant and available for rental by Very Low Income Households. The Project will serve formerly homeless families and individuals during the period in which not less than 120 units in the Project are being funded, by the Local Operating Subsidy Program pursuant to the terms of the Local Operating Subsidy Program.

ARTICLE 10. CONSTRUCTION OF IMPROVEMENTS

10.01. General Requirements and Rights of Landlord

Construction documents for the construction of the Improvements by Tenant, including: (1) the Basic Concept Drawings; (2) the Schematic Drawings; (3) the Design Development Documents; and, (3) the final Plans and Specifications (the "Final Construction Documents")

(collectively the “**Construction Documents**”) shall be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Ground Lease and all applicable Federal, State and local laws and regulations. The architect shall use, as necessary, members of associated design professions, including engineers and landscape architects.

Tenant shall submit and the Landlord shall disapprove the Construction Documents referred to in this Ground Lease within the times established in the Schedule of Performance. Failure by the Landlord to disapprove within the times established in the Schedule of Performance shall entitle Tenant to a day for day extension of time for completion of those activities delayed as a direct result of Landlord’s failure to timely disapprove the Construction Documents.

10.02. Landlord Approvals and Limitation Thereof

The Construction Documents must be approved by the Landlord in the manner described in the section below.

10.02(a) Compliance with Ground Lease

The Landlord's approval with respect to the Construction Documents is limited to determination of their compliance with this Ground Lease, the Redevelopment Plan, Transbay Development Controls and Design Guidelines, and the Streetscape and Open Space Plan and amendments thereto (all as modified by the conditions of approval for the Project) (sometimes referred to collectively as "**Redevelopment Requirements**"). The Construction Documents shall be subject to general architectural review and guidance by the Landlord as part of this review and approval process. **Landlord Does Not Approve Compliance with Construction Requirements**

The Landlord's approval is not directed to engineering or structural matters or compliance with building codes and regulations, the Americans with Disabilities Act, or any other applicable State or Federal law relating to construction standards or requirements.

10.02(c) Landlord Determination Final and Conclusive

The Landlord's determination respecting the compliance of the Construction Documents with Redevelopment Requirements shall be final and conclusive (except that it makes no determination and has no responsibility for the matters set forth in Section 10.02(b), above).

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

10.03(a) Compliance with Landlord Approved Documents

The construction shall be in material compliance with the Landlord-approved Construction Documents.

10.03(b) Compliance with Local, State and Federal Law

The construction shall be in material compliance with all applicable local, State and Federal laws and regulations.

10.04. Disapproval of Construction Documents by Landlord

If the Landlord disapproves the Construction Documents in whole or in part as not being in compliance with Redevelopment Requirements or this Ground Lease, Tenant shall submit new or

corrected plans which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this Section 10.04 relating to approval, disapproval and re-submission of corrected Construction Documents shall continue to apply until the Construction Documents have been approved by the Landlord; provided, however, that in any event Tenant must submit satisfactory Construction Documents (i.e., approved by the Landlord) no later than the date specified therefor in the Schedule of Performance.

10.05. Final Construction Documents to be Approved by Landlord

The Final Construction Documents, including all drawings, specifications, and other related documents necessary for the construction of the Improvements in accordance with the requirements of this Ground Lease must be approved by the Landlord's Deputy Executive Director for Housing.

10.06. Issuance of Building Permits

10.07(a) Tenant shall have the sole responsibility for obtaining all necessary building permits and shall make application for such permits directly to the City's Department of Building Inspection. The Landlord understands and agrees that Tenant may use the Fast Track method of permit approval for building the Improvements.

10.07(b) The Tenant is advised that the Central Permit Bureau forwards all building permits to the Agency for Agency approval of compliance with Redevelopment Requirements. The Agency's approval of compliance with Redevelopment Requirements is limited and does not include Section 10.02(b) matters. Agency evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

10.07. Performance and Payment Bonds

Prior to commencement of construction of the Improvements, Tenant shall deliver to the Landlord performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds shall name the Landlord as co-obligee, or such other completion security which is acceptable to the Landlord.

10.08. Landlord Approval of Changes after Commencement of Construction

Once construction has commenced, the only Construction Document matters subject to further review by the Landlord will be requests for any material changes in the Construction Documents which affect matters previously approved by the Landlord. For purposes of determining materiality in the Construction Documents, any single change order of \$10,000 or more in value and any change order which causes the aggregate value of all change orders to exceed \$100,000 shall be considered material and require the Landlord's prior written approval unless waived by the Landlord. Permission to make such changes shall be requested by Tenant in writing directed to the Landlord, Attention: Deputy Executive Director for Housing, with a copy to the Architecture Division Manager. The Landlord shall reply in writing giving approval or disapproval of the changes within ten (10) days after receiving such request. If the request is disapproved, the reply must specify the reasons for the disapproval.

10.09. Times for Construction

Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the construction of the Improvements thereon, and that such construction shall in any event commence and thereafter

diligently continue and shall be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by the Landlord.

