

COMMERCIAL GROUND LEASE AGREEMENT

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

4840 MISSION HOUSING ASSOCIATES LP,

a California limited partnership

for

THE COMMUNITY HEALTH CLINIC

DATED AND EXECUTED AS OF \_\_\_\_\_

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THIS COMMERCIAL GROUND LEASE AGREEMENT ("Commercial Ground Lease" or "Lease") is entered into as of \_\_\_\_\_ ("Effective Date") by and between THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, represented by the Mayor, acting through its Real Estate Division and the Mayor's Office of Housing and Community Development ("**City**" or "**Landlord**"), and 4840 MISSION HOUSING ASSOCIATES LP, a California limited partnership ("**Tenant**").

#### RECITALS

- A. Landlord is the fee owner of certain real property described in Exhibit 1 (the "**Commercial Parcel**") attached hereto.
- B. The City entered into a Loan Agreement on [MONTH] [DATE], 2021 (the "**MOHCD Loan Agreement**"), with Tenant, for the purpose of constructing, developing and operating 135 units of very-, low-, and moderate- income family rental housing, plus two manager's unit, 4,407 square foot commercial space, and forty (40) parking spaces for the residential units, and other ancillary uses (the "**Residential Project**") on certain real property adjacent to the Commercial Parcel ("**Residential Parcel**"), as well as the development and construction of cold-shell improvements for a 9,977 square foot commercial space on the Commercial Parcel ("**Cold Shell Improvements**") intended for a community health clinic (the "**Clinic**").
- C. The City has entered into that certain Ground Lease dated \_\_\_\_\_, 2021 ("**Residential Ground Lease**"), with Tenant for the development, construction, and operation of the Residential Project. The Residential Parcel and Commercial Parcel are collectively referred to as the "**Site**."
- D. Tenant and Mission Neighborhood Health Center, a California public nonprofit corporation ("**MNHC**") have entered into that certain Joint Development and Cost Allocation Agreement dated [MONTH] [DATE], 2021 (the "**JDA**") regarding the construction of the Cold Shell Improvements, shared cost of constructing the Cold Shell Improvements, transfer of the completed Cold Shell Improvements to MNHC, and assignment of this Commercial Ground Lease upon completion of the Cold Shell Improvements. MNHC will undertake the development and construction of the improvements to the Commercial Parcel for the Clinic (the "**Clinic Improvements**," and together with the Cold Shell Improvements, the "**Clinic Project**").
- D. Landlord is willing to lease the Commercial Parcel to Tenant for the purposes of Tenant developing and constructing the Cold Shell Improvements, and subject to the JDA, MNHC developing and constructing the Clinic Improvements and managing and operating the Commercial Parcel as a Clinic during the Term in accordance with the provisions of this Lease.

NOW, THEREFORE, in consideration of the mutual promises and covenants, the purposes stated in the above Recitals, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant (the "Parties") hereby agree as follows:

#### ARTICLE 1 PREMISES; TERMS; EXTENSION OPTIONS; ; DEFINITIONS

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Commercial Parcel and all appurtenances thereto (the "**Premises**") for and in consideration of the ground rents, and the covenants and agreements contained in this Lease. The Parties understand, acknowledge and agree that as of the Effective Date of this Lease, the Premises is comprised of the Commercial Parcel, more particularly described in Exhibit 2, Legal Description

of Commercial Parcel, together with all rights, privileges and licenses appurtenant to such Commercial Parcel are owned by Landlord.

1.2 Term of Commercial Ground Lease; Commercial Ground Lease Effective Date.

Tenant shall have a leasehold interest in the Commercial Parcel for a term (the "Term") that commences as of the Effective Date, and shall terminate on the seventy-fifth (75th) anniversary of the Effective Date (the "Termination Date"), unless such Term is extended for an additional twenty-four (24) years, as set forth below, or earlier terminated under this Lease.

1.3 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 Commercial Ground Lease (an "Extension Notice"). The extended term shall be for twenty-four (24) years from the Termination Date, which option the Tenant may exercise only once, for a total term of not to exceed ninety-nine (99) years.

1.4 Definitions and Exhibits

(a) Capitalized Terms. All capitalized terms used herein are defined in the Lease or in **Article 40** or have the meanings given them when first defined.

(b) Exhibits to this Lease. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein. Whenever an article, section, subsection, or paragraph is referenced, it is a reference to this Lease unless otherwise specifically referenced.

## ARTICLE 2 RENT AND FINANCIAL ACCOUNTING

2.1 Ground Rent During Term; Base Rent.

(a) Payment of Ground Rent. From and after the date the Premises is transferred to MNHC, or if the Property is not transferred MNHC then following the commencement of operations of a commercial use the Premises Tenant shall pay the City per lease year (i) Base Rent, as defined in Sections 2.1(b), and (ii) if applicable, Percentage Rent, as defined in Section 2.2(a), without offset of any kind and without necessity of demand, notice or invoice from the City (together, "**Ground Rent**"). Base Rent shall be increased by twenty percent (20%) on the tenth (10<sup>th</sup>) anniversary of the date of this Commercial Ground Lease and every ten (10) years thereafter to account for MOHCD's increased costs to service and asset manage the Commercial Ground Lease.

(b) Base Rent. "**Base Rent**" means, Five Thousand and No/100 Dollars (\$5,000.00) in any given Lease Year commencing with the year construction of the Clinic is complete as evidenced by a certificate of occupancy ("First Lease Year"). Base Rent shall be due and payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the First Lease Year shall be due on the January 31st of the following calendar year, and shall be equal to Five Thousand and No/100 Dollars (\$5,000.00) times the number of days in the First Lease Year, divided by three hundred sixty-five (365).

2.2 Commercial Revenue Sharing. In the event City and Tenant agree to a change in the permitted use of the Commercial Parcel under Article 15, Tenant will pay to City the Percentage Rent in addition to the Base Rent under this Section 2.2. Provided that Tenant uses the Premises for Public Benefit Purposes, this Section 2.2 will not apply to this Commercial Ground Lease.



(a) Definitions. For purposes of this Section 2.2, the following definitions will apply to this Lease:

**"Commercial Income"** means any and all retail/commercial rental income, pass-throughs, subtenant charges, subtenant reimbursements to Tenant under all leases and subleases of its interests in the Commercial Parcel, real estate tax rebates or refunds, and insurance proceeds received by or for the account of Tenant for renting/leasing/letting of retail/commercial spaces on the Commercial Parcel.

**"Commercial Expenses"** mean all operating expenses or other costs attributable to Tenant's operation and management of the Improvements, including property taxes, assessments, insurance, business taxes, utility services, leasing fees or commissions, auditing, commercial property and asset management, operating reserves, expenditures for tenant improvement allowances as permitted under the terms of the Loan Agreement (if applicable), income taxes and any other taxes on the proceeds of the operations, payments made pursuant to this Lease other than Base Rent, required payments of interest and principal on any financing secured by the Commercial Parcel and used to finance the Clinic that has been approved by the City, and any other imposition, costs or reserves related to the ownership, operation, and maintenance of the Improvements that Tenant is responsible to pay, including, but not limited to, costs and expenses incurred in connection with the REA, provided that such expenses are commercially reasonable and approved by the Landlord (which shall not be unreasonably withheld, delayed or conditioned).

**"Net Commercial Cash Flow"** means Commercial Income minus Commercial Expenses for a given period.

**"Percentage Rent"** means forty percent (40%) of annual Net Commercial Cash Flow.

**"Tenant"** means Tenant, its agents, subtenants, assignees, licensees, and concessionaires, or otherwise (whether verbal or written) that occupies and/or conducts any operation of any kind in the Commercial Parcel.

(b) Annual Statements.

(i) On or before the sixtieth (60th) day immediately following each anniversary of the Effective Date, Tenant will deliver a complete statement (each, an "Annual Statement") showing the computation of the Commercial Parcel for the immediately preceding Lease Year in a form approved by City. Each Annual Statement must show in reasonable detail (i) the Commercial Income for the immediately preceding Lease Year, including an itemized list of any and all deductions or exclusions from Commercial Income that Tenant may claim and that are expressly permitted under this Commercial Ground Lease, (ii) the Commercial Expenses for the immediately preceding Lease Year, and (iii) a computation of the Percentage Rent for the immediately preceding Lease Year. Each Annual Statement must be certified as accurate, complete, and current by an independent certified public accounting firm acceptable to MOHCD or the City's Director of Property in his or her sole discretion.

(ii) If Tenant fails to deliver any Annual Statement within the time period set forth in this subsection (regardless of whether any Percentage Rent is actually paid or due to City for the preceding Lease Year) and that failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of the failure from the City, the City will have the right, among its other remedies under this Commercial Ground Lease, to employ a certified public accountant to make an examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Commercial Parcel) as may be necessary to certify the amount of the Commercial Income and Commercial Expenses for the period in question. The

certification will be binding upon Tenant and Tenant will promptly pay to the City the total reasonable cost of the examination and the City's other reasonable costs (including attorneys' fees) in exercising its examination rights, together with the full amount of Percentage Rent due and payable for the period in question. Tenant acknowledges that the late submittal of any Annual Statement will cause the City increased costs not contemplated by this Commercial Ground Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that City will incur by reason of Tenant's lateness, but the City's acceptance of any such amount will not limit the City's rights or remedies under this Commercial Ground Lease for Tenant's failure to perform its obligations under this Section.

(c) Payments of Percentage Rent.

(i) On or before the one hundred twentieth (120th) day immediately following each anniversary of the Effective Date, Tenant will pay to the City, in addition to the Base Rent payable by Tenant, the Percentage Rent for the Lease Year immediately preceding such payment date. Notwithstanding anything to the contrary in the foregoing sentence, if this Commercial Ground Lease terminates before the anniversary of the Effective Date, then Tenant will pay to the City a final payment of Percentage Rent on or before the sixtieth (60th) day immediately following such termination, which payment shall be in an amount equal to forty percent (40%) of the Net Commercial Cash Flow for the period (i) between the last anniversary of the Effective Date before such termination date and (ii) the termination of this Commercial Ground Lease.