10.10. Force Majeure

For the purposes of any of the provisions of this Ground Lease, and notwithstanding anything to the contrary, neither the Landlord nor Tenant, as the case may be, shall be considered in breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, 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 restricted to, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall have notified the other party thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of performance of any of Tenant's obligations to be performed prior to the commencement of construction, nor shall the failure to timely perform pre-commencement of construction obligations extend or be construed to extend Tenant's obligations to commence,

prosecute and complete construction of the Improvements in the manner and at the times specified in this Ground Lease.

10.11. Reports

10.11(a) Until completion of construction of the Improvements, Tenant shall make a report in writing to the Landlord every three (3) months, in such detail as may reasonably be required by the Landlord, as to the actual progress of the Tenant with respect to such construction. Such reporting requirements may be satisfied by Tenant's provision of draw requests as required pursuant to the terms of the Loan Agreement. Until completion of the construction of the Improvements, Tenant shall be subject to inspection by representatives of the Landlord, at reasonable times and upon reasonable advance notice.

10.11(b) Tenant will have the right to have an employee, agent, or other representative of Tenant accompany the Landlord representative at all times while the Landlord representative is present on the Site. The Landlord and its representatives will exercise due care in entering upon and/or inspecting the Site, and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Site or Improvements, or any disruption to the work of construction or operation of the Improvements. The Landlord and its respective representatives will abide by any reasonable safety and security measures Tenant imposes.

10.12. Access to Site

Tenant shall permit access to the Site to the Landlord and 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. In accessing the Site, Landlord shall comply with Section 10.11(b).

10.13. Notice of Completion

Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, Tenant shall timely file a Notice of Completion (“NOC”), and record such approved NOC in the San Francisco Recorder’s Office. Tenant shall provide Landlord with a copy of the recorded NOC.

10.14. Completion of Improvements by New Developer

In the event Lender or a successor thereto forecloses, obtains a deed in lieu of foreclosure or otherwise realizes upon the Premises and undertakes construction of the Improvements (“New Developer”) (a) such New Developer shall not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but shall only be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the Landlord, (b) such New Developer shall only be required to complete the Improvements in accordance with all applicable building codes and ordinances, and the approved Construction Documents with such changes that are mutually agreed upon by the Agency and the New Developer pursuant to subsection (c) hereof; and (c) Landlord and New Developer shall negotiate in good faith such reasonable amendments and reasonable modifications to this Article 10 of this Lease as the Parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 11. COMPLETION OF IMPROVEMENTS

11.01. Certificate of Completion - Issuance

Promptly after completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, and upon the request of Tenant, the Landlord will furnish Tenant with an appropriate instrument so certifying. Such certification by the Landlord shall be a

conclusive determination of satisfaction and termination of the agreements and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors and assigns, to construct the Improvements in accordance with Landlord approved final Construction Documents and the dates for the beginning and completion thereof; provided, however, that such determination shall only be withheld because of failure to carry out specific requirements of the Redevelopment Requirements or this Ground Lease; provided further, that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that Landlord issuance of any Certificate of Completion does not relieve Tenant or any other person or entity from any and all City requirements or conditions to occupancy of the Improvements, which requirements or conditions must be complied with separately.

The Agency may elect to issue to Tenant a Certificate of Completion if no events of default by Tenant are then existing under this Agreement and Tenant has completed the Improvements in accordance with this Agreement, except for: (1) punch list items; (2) landscaping and other outside areas of the Improvements; and (3) other items that do not adversely affect or impair Tenant's use and occupancy of the Improvements for the purposes contemplated by this Agreement and that do not preclude the City's issuance of a certificate of occupancy or other certificate or authorization of Tenant's use and occupancy of the Improvements. However, the Agency will not be obligated to issue a Certificate of Completion in these circumstances unless and until Tenant has provided to the Agency, at the Agency's request, a bond, letter of credit, certificate of deposit, or other security reasonably acceptable to the Agency in an amount equal to 110% of the estimated cost of completing the items described in clauses (1) through (3) above, as reasonably determined by the Agency.

11.02. Certifications to be Recordable

All certifications provided for in this Section 11.02 shall be in such form as will enable them to be recorded with the Recorder of the City.

11.03. Certification of Completion - Non-Issuance Reasons

If the Landlord shall refuse or fail to provide any certification in accordance with the provisions of Section 11.01, the Landlord shall provide Tenant with a written statement, within fifteen (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Ground Lease or is otherwise in default hereunder and what measures or acts will be necessary, in the opinion of the Landlord, for Tenant to take or perform in order to obtain such certification. Failure by the Agency to either issue a certificate of completion or a written statement within the times provided herein will entitle Tenant to a day for day extension of time for the period of delay caused by the Agency.

ARTICLE 12. CHANGES TO THE IMPROVEMENTS

12.01. Post Completion Changes

The Landlord has a particular interest in the Site and in the nature and extent of the permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the following particular controls on the Site and on the Improvements: during the term of this Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or permit any change in the Improvements, as change is hereinafter defined, unless the express prior written consent for any change shall have been requested in writing from the Landlord and obtained, and, if obtained, upon such terms and conditions as the Landlord may require. The Landlord agrees not to withhold or delay its response to such a request unreasonably.

12.02. Definition of Change

“**Change**” as used in this Article 12 means any alteration, modification, addition and/or substitution of or to the Site, the Improvements, and/or the density of development which differs materially from that which existed upon the completion of construction of the Improvements in accordance with this Ground Lease, and shall include, without limitation the exterior design, exterior materials, and/or exterior color. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. Changes shall not include repairs, maintenance and interior alterations in the normal course of operation of a mixed use development or as may be required in an emergency to protect the safety and well-being of the Project’s Occupants, tenants, or subtenants.

12.03. Enforcement

Subject to Article 19 hereof, Landlord shall 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 breach thereof or any actual breach or violation thereof.

ARTICLE 13. TITLE TO IMPROVEMENTS

Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of this Ground Lease, subject to Section 14.01 below. Subject to the rights of any Lenders and as further consideration for the Landlord entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements shall vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord.

ARTICLE 14. ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE

14.01. Assignment, Sublease or Other Conveyance by Tenant

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 allow any person or entity to occupy or use all or any part of the Site, other than leases to residential tenants in the ordinary course of business nor may it contract or agree to do any of the same, without the prior written approval of the Landlord, and the City and County of San Francisco through approval by the City's Board of Supervisors pursuant to its authority under California Health and Safety Code Section 33433 for transfers of the Leasehold Estate, which approval shall not be unreasonably withheld or delayed. Landlord reserves the right to review and approve any commercial leases and tenants for the Site. Landlord hereby pre-approves the following potential transfers listed in Section 14.01(a) through (d) by the Tenant and acknowledges that such transfers shall not require additional approval of the Agency:

14.01(a) A transfer of the limited partner interest in the Partnership to a reputable tax credit investor (the "Tax Credit Investor") and future transfers of such limited partner interest.

14.01(b) A transfer of Tenant's interests in this Ground Lease and in the Improvements to Community Housing Partnership ("CHP") or an affiliate of Community Housing Partnership or its successor in interest with prior thirty (30) day written notice to the Landlord.

14.01(c) A transfer of Tenant's interests in this Ground Lease and in the Improvements to BRIDGE Housing Corporation ("BRIDGE") or an affiliate of BRIDGE or its successor in interest with prior thirty (30) day written notice to the Landlord.

14.01(d) In the event the general partner of the Tenant is removed by the limited partner of the Tenant for cause following a default under the Tenant's partnership agreement, the Agency hereby approves the transfer of the general partner interest to a 501(c)(3) tax-exempt nonprofit corporation, selected by the limited partner and approved by the Agency in writing, which approval shall not be unreasonably withheld.

14.01(e) A transfer of the ownership interest in 25 Essex, LP, whereby BRIDGE, MCB Housing Inc, or CHP may become the sole member of 25 Essex, LP, upon thirty (30) days prior written notice to Landlord must be approved by the Agency Executive Director, which approval shall not be unreasonably withheld; provided that the Project investors and other Project lenders have approved of such transfer.

14.02. Assignment, Sublease or Other Conveyance by Landlord

The Parties acknowledge that any sale, assignment, transfer or conveyance of all or any part of the Landlord's interest in the Site, the Improvements, or this Ground Lease, is subject to this Ground Lease. The Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of the Landlord under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease shall not be affected by any such sale, and Tenant shall attorn to any such purchaser or assignee. In the event that the Landlord intends to sell all or any part of the Site, the Landlord shall notify Tenant of the proposed terms of such sale not later than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of such notice to exercise a right of first refusal to purchase the Site on the same terms and conditions of such proposed sale to any entity other than the City or a successor entity of the Agency.

ARTICLE 15. TAXES

Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all valid taxes, assessments and similar charges on the Site which become effective after the execution of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; 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 shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The Landlord shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that such information is otherwise available to the public. The Landlord hereby consents to Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Site or on Tenant's interest in the Site.

ARTICLE 16. UTILITIES

Tenant shall 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 shall pay all connection and use charges imposed in connection with such services. As between the Landlord and Tenant, Tenant shall 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.

ARTICLE 17. MAINTENANCE

Tenant, at all times during the term hereof, shall maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the Landlord, including the exterior, interior, substructure and foundation of the Improvements and all fixtures, equipment and landscaping from time to time located on the Site or any part thereof. The Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

ARTICLE 18. LIENS

Tenant shall use its best efforts to keep the Site free from any liens arising out of any work performed or materials furnished by itself or its subtenants. In the event that Tenant shall not cause the same to be released of record or bonded around within twenty (20) days following written notice from the Landlord of the imposition of any such lien, the Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by the Landlord for such purpose, and all reasonable expenses incurred by it in connection therewith, shall be payable to the Landlord by Tenant on demand; provided, however, Tenant shall have the right, upon posting of an adequate bond or other security, to contest any such lien, and the Landlord shall not seek to satisfy or discharge any such lien unless Tenant has failed so to do within ten (10) days after the final determination of the

validity thereof. In the event of any such contest, Tenant shall protect, defend, and indemnify the Landlord against all loss, cost, expense or damage resulting there from.

ARTICLE 19. GENERAL REMEDIES

19.01. Application of Remedies

The provisions of this Article 19 shall govern the Parties' remedies for breach of this Ground Lease.