(ii) The City's acceptance of any sums paid by Tenant as Percentage Rent as shown by the applicable Annual Statement will not be an admission of the accuracy of the Annual Statement or the amount of the Percentage Rent payment. The City's receipt of a portion of Percentage Rent will be deemed strictly as rental and nothing in this Commercial Ground Lease will be construed to create the legal relation of a partnership or joint venture between the City and Tenant.

(iii) Tenant will maintain adequate accounting systems and controls reasonably satisfactory to Landlord to ensure that Commercial Income collected and all Commercial Expenses incurred are properly accounted for and recorded on a cash basis.

(iv) Any provision to the contrary notwithstanding, it will be a material breach of this Lease if, at any time, Tenant takes any action or enters into any arrangement or agreement with any subtenant of any portion of the Commercial Parcel, or Tenant's employees, creditors, officers or any other person which arrangement or agreement is intended to understate or to conceal Tenant's Percentage Rent under this Lease.

(d) Books and Records; Audit.

(i) "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to the business at or use of the Commercial Parcel, this Commercial Ground Lease, the tenant improvements, any alterations, and the operation and maintenance of the Commercial Parcel, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the business in or use of the Commercial Parcel, and any other bookkeeping documents Tenant utilizes in its business operations for the Commercial Parcel. Tenant must maintain a separate set of accounts to allow a determination of all Commercial Expenses, all Commercial Income generated directly from the Commercial Parcel, and all exclusions therefrom.

(ii) Tenant agrees that the business conducted in the Commercial Parcel will be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to the City is issued with each sale, whether for cash, credit, or exchange. Furthermore, Tenant will keep (and will cause its agents, subtenants, assignees, licensees, and concessionaires, or otherwise to keep) at the Commercial Parcel, at all times between the Effective Date and the expiration or earlier termination of this Commercial Ground Lease, complete and accurate Books and Records that contain all information required to permit the City to verify Commercial Income, deductions and exclusions therefrom, and Commercial Expenses that are in accordance with this Commercial Ground Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Commercial Parcel. Tenant will retain (and will cause its agents, subtenants, assignees, licensees, and concessionaires, or otherwise to retain) such Books and Records for a period (the "Audit Period") that is the later of (1) four (4) years after the end of each Lease Year (or portion thereof) to which such Books and Records apply or, (2) if an audit is commenced or if a controversy arises between the parties regarding the Percentage Rent payable, until such audit or controversy is terminated.

(iii) Tenant will make its Books and Records available to the City, any City auditor, or any auditor or representative designated by the City (each referred to in this subsection as "City's Audit Representative"), on no less than fifteen (15) business days' prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after an Annual Statement is delivered to the City. Tenant will cooperate with the City's Audit Representative during the course of any audit, provided however, such audit will occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records may be removed by City's Audit Representative without the prior express written consent of Tenant (but copies may be made by City's Audit Representative on site), and once commenced, with Tenant's cooperation, the audit will be diligently pursued to completion by the City within a reasonable time, so long as that Tenant makes available to the City's Audit Representative all the relevant Books and Records in a timely manner. If an audit is made of the Books and Records and the City claims that errors or omissions have occurred, the Books and Records will be retained by Tenant and made available to the City's Audit Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Commercial Parcel through one or more subtenants or agents or otherwise, Tenant will require each such subtenant or agent or other party to provide the City with the copy of this audit right. Upon completion of the audit, the City will promptly deliver a copy of the audit report to Tenant.

(iv) If an audit reveals that Tenant has understated its Net Commercial Cash Flow for the applicable audit period, Tenant will pay the City, promptly upon demand, the difference between the Percentage Rent payment Tenant has paid and the Percentage Rent payment it should have paid to the City, plus, if the difference is a material amount and if required by the City, interest from the date of the error in the payment equal to ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law, if the City elects to charge such interest. If an audit reveals that Tenant has overstated its Net Commercial Cash Flow for the applicable audit period, Tenant shall be entitled to a credit equal to the difference between the amount Tenant has paid and the amount it should have paid to City against the next installment of Percentage Rent owed by Tenant. If Tenant understates the Net Commercial Cash Flow for any audit period by three percent (3%) or more, Tenant will pay the reasonable cost of the audit. A second understatement of three percent (3%) or more within any three (3) Lease Year period will be a material default of this Commercial Ground Lease.

(e) Tenant's Compliance with City Business and Tax and Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Commercial Ground Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

2.3 Triple Net Lease. This Lease is a "triple net lease," and it means Tenant shall pay for all taxes, maintenance and other costs, charges, impositions and obligations attributed to the Commercial Parcel, Improvements located in the Commercial Parcel, and its leasehold interest under this Lease ("Carrying Costs"). If Landlord pays any Carrying Costs, whether to cure a default or otherwise protect its interests hereunder, and provided Landlord has provided Tenant with notice and an opportunity to cure, as required below in this Section 2.3, Tenant shall reimburse Landlord the Carrying Costs as Additional Ground Rent (as defined in Article 40) on the next Ground Rent payment date. Tenant is responsible for all of Tenant's expenses, and Landlord shall be indemnified against all liabilities and expenses arising from the development and operation of the Commercial Parcel, except those arising from Landlord's gross negligence or willful misconduct. Landlord shall not pay any Carrying Costs without providing at least fifteen (15) days prior written notice to Tenant unless for immediate safety reasons or to prevent cancellation of required insurance policies or to avoid the imposition of penalties if earlier payment is required, and in such instances Landlord shall provide written notice to the Tenant as soon as possible.