19.02. Notice and Cure Rights for Tenant Limited Partner

19.02(a) The Landlord may not exercise its remedies under this Ground Lease for a default by the Tenant unless and until (i) the Landlord has given written notice of any such default, in accordance with the notice provisions of Article 40, to Tenant and Permitted Limited Partners who have requested notice as set forth below (“**Permitted Limited Partners**”), and (ii) such default has not been cured within sixty (60) days, or such longer period as may be set forth herein, following the giving of such notice or, if such default cannot be cured within such 60-day period, such longer period as is reasonably necessary to cure such default, provided that such cure has been commenced within such 60-day period and is being prosecuted diligently to completion. 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.

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

19.02(c) Any limited partner wishing to become a Permitted Limited Partner other than the Permitted Limited Partner identified in Article 39 must provide five (5) days written notice to the Landlord 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. Such 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 19.02 with respect to any default occurring prior to the time such limited partner becomes a Permitted Limited Partner.

19.03. Breach by Landlord

If Tenant believes a material breach of this Ground Lease has occurred, Tenant shall first notify the Landlord in writing of the purported breach, giving the Landlord sixty (60) days from receipt of such notice to cure such breach. In the event Landlord does not then cure or, if the breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law or equity.

19.04. Breach by Tenant

19.04(a) Default by Tenant

The following events each constitute a basis for the Landlord to take action against Tenant:

- (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.02;

(2) 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 with the approval of Landlord;

(3) Tenant, or its successor in interest, shall fail to pay real estate taxes or assessments on the Premises or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged; provided, however, that Tenant shall have the right to contest any tax or assessment pursuant to Article 15 and Article 18 and, upon the posting of an adequate bond or other security, to contest any such lien or encumbrance. In the event of any such contest, Tenant shall protect, indemnify and hold Landlord harmless against all losses and damages, including reasonable attorneys' fees and costs resulting therefrom;

(4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have 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 same 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;

(5) Tenant breaches any other material provision of this Ground Lease; and

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

19.04(b) Notification and Landlord Remedies

Upon the happening of any of the events described in Section 19.04(a) above and prior to exercising any remedies, the Landlord shall notify Tenant, the Permitted Limited Partners and each Lender in writing of the Tenant's purported breach, failure or act, giving Tenant sixty (60) days from receipt of such notice to cure such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.02 and Article 26, the Landlord thereafter shall be afforded all of its rights at law or in equity, including any or all of the following remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for damages; or (3) seeking specific performance of this Ground Lease.

Notwithstanding the foregoing, during the 15-year tax credit compliance period, Landlord may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6) above.

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 hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction,

or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required or elects to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease shall be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by the Landlord any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right to do so under this Section 20.01, or elects not to restore the Improvements, the insurance proceeds shall be disbursed in the order set forth in Section 20.03 below.

20.02. Uninsured Casualty

If (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) 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, other than the Agency, terminate this Ground Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord promptly and not consent to any settlement or adjustment of an insurance award without the Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Ground Lease pursuant to this Section 20.02, all insurance proceeds and damages payable by reason of the casualty shall be divided among Landlord, 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 casualty, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition prior to such damage or destruction in accordance with the provisions of Section 20.01 and shall be entitled to all available insurance proceeds.

20.03. Distribution of the Insurance Proceeds

In the event of an election by Tenant to terminate and surrender as provided in either Sections 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

(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;

(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 statute, law, ordinance, rule, regulation or order of any federal, state or local government, or any agency or official thereof, 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;

(c) Third, to compensate Landlord for any diminution in the value (as of the date of the damage or destruction) of the Site as a raw development site caused by or arising from the damage or destruction; and

(d) The remainder to Tenant.

20.04. Clean Up of Housing Site

In the event the Tenant terminates this Ground Lease pursuant to the provisions of Sections 20.01 or 20.02 and the proceeds of any insurance policy are insufficient to pay the clean-

up and other costs described in Section 20.03(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

ARTICLE 21. DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS; INDEMNIFICATION

21.01. Damage to Person or Property -General Indemnification

Landlord shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site during the term of this Lease, for any injury or damage to the Premises during the term of this Lease, or to any property of Tenant during the term of this Lease, or to any property of any other person, entity or association on or about the Site during the term of this Lease, unless arising from any gross negligence or willful misconduct of Landlord, the City or any of their commissioners, officers, agents or employees. Tenant shall defend, hold harmless and indemnify the Landlord, the City and their respective commissioners, officers, agents, and employees, of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Site, including adjoining sidewalks and streets, and any of its operations activities thereon or connected thereto; provided, however, that this Article 21 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Landlord, the City or any of their commissioners, officers, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by the person or entity seeking such indemnity.

21.02. Hazardous Materials –Indemnification

21.02(a) Tenant shall indemnify, defend, and hold the Landlord and the City, and their respective commissioners, officers, agents and employees (individually, an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”) harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action 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 by Tenant during the term of the Lease, or any Release caused by Tenant during the term of the Lease, threatened Release caused by Tenant during the term of the Lease and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site caused by Tenant during the term of the Lease.