## ARTICLE 3 PAYMENT OF IMPOSITIONS

### 3.1 Taxes

(a) Tenant's Covenant to Pay Impositions. Subject to any available exemptions to the Tenant, Tenant covenants and agrees to pay, before delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all Impositions which are or may have been or shall be assessed, levied, confirmed, imposed or become a lien upon the Commercial Parcel or any part thereof that become payable until the later of (i) the last day of the Term, or (ii) the last day Tenant has possession of the Commercial Parcel. If any applicable law, code, regulation or rule permits Tenant to pay any such Imposition in installments, Tenant may pay the same (and any accrued interest thereon) in installments prior to delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof. As used herein, "Impositions" means all taxes and all transit taxes, possessory interest taxes associated with the Commercial Parcel and assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term of this Lease), taxes assessed by any governmental authority by virtue of any operations by Tenant conducted in on or out of the Commercial Parcel and the Improvements located thereon, fees, water, sewer or similar rents, rates and charges, excises, levies, vault license fees or rentals, license fees, permit fees, inspection fees and other authorization fees and other governmental charges of any kind or nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, except as expressly stated herein to the contrary (including all interest and penalties thereon), which at any time during or in respect of the period to the later of (i) the last day of the Term, or (ii) the later of the last day Tenant (a) is in or (b) has a right to possession of the

Commercial Parcel, may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Commercial Parcel, any buildings or Improvements which are now or hereafter located thereon, any Personal Property now or hereafter located thereon, on the leasehold estates created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease or on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or any part thereof. Tenant must pay or reimburse Landlord, as the case may be, for any fine, penalty, interest or cost which may be added by the collecting authority for the late payment or nonpayment of any Imposition required to be paid by Tenant hereunder. All Impositions imposed for the tax years in which Tenant vacates the Commercial Parcel will be apportioned and prorated between Tenant and Landlord. Upon demand made from time to time by Landlord, Tenant will furnish to Landlord for inspection, immediately upon receipt thereof, official receipts of the appropriate taxing authority, or other proof satisfactory to Landlord evidencing the payment of such Imposition.

(b) Landlord's Right to Pay . Unless Tenant is exercising its right to contest under and in accordance with the provisions of Article 4, if Tenant fails to pay and discharge any amounts payable pursuant to this Article 3 Landlord, at its option, may (but is not obligated to) pay or discharge the same; and the amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at an interest rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest accruing from the date of such payment, shall be deemed to be and shall be payable by Tenant as Additional Ground Rent (defined in Article 40) and must be reimbursed to Landlord by Tenant on demand.

### 3.2 Taxes, Assessments, Licenses, Permit Fees and Liens

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

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same pursuant to Article 4, below.

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

## ARTICLE 4 CONTESTS

4.1 Contests. Tenant has the right, after not more than ninety (90) days nor less than ten (10) business days prior written notice to Landlord, to contest the amount or validity of any

Imposition, Law or Ordinance, and/or lien by appropriate proceedings promptly initiated and conducted in good faith and with due diligence, at its sole cost and expense; provided, that (i) Landlord shall have determined reasonably that neither the Premises, nor any part thereof or interest therein, will be in danger of being sold, forfeited, terminated, canceled or lost, (ii) Tenant shall have furnished such security as may be required in such proceedings or as may from time to time be reasonably requested by Landlord, and (iii) Landlord shall have determined reasonably that Landlord shall not be in danger of being subjected to fines, penalties or criminal liability as a result of such contest. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Before any fine, interest, penalty or cost may be added thereto for nonpayment. Tenant must pay and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant. After such payment and discharge by Tenant, Landlord will promptly return to Tenant the unused portion of such security as Landlord received in connection with such contest, without interest. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at Tenant's sole cost and expense and with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises. Neither Landlord nor the Premises may be subjected to any liability for the payment of any fines, penalties, costs, fees, including attorneys' fees, or expenses in connection with any such proceeding, and Tenant covenants to indemnify, defend and hold harmless Landlord and the Premises from any such fines, penalties, costs, fees or expenses.

4.2 Contesting Impositions. At its own cost and after notice to Tenant of its intention to do so, by appropriate proceedings conducted in good faith and with due diligence, Landlord may but in no event shall be obligated to contest the validity, applicability and/or the amount of any Impositions. Landlord in so contesting any Imposition, shall hold all other parties harmless from and against any loss, cost or damage they suffer by reason of such contest. Nothing in this Section requires Landlord to pay any Impositions as long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the portion of the Premises affected thereby to be forfeited to the imposer of such Impositions as a result of its nonpayment. Landlord must give notice to all other parties within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

## ARTICLE 5 INSURANCE

5.1 Insurance Requirements for Tenant. Tenant must procure and maintain, or cause to be procured and maintained, insurance against claims for injuries to persons or damages to property or the Improvements on the Commercial Parcel which may arise from or in connection with Tenant's operation and use of the Commercial Parcel until the termination of the Commercial Ground Lease.

5.2 Minimum Scope. In order to satisfy the foregoing requirements, coverage must be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01) (any auto).

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

(d) Professional Liability. During the course of any construction within the Premises, Professional Liability Insurance covering all negligent acts, errors and omissions by all architectural and engineering professional consultants. Tenant must provide the City with copies of consultants' insurance certificates showing such coverage.

(e) Property Insurance. Property Insurance against all risks of direct physical loss to the Commercial Parcel and the Improvements, excluding earthquake or flood, during the course of construction. This insurance requirement may be met by obtaining the physical loss insurance required under the REA.

5.3 Minimum Limits. Tenant must maintain limits for the foregoing coverage of no less than:

(a) General Liability: Following Completion of Construction of the Clinic Project, \$2,000,000 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, the general aggregate limit must be twice the occurrence limit.

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

(c) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's 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.

(d) Professional Liability: \$1,000,000 per claim and in the annual aggregate covering all negligent acts, errors and omissions of all design/engineering consultants, including architects, engineers and surveyors. If the design/engineering consultants' Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the design/engineering consultants for no less than three (3) years beyond completion of construction.

(e) Property Insurance:

1. During the course of the Clinic Project construction:

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

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

2. Upon completion of Clinic Project:

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

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

3. As applicable, during the course of any Tenant or subtenant improvements:

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

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

4. Upon completion of Tenant or subtenant improvements: Following completion of construction, Full Replacement Value of the Clinic Improvements with no coinsurance penalty provision.

5.4 Other Insurance Provisions

(a) Additional Insured Endorsement. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: the Landlord and its officers, agents, employees and Supervisors are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Tenant; and liability arising out of work or operations performed by or on behalf of Tenant.



(b) Primacy of Tenant's Insurance. For any claims related to the Commercial Parcel during the Term, Tenant's insurance coverage must be primary insurance as respects the Landlord and its, officers, agents, employees and Supervisors. Any insurance or self-insurance maintained by Landlord, and its Supervisors, officers, agents or employees must be in excess of Tenant's insurance and shall not contribute with it.

(c) Insured Not Affected by Failure to Report. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Landlord and its Supervisors, officers, agents or employees.

(d) Written Notice Required to Effect Changes. Each insurance policy required by this Article 5 must 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 the Landlord.

5.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the City.

5.6 Verification of Coverage. Tenant must furnish City with certificates of insurance and with original endorsements effecting coverage required by this Article 5. 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. The certificates and endorsements may be on forms provided by the City. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

5.7 Contractors. Tenant must include any and all contractors with which it contracts directly as insureds under its policies or, upon request, must furnish separate certificates and endorsements for each contractor's coverage. All such coverage shall be subject to the requirements stated herein, unless otherwise approved by Landlord.

5.8 Assignment of Policies. Upon the termination or expiration of the Term, Landlord may require Tenant to assign to it all policies of insurance to be maintained by Tenant hereunder; provided, however, that all such policies that are not assignable by their terms and all such policies that would require the consent of any insurer, which consent is not obtained by Tenant in a timely manner, shall be canceled and all refunds of premiums with respect to all of such policies shall immediately be paid to Landlord. In the event of an assignment of any such policy, the premium will be prorated between Landlord and Tenant as of the date of such termination or expiration. In the event that an assignment is not required as to any policy or, in the case of a blanket policy, if coverage is terminated, any premium refund will be payable to Tenant.

5.9 Landlord Entitled to Participate. Except for the rights of Lenders, Landlord shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Hundred Thousand Dollars (\$500,000) (as Indexed) covered by the insurance required to be carried hereunder; provided, however, that (i) Landlord's consent shall not be unreasonably withheld, and (ii) no consent of Landlord shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Premises if Tenant shall have agreed to commence and complete restoration of the Premises in accordance with this Lease.

5.10 Release and Waiver of Subrogation. Each party hereby waives all rights of recovery and causes of action, and releases each of the other parties from any liability, losses and damages

occasioned to the property of each such party, which losses and damages are of the type covered under the policies required by this Section to the extent that said loss is reimbursed by an insurer.

## ARTICLE 6 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.1 Landlord May Perform in Emergency. Without limiting any other provision in this Lease, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that upon any failure by Tenant to pay any obligation and/or perform any act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder within the time provided herein for such payment and/or performance, which failure shall give rise to an emergency, as reasonably determined by Landlord, after using reasonable efforts to notify Tenant of Landlord's intent, Landlord may, but shall not be obligated to, pay any such obligation and/or perform any such act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder for and on behalf of Tenant.

6.2 Landlord May Perform Following Tenant's Failure to Perform. Without limiting any other provision in this Lease, but subject to the provisions of Article 35, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that if Tenant at any time fails to perform any act, covenant, term, condition or agreement on Tenant's part to be performed under this Lease, which failure to perform, in all cases other than as described in Article 6, continues for thirty (30) days after written notice from Landlord; then, Landlord may, but shall not be obligated to, perform any such act, covenant, term, condition or agreement for and on behalf of Tenant. If Landlord believes that Tenant has failed to perform an obligation set forth in this Lease, then before performing such obligation, Landlord shall give Tenant as much notice as reasonably possible.