For purposes of this Section 21.02, the following definitions shall apply:

(i) “**Hazardous Substance**” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, 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 Section 25316 and Section 25281(d), all chemicals listed pursuant to 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 shall not include substances which occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a mixed use development.

(ii) “**Environmental Law**” shall include all federal, state and local laws, regulations and ordinances 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 Agreement.

(iii) “**Release**” shall mean 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.

ARTICLE 22. INSURANCE

22.01. Insurance

22.01(a) Insurance Requirements for Tenant

During the term of this Ground Lease, Tenant shall 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 or subcontractors and the Tenant’s use and occupancy of the Site and the Improvements.

22.01(b) Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 00 01) or other form approved by the Agency’s Risk Manager.

(2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – “any auto”) or other form approved by the Agency’s Risk Manager.

(3) Workers' Compensation insurance as required by the State of California and Employer’s Liability insurance.

(4) Professional Liability Insurance: Tenant shall require that all architects, engineers, and surveyors for the Project have liability insurance covering negligent acts, errors and omissions. Tenant shall provide the Landlord with copies of consultants’ insurance certificates showing such coverage.

(5) Property Insurance, special form coverage against direct physical loss to the Project, excluding earthquake or flood, during the course of construction and following completion of construction.

22.01(c) Minimum Limits of Insurance

Tenant shall maintain limits no less than:

(1) General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation and Employers Liability: Workers’ Compensation limits as required by the State of California and Employers Liability limits of \$1,000,000 for

bodily injury by accident, and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

(4) Professional Liability: \$1,000,000 per occurrence and in the annual aggregate, for new construction or remodeling in excess of \$100,000, 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 shall assure that these limits are maintained for no less than three (3) years beyond the completion of the construction or remodeling.

(5) Property Insurance:

(a) During the course of construction, builder's risk insurance in the full completed value of the Project.

(b) Following completion of construction, full replacement value of the Project with no coinsurance penalty provision.

(6) Review of Minimum Limits: At no less than every five years during the Term, Landlord may reasonably adjust the Minimum Limits of coverage required in this Section 22.01(c).

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 Landlord's Risk Manager. In the event deductibles or self-insured retentions are in excess of \$25,000, at the option of Landlord's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Landlord, the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Tenant shall procure a financial guarantee satisfactory to the Agency's Risk

Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

22.01(e) Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverage:

(a) Additional Insureds: "The San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees", are to be named as additional insured as respects: liability arising out of activities performed by or on behalf of the Tenant; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant; and automobiles owned, leased, hired or borrowed by or on behalf of the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the Landlord, the City and County of San Francisco and their respective Commissioners, members, officers, agents or employees.

(b) Primary Insurance: For any claims related to this Lease, the Tenant's insurance coverage shall be primary insurance as respects the Landlord, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the Landlord, the City and County of San Francisco and their respective commissioners, members, officers, agents, or employees shall be excess of the Tenant's insurance and shall not contribute with it.

(c) Reporting Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Landlord, the City

and County of San Francisco, and their respective commissioners, members, officers, agents, or employees.

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

(2) Builder's Risk (Course of Construction) Insurance: Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall contain the following provision:

(a) Landlord shall be named as loss payee as their interest may appear.

(3) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall 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 Landlord, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

22.01(f) Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII or as otherwise approved by the Landlord's Risk Manager.

22.01(g) Verification of Coverage

Tenant shall furnish Landlord 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. Landlord 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 shall cause its general contractor and all subcontractors and consultants to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by the Agency's Risk Manager. Tenant must furnish Agency with general contractor's, architects' and engineers' certificates of insurance and original endorsements effecting coverage required by this Article 22.01(h).

ARTICLE 23. COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01. Compliance with Legal Requirements

Tenant shall at its cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, insofar as any thereof relates to or affects the condition, use or occupancy of the Site. In the event Tenant contests any of the foregoing, Tenant shall not be obligated to comply therewith to the extent that the application of the contested law, statute, ordinance, rule, regulation or requirement is stayed by the operation of law or administrative or judicial order and Tenant indemnifies the Landlord against all loss, cost, expense or damage resulting from noncompliance.

ARTICLE 24. ENTRY

The Landlord and its authorized agents shall have the right at all reasonable times during normal business hours and after 48 hours written notice to Tenant (except in the event of an emergency when no written notice is required), to go on the Site for the purpose of inspecting the same or for the purpose of posting notices of nonresponsibility, or for police or fire protection. Except in the event of emergency, the provisions of Section 10.11(b) shall apply to the Agency's entry under this Article 24.

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 Landlord in the form attached hereto as Attachment 3, which consent shall not be unreasonably withheld 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, design, construction, renovation or reconstruction of the Improvements 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.

25.02. Holder Not Obligated to Construct

The holder of any mortgage, deed of trust or other security interest authorized by Section 25.01 (“**Holder**” or “**Lender**”), including the successors or assigns of such Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Ground Lease be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee the

completion of the construction of the Improvements, subject to Section 26.05(b), nothing in this Ground Lease shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements authorized under Section 9.02 subject to any reasonable modifications in plans proposed by any Holder or its successors in interest proposed for the viability of the Project, subject to the approval of Landlord which approval shall not be unreasonably withheld. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, subject to Section 26.05(b), that Holder or its successors in interest must obtain the written consent of the Landlord.