6.3 Tenant's Obligation to Reimburse Landlord. If, pursuant to the provisions of Sections 6.1 and 6.2, Landlord shall pay and/or perform any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord immediately upon demand for all sums so paid by Landlord, including, without limitation, all costs and expenses and reasonable attorney fees, incurred by Landlord in connection with the performance of any such obligation by Landlord, regardless of which party actually completes the same, together with interest from the date Landlord incurs the cost or expense until paid at a per annum rate equal to the sum of the Prime Rate plus 5%, which rate shall be reduced to the extent that it exceeds the maximum rate permissible by applicable law.

## ARTICLE 7 COVENANTS AGAINST WASTE AND TO REPAIR AND MAINTAIN PREMISES

7.1 No Waste. Subject to the applicable provisions of this Lease, Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises.

7.2 Repair. Under no circumstances shall Landlord be obligated to make repairs or replacements of any kind or to maintain all or any portion of the Commercial Parcel, the Improvements on the Commercial Parcel or any portion thereof, as part of the consideration for rental, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced, or restated. Tenant covenants, throughout the Term, at Tenant's sole cost and

expense, to repair and maintain the Commercial Parcel and all buildings and Improvements now or at any time erected on the Commercial Parcel including all Personal Property within the Commercial Parcel owned by Tenant, in good and clean order, condition and repair, as may be necessary to maintain the same in first- class condition and in compliance with all applicable laws and governmental regulations, and promptly, at Tenant's own cost and expense, to make or cause others to make all necessary or appropriate capital and operating repairs, renewals and replacements, whether structural or non- structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted, to the extent that the same is consistent with maintenance of the Commercial Parcel in a first-class condition, with materials, apparatus and facilities as originally installed and approved by Landlord under this Lease, or, if not originally subject to Landlord approval or not available, with materials, apparatus and facilities of quality at least equal in quality, appearance and durability of the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, and durability to and in all respects consistent with the original work.

### 7.3 Replacement Reserve.

(a) Commencing no later than December 30, 2023, or any other date thereafter the City designates in writing, Tenant must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before each anniversary of each month following establishment of the Replacement Reserve Account, Tenant must make annual deposits from Tenant's Annual Revenue into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. Landlord may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary, provided that no upward adjustment will be in excess of 10 percent. In addition, if 4840 Mission Housing Associates, LP (the "Partnership") is the current tenant under the lease on or after December 30, 2023, the City may extend the dates that the reserve deposits commence and the required reserve payments will be made only to the extent there is Net Commercial Income sufficient to make such payments.

(b) Tenant must deliver to Landlord an updated CNA every ten (10) years after the Effective Date for approval. The updated CNA must include an analysis of Tenant's actual expenditures for capital needs compared to the most recently approved CNA, Tenant's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

(c) Annual deposits must equal the lesser of: (i) 0.6% of Replacement Cost, or (ii) \$30,000. After the Project's first five (5) years of operation, Tenant may request adjustments every ten (10) years based on its most recently approved CNA.

(d) Tenant may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Clinic Improvements, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Clinic Improvements that are reasonably required to preserve the Clinic Improvements. Tenant may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval.

7.4 Other Reserve Requirements. If City and Tenant agree to change the permitted use of the Premises under Article 15, Tenant shall establish a segregated interest-bearing depository accounts for (1) a commercial leasing reserve, and (2) tenant improvement reserve, each subject to review and prior written approval by City. In addition, if 4840 Mission Housing Associates,

LP (the "Partnership") the required reserve payments will be made only to the extent there is Net Commercial Income sufficient to make such payments.

7.5 Return of the Commercial Parcel. The Commercial Parcel, together with all Improvements thereon, repairs, alterations, additions, substitutions and replacements thereto or thereof shall be surrendered to Landlord upon the expiration or earlier termination of the Term subject to reasonable wear and tear.

## ARTICLE 8 LEASED PROPERTY CONDITION

8.1 AS-IS Condition. The Premises are being leased, as applicable, "AS IS," without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession, and Tenant agrees to take possession of the Premises in its "AS IS" condition on the Effective Date, subject to the provisions of this Lease. Tenant acknowledges and agrees that Tenant is familiar with the Premises. Tenant represents and warrants to City that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Improvements (including, but not limited to the substructure), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

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

8.3 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances, as identified in the Phase 1 and phase 2 prepared by Group Delta on April 28, 2017 as updated (Phase 1) and September 17, 2015 (Phase 2)/15 and the Subsurface Analysis Report and Site Mitigation Report dated 10/12/2020

## ARTICLE 9 UTILITY SERVICES

In no event shall Landlord be obligated to provide any utility, sewer, mechanical or other services with respect to the Premises or any portion thereof. Tenant will pay or cause to be paid as the same become due all charges for all public or private utility services at any time rendered to or in connection with the Premises or any part thereof and will do all other things required for the maintenance and continuance of all such services. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any failure by Landlord to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Premises, gas, electric or telephone services.

## ARTICLE 10 DAMAGE OR DESTRUCTION

10.1 Notice. In case of any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, Tenant will promptly but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Landlord describing, with as much specificity as is reasonable, the nature and extent of such damage or destruction.