25.03. Failure of Holder to Complete Construction

In any case where six months after assumption of obligations pursuant to Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the Landlord shall be afforded the rights against such Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; provided, however, if Lender has proceeded diligently with construction, the Schedule of Performance shall not apply to Lender if such Schedule of Performance has been replaced by the new Schedule of Performance pursuant to Section 10.14 of this Agreement, which new Schedule of Performance will apply to Lender.

25.04. Default by Tenant and Landlord's Rights

25.04(a) Right of Landlord to Cure a Default or Breach by Tenant under a Leasehold Mortgage

In the event of a default or breach by Tenant in or of its obligations under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, the Landlord may, at its option, cure such breach or default at any time

prior to one hundred nineteen (119) days after the date on which the Lender files a notice of default. In such event, the Landlord shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the Landlord in curing the default or breach. The Landlord shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements. Any such lien shall 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, the Landlord shall also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to such Lender's and Permitted Limited Partner's written consent, but which may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

25.04(b) Notice of Default to Landlord

Tenant shall use its best efforts to require Lender to give the Landlord prompt written notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also contain the Landlord's right to cure as above set forth.

25.04(c) Cost of Mortgage Loans to be Paid by Tenant

Tenant covenants and affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26. PROTECTION OF LENDER

26.01. Notification to Landlord

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, each Lender (except for the Agency)

shall give written notice to the Landlord of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 shall constitute Landlord'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 Landlord hereby acknowledges that the First Mortgage Lender and the Landlord are deemed to have given such written Notice.

26.02. Lender's Rights to Prevent Termination

Each Lender shall have the right, but not the obligation, at any time prior to 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 hereunder, 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 hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof 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

Should any event of default under this Ground Lease occur, and not be cured within the applicable cure period, the Landlord shall not terminate this Ground Lease nor exercise any other remedy hereunder unless it first gives written notice of such event of default to Lender and

26.03(a) If such event of default is a failure to pay a monetary obligation of Tenant, Lender shall have failed to cure such default within sixty (60) days from the date of written notice from the Landlord to Lender; or

26.03(b) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site 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 shall be remedied or deemed remedied in accordance with Section 26.04 below.

All rights of the Landlord to terminate this Ground Lease as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, the Landlord having first given Lender written notice of such event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate created hereby 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 Tenant having failed to proceed as permitted under this Ground Lease, or Permitted Limited Partners having failed to proceed as permitted under Sections 19.02(b) or 26.04(d).

26.03(c) Default Which Cannot be Remedied by Lender

Any event of default under this Ground Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied if:

26.03(d) within sixty (60) days after receiving notice from the Landlord setting forth the nature of such event of default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof;

26.03(e) Lender shall diligently prosecute any such proceedings to completion;

26.03(f) Lender shall have fully cured any event of default arising from failure to pay or perform any monetary obligation in accordance with the terms of this Ground Lease; and

26.03(g) after gaining possession of the Improvements, Lender shall diligently proceed to perform all other obligations of Tenant as and when the same are due in accordance with the terms of this Ground Lease.

26.03(h) Court Action Preventing Lender's Action

If Lender is prohibited by any process or injunction issued by any court or by reason 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 thereof, the times specified in Sections 25.03 and 25.04 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the Landlord agrees to enter into a new ground lease with the Lender on the same terms set forth in this Ground Lease.

26.04. Lender's Rights to Record, Foreclose and Assign

The Landlord hereby agrees with respect to any Leasehold Mortgage, that:

26.04(a) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate created hereby to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from Landlord, which approval shall not be unreasonably withheld, and if the Subsequent Owner has elected to maintain the use restrictions of Article 9, said Subsequent Owner shall be 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 receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender shall

become the assignee, may sell and assign said Leasehold Estate subject to Landlord approval, which shall not be unreasonably withheld, and to the Landlord's rights under Article 25;

26.04(b) should the Lender acquire the Leasehold Estate hereunder by foreclosure or other appropriate proceedings in the nature of foreclosure or as the result of any other action or remedy provided for by any Leasehold Mortgage, or should Lender sell or assign the same to a Landlord approved purchaser or assignee, and any subsequent transfer to a Landlord approved transferee Lender or its purchaser or assignee, and any subsequent transferee, shall take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, the Lender or its purchaser or assignee may operate and maintain the approximately one hundred and twenty (120) Residential Units without any limitations on the rents charged or the income of the occupants thereof;

26.04(c) the Landlord shall mail or deliver to any Lender which has an outstanding Leasehold Mortgage a duplicate copy of all notices which the Landlord may from time to time give to Tenant pursuant to this Ground Lease; and

26.04(d) any Permitted Limited Partners of Tenant shall have the same rights as any Lender under Sections 26.02, 26.03, and 26.06(c), and any reference to a Lender in said Sections shall be deemed to include such limited partners; provided, however, that the rights of such limited partners shall be subordinate to the rights of any Lender.

26.05. 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 shall be set as follows:

26.05(a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the Landlord, and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner. Subsequent to foreclosure, if the Lender continues to operate the Project subject to the use and occupancy restrictions of Section 9.02, then Annual Rent otherwise due may, at the option of the Lender, be deferred until such time as the Project is no longer operated by the Lender subject to such restrictions. All deferred Annual Rent shall accrue, with simple interest at six percent (6%) per annum until paid, and shall be due and payable upon sale or assignment of the Project by Lender or within sixty (60) days after Lender ceases to operate the Project in accordance with such restrictions.

26.05(b) If the Subsequent Owner exercises its rights under Section 26.04(b) to operate the Project without being subject to Section 9.02, Annual Rent shall 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 shall be increased to the new fair market rent pursuant to Section 26.05(b) and the provisions of Section 9.02 shall be suspended; provided, however, that the Landlord shall 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 Very Low Income Households as the Landlord and the Subsequent Owner shall agree. The fair market rental value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the Landlord, 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. Provided, however, that after the neutral third party process, the Lender, in its sole discretion may rescind its written notification of intent to not comply with Section 9.02 of this Ground Lease.

26.06. Permitted Uses After Lender Foreclosure

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises shall be operated in accordance with the uses specified in the building permit with all addenda, as approved by the Landlord.

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 Site or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the Parties shall be determined pursuant to this Article 27, subject to the rights of any Lender.

27.02. Total Taking

If the Site is totally taken by condemnation, this Ground Lease shall terminate on the date the condemnor has the right to possession of the Site.

27.03. Partial Taking

If any portion of the Site is taken by condemnation, this Ground Lease shall 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 pursuant to this paragraph by giving notice to the Landlord within thirty (30) days after the Landlord notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify the Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified the Landlord of its election to terminate; except that this Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall continue in full force and effect.

27.04. 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 shall 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.

27.05. Restoration of Improvements

If there is a partial taking of the Improvements and this Ground Lease remains in full force and effect pursuant to Section 27.03, Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

27.06. Award and Distribution

Any compensation awarded, paid or received on a total or partial condemnation of the Site or threat of condemnation of the Site shall belong to and be distributed in the following order:

(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

(b) Second, to the Tenant in an amount equal to the actual equity invested by the Tenant.

27.07. 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, such award shall be disposed of as provided in the Leasehold Mortgage.

ARTICLE 28. ESTOPPEL CERTIFICATE

The Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender or a Permitted Limited Partner, promptly upon request (and in no event longer than thirty (30) days following receipt of the 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 Landlord or Tenant to be performed or observed and, if so, specifying the same, and (d) whether there are then existing any defaults by Tenant or the Landlord in the performance or observance by Tenant or the Landlord of any agreement, covenant or condition hereof on the part of Tenant or the Landlord to be performed or observed and whether any notice has been given to Tenant or the Landlord of any default which has not been cured and, if so, specifying the same.

ARTICLE 29. QUITCLAIM

Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the Site to the Landlord and, at the Landlord's request, shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the Improvements shall vest automatically in the Landlord as provided in Article 13 herein.

ARTICLE 30. EQUAL OPPORTUNITY

Tenant agrees to comply with all of the Equal Opportunity and related requirements attached hereto as Attachment 5.

ARTICLE 31. CERTIFICATE OF PREFERENCE PROGRAM

Tenant agrees to comply with the requirements of the Agency's Certificate of Preference Program, as it may be amended from time to time, and as set forth on Attachment 4.

ARTICLE 32. LABOR STANDARDS PROVISIONS

Tenant agrees to comply with the requirements of the Agency's Labor Standards Provisions as set forth on Attachment 7.

**ARTICLE 33. MINIMUM COMPENSATION AND HEALTH CARE
ACCOUNTABILITY POLICY**

Tenant agrees that the Tenant and its subtenants, if any, will comply with the provisions of the Agency's Minimum Compensation Policy ("MCP") and Health Care Accountability Policy ("HCAP") (together, the "Policies") as such policies may be amended from time to time, and as

set forth in Attachments 8 and 9 respectively. Notwithstanding this requirement, the Agency recognizes that the residential housing component of the Improvements is not subject to the Policies.

ARTICLE 34. CONFLICT OF INTEREST

No commissioner, official, or employee of the Landlord shall have any personal or financial interest, direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or employee participate in any decision relating to this Ground Lease which 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 35. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, 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 Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective

party to the contract; each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Tenant agrees to provide to the Agency the names of each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is not sponsored or controlled by Tenant.

ARTICLE 36. NO PERSONAL LIABILITY

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

ARTICLE 37. ENERGY CONSERVATION

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

ARTICLE 38. WAIVER

The waiver by the Landlord or Tenant of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained, nor shall any custom or practice which may grow up between the Parties in the administration of the terms hereof be construed to waive or to lessen the right of the Landlord or Tenant to insist upon the performance by the other in strict accordance with the said terms. The subsequent acceptance of rent or any other sum of money hereunder by the Landlord shall 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 so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such rent or other sum.

ARTICLE 39. TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as the Landlord may deem necessary, there shall be made available to the Landlord 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. Nothing contained herein shall entitle the Landlord 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 Landlord will respect the confidentiality requirements of Tenant in regard to the lists furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the residential portion of the Site.