10.2 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, subject to written approval of the First Mortgage Lender; 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 Commercial 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 Commercial 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 Commercial Ground Lease pursuant to its right to do so under this Section 10.2, or elects not to restore the Improvements, the insurance proceeds shall be disbursed in the order set forth in Section 10.3 below.

10.3 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, terminate this Commercial Ground Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Section 10.3 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 Commercial Ground Lease pursuant to this Section 10.3, 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 10.4. If Tenant does not have the right, or elects not to exercise the right, to terminate this Commercial 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, subject to First Mortgage Lender's written approval, in accordance with the provisions of Section 10.2.

10.4 Distribution of the Insurance Proceeds. In the event of an election by Tenant to terminate and surrender as provided in either Section 10.01 or 10.02, 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 of their respective Leasehold Mortgages;

(b) Second, to pay for the cost of removal of all debris from the Commercial Parcel 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 Commercial Parcel as a raw development site caused by or arising from the damage or destruction; and

(d) The remainder to Tenant.

10.5 Clean Up of Commercial Parcel. In the event the Tenant terminates this Commercial Ground Lease pursuant to the provisions of Article 10 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 10.4(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

## ARTICLE 11 CONDEMNATION

11.1 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Commercial Ground Lease, there is any condemnation of all or any part of the Commercial Parcel 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 11, subject to the rights of any Lender.

11.2 Total Taking. If the Commercial Parcel is totally taken by condemnation, this Commercial Ground Lease shall terminate on the date the condemner has the right to possession of the Site.

11.3 Partial Taking. If any portion of the Commercial Parcel is taken by condemnation, this Commercial Ground Lease shall remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Commercial Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Commercial Parcel. If Tenant elects to terminate this Commercial 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 Commercial Ground Lease as provided in this Section 11.3, 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 Commercial Ground Lease shall terminate on the date the condemner has the right to possession of the Commercial Parcel if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Commercial Ground Lease within such thirty (30) day notice period, this Commercial Ground Lease shall continue in full force and effect.

11.4 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.

11.5 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 11.3, Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements, upon receipt of First Mortgage Lender's written approval.

11.6 Award and Distribution. Any compensation awarded, paid or received on a total or partial condemnation of the Commercial Parcel or threat of condemnation of the Commercial Parcel shall belong to and be distributed in the following order:

(a) First, to pay the any balance due on any outstanding Leasehold Mortgages in accordance with applicable loan documents and other outstanding or unpaid obligations and/or liabilities that could result in a lien on the Premises; and

(b) Second, to the Tenant.

11.7 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 12 LIENS.

12.1 No Liens. Tenant will not directly or indirectly create or permit the creation of or to remain, and will immediately discharge, any mortgage, deed of trust, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Premises, the Improvements thereon, or any part thereof or all or any portion of Tenant's interest therein, other than (i) this Lease and Space Subleases approved by City, (ii) liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for nonpayment, or being contested as permitted by Article 4, (iii) the Permitted Exceptions, and (iv) the Mortgages by the First Senior Lender and the City.

12.2 Entry. Tenant shall permit Landlord and the authorized representatives of Landlord to enter the Premises at all reasonable times (and at any time in the event of emergencies) for the purpose of (i) inspecting the same and (ii) pursuant to the provisions of Sections 6.1 and 6.2, performing any work therein that may be performed by Landlord in accordance with such Sections. Nothing herein shall imply any duty upon the part of Landlord to do any such work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability whatsoever, for the care, supervision or repair of the Premises. During the progress of any work on the Premises, Landlord may keep and store therein all necessary materials, tools and equipment required for such work, which must be stored therein. Landlord shall not in any event be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of any such work on the Premises, or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof.

12.3 Exhibit for Sale or Lease. Landlord has the right during normal business hours to enter the Premises (a) at any time during the Term, to exhibit the same in a reasonable manner for the purpose of selling, transferring or otherwise conveying all or any portion of its interest in the Premises; and (b) during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

12.4 Notice. Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency.

#### ARTICLE 13 ASSIGNMENT, TRANSFER, SIGNIFICANT CHANGE AND SUBLEASING

13.1 Landlord's Consent Required for Transfer. Except for an assignment of this Commercial Ground Lease to MNHC under the JDA, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, (ii) assign any interest in this Lease either voluntarily or by operation of law, or (iii) sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, in each case, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord. Notwithstanding any provision herein to the contrary, for so long as the Partnership remains the tenant under this Lease, Tenant may cause or permit the following: (a) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion, (b) transfers from Tenant to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Tenant or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity; (c) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by the City; (d) transfers of any limited partnership or membership interest in Tenant to an investor under the tax credit syndication of the Project and/or as otherwise permitted by Tenant's Partnership Agreement; (e) any transfer by foreclosure or deed in lieu of foreclosure; (f) if the Tenant is a Lender (or a Lender's affiliate), transfers of ownership interests in such Lender (or its affiliate); or (g) the grant or exercise of an option agreement between Borrower and Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by the City; or (h) to remove or replace the General Partner in accordance with the terms of the Partnership Agreement, a transfer of any general partnership interest to a new general partner approved in advance by the City. Further, City will not unreasonably withhold or delay its approval of the removal or replacement of a General Partner by the Permitted Limited Partner, pursuant to the terms of the Tenant's Partnership Agreement.