ARTICLE 40. NOTICES AND CONSENTS

All notices, demands, consents or approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Tenant and the Landlord as shall from time to time be designated by the Parties for the receipt of notices, 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: 25 Essex, LP
Community Housing Partnership
280 Turk Street
San Francisco, CA 94102
Telefacsimile: (415) 749-2791
Telephone: (415) 929-2470, x305
Attn: Executive Director

With a copy to: BRIDGE Housing Corporation
345 Spear Street, Suite 700
San Francisco, CA 94105
Telefacsimile: (415) 495-4898
Telephone: (415) 989-1111
Attn: President/CEO

if to Landlord at: San Francisco Redevelopment Agency

One South Van Ness Ave, 5th Floor
San Francisco, California 94103
Attn.: Executive Director

And to Tenant's Permitted
Limited Partner at: [TBD]

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 pursuant to the provisions of this Article 40. Any notice given pursuant to this Article 40 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

ARTICLE 41. COMPLETE AGREEMENT

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

ARTICLE 42. HEADINGS

Any titles of the several parts and sections of this Ground Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "section" may be used interchangeably.

ARTICLE 43. SUCCESSORS AND ASSIGNS

This Ground Lease shall be binding upon and inure to the benefit of the successors and assigns of the Landlord and Tenant and where the term "Tenant" or "Landlord" is used in this Ground Lease, it shall mean and include their respective successors and assigns; provided, however, that the Landlord shall have no obligation under this Ground Lease to, nor shall any benefit of this Ground Lease accrue to, any unapproved successor or assign of Tenant where Landlord approval of a successor or assign is required by this Ground Lease. At such time as Landlord sells the Site to any third party, Landlord shall require such third party to assume all of Landlord's obligations hereunder arising on and after the transfer in writing for the benefit of Tenant and its successors and assigns.

ARTICLE 44. TIME

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

ARTICLE 45. PARTIAL INVALIDITY

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

ARTICLE 46. APPLICABLE LAW

This Ground Lease shall be governed by and construed pursuant to the laws of the State of California.

ARTICLE 47. ATTORNEYS' FEES

If either of the Parties commences a lawsuit to enforce any of the terms of this Ground Lease, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit, including fees and costs on appeal, from the other party.

ARTICLE 48. EXECUTION IN COUNTERPARTS

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

ARTICLE 49. RECORDATION OF MEMORANDUM OF GROUND LEASE

This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall be recorded. The Parties shall 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 50. TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Neither the transfer of any limited partner of Tenant (a "Limited Partner") interests in the Tenant or the admission of a successor limited partner or partners pursuant to the terms of the Partnership Agreement shall constitute an event of default under the Lease nor require the Landlord's consent. The withdrawal or removal of a general partner of the Tenant pursuant to the terms of the Partnership Agreement shall not require Landlord consent, and shall not constitute a default under the Lease provided that any replacement general partner shall require the consent of the Landlord which shall not be unreasonably withheld.

ARTICLE 51. TERMINATION OF DDA

Concurrent with its execution of this Ground Lease, the Agency shall provide to Tenant a notice of termination of the DDA ("DDA Termination Notice") which shall provide that the Tenant has met its obligations under the DDA and that the DDA is terminated.

ARTICLE 52. ATTACHMENTS

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

1. Legal Description of Site
2. Schedule of Performance
3. Agency Consent of Leasehold Mortgage
4. Operational Rules for Certificate Holders' Priority

5. Small Business Enterprise Agreement
6. Income Certification Form
7. Prevailing Wage Provisions
8. Agency's Minimum Compensation Policy
9. Agency's Health Care Accountability Policy
10. Scope of Development
11. Approved Project Cash Flow
12. Mayor's Office of Housing Asset Management Fee and Partnership Management Fee Policy

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

TENANT:

25 ESSEX, LP, a California limited partnership

By **COMMUNITY HOUSING PARTNERSHIP**,
a California nonprofit public benefit corporation, its member

By: _____

Printed Name and Title

By MCB Family Housing, Inc,
a California nonprofit public benefit corporation, its member

By: _____

Printed Name and Title

LANDLORD:

**REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO,**
a public body, corporate and politic

By: _____

Amy Lee
Deputy Executive Director,
Finance and Administration

APPROVED AS TO FORM:

By: _____

James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 127-2010, adopted October 19, 2010

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ATTACHMENT 1

Legal Description of the Site

ATTACHMENT 2

Schedule of Performance

ATTACHMENT 3

Agency Consent of Leasehold Mortgage

ATTACHMENT 4

Operational Rules for Certificate Holders' Priority

ATTACHMENT 5

Small Business Enterprise Agreement

ATTACHMENT 6

Income Certification Form

ATTACHMENT 7

Prevailing Wage Provisions

ATTACHMENT 8

Agency's Minimum Compensation Policy

ATTACHMENT 9

Agency's Health Care Accountability Policy

ATTACHMENT 10

Scope of Development

ATTACHMENT 11

Approved Project Cash Flow

ATTACHMENT 12

Mayor's Office of Housing Asset Management Fee and Partnership Management Fee Policy