13.2 Assignment Subject to Assumption of Performance Obligation. Except for an assignment of this Commercial Ground Lease to MNHC under the JDA, no assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes performance of the obligations on the assignor's part to be performed under this Lease to the end of the Term. Landlord consents to a transfer of this Lease and Tenant's rights and obligations under this Lease to MNHC in accordance with the JDA.

13.3 Tenant and Transferee Obligations. The consent by Landlord to an assignment hereunder is not in any way to be construed to (i) from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under this Lease prior to the date of such assignment, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further assignment or to any Significant Change. Notwithstanding anything to the contrary in this Lease, from and after the date that the Partnership assigns this Lease to MNHC, Partnership will be released from its rights and obligations under this Lease.

13.4 Tenant Notice to Landlord of Any and All Significant Changes. Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may



reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of the Tenant, setting forth all of the members of the board of directors of Tenant. Such lists, data and information must in any event be furnished to Landlord annually at the end of each Lease Year (defined in Article 40 of this Lease).

13.5 Landlord's Review of Proposed Transfer. At any time Tenant may submit a request in writing to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referred to herein as a "proposed transfer") or for a decision by Landlord as to whether in its opinion a proposed transfer requires Landlord consent under the provisions of this Article 13. Tenant's request for a proposed transfer must comply with the following:

(i) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and agree to be subject to all of the conditions and restrictions to which Tenant is subject; provided, however, that the fact that any transferee of this Lease, or any other successor in interest whatsoever to this Lease, whatsoever the reason, does not assume such obligations will not relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or the construction of the Improvements unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Landlord. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Landlord would have had, had there been no such transfer or change;

(ii) all instruments and other legal documents involved in effecting transfer shall have been submitted to Landlord for review, and Landlord shall have approved such documents which approval shall not be unreasonably withheld or delayed; and Tenant shall have complied with the provisions of this Article 13.

13.6 Reserved.

13.7 Landlord's Sale or Assignment. Landlord has the right to sell and/or assign all or any portion of its interest in all or any portion of the Premises and/or this Lease, without the prior written consent of Tenant, provided, however, that no such transfer of the Premises may be effective until there is delivered to Tenant an agreement of the transferee reasonably satisfactory to Tenant expressly assuming all of Landlord's obligations hereunder with respect to those portions of the Premises so transferred, which obligations arise from and after the date of transfer. Upon delivery of such agreement, Landlord will be relieved of all obligations hereunder arising from and after the date of such transfer with respect to those portions of the Premises so transferred. Notwithstanding the foregoing, and without limiting the provisions thereof, Landlord agrees that if Landlord offers to sell its interest in all or any portion of the Premises to any person or entity, Landlord shall negotiate first with Tenant for the sale of such portion or portions of the Premises or portions thereof, to Tenant on terms and conditions satisfactory to Landlord and Tenant. If Landlord negotiates with Tenant, but the parties cannot agree upon terms and conditions satisfactory to both of them within sixty (60) days of commencement of such negotiations, Landlord may sell its interest in all or any portion of the Premises, to any other person or entity upon any terms Landlord may negotiate and/or accept, including terms less favorable to Landlord, without negotiating further with Tenant.

## ARTICLE 14 INDEMNIFICATION OF LANDLORD

Tenant will protect, indemnify, defend, and hold Landlord and its officers, directors, employees, agents, successors, assigns and Supervisors (each, an "Indemnified Party") harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of legal counsel) imposed upon or incurred by or asserted against any such Indemnified Party or the Premises by reason of the occurrence or existence of any of the following (except to the extent such losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses arise from the gross negligence or willful misconduct of the Indemnified Party): (a) any accident, injury to or death of persons (including workers) or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, streets, vaults, passageways, spaces or ways; (b) any use, possession, occupation, operation, maintenance, management or condition of the Premises or any part thereof or the adjoining sidewalks, alley, curbs, streets, vaults, passageways, spaces or ways; (c) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; (e) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, sublessees, licensees or invitees; (f) the death of or any accident, occurrence, injury, loss or damage whatsoever caused to any natural person or to the property of any persons as shall occur in or on the Premises during the Term hereof; or (g) any Hazardous Material Claims. In case any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to furnish indemnity to such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding, and Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the foregoing, this Article 14 shall not be deemed or construed to and shall not impose any obligation to indemnify and save harmless the Indemnified Parties 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 an Indemnified Party.

## ARTICLE 15 USE OF PREMISES; CHANGE OF USE; SURRENDER OF PREMISES

15.1 Permitted Uses. The permitted uses of the Commercial Parcel is limited to the following: (a) operation of a licensed community health clinic, (b) meeting with individuals or groups of the community health clinic on weekday, weekends, and evenings, (c) clinic health events, (d) staff training and staff meetings, and (e) community-serving events consistent with Tenant's charitable purpose. Tenant may use the Commercial Parcel for other Public Benefit Use with the prior written approval of the City and that are compatible with the use and operation of the Residential Project, and for no other purposes. Any other commercial uses of the Commercial Parcel are subject to City's prior written approval, in the City's sole and absolute discretion. If City approves of a change in use, Tenant will pay to City the Percentage Rent and agree to any amendments to this Commercial Ground Lease or other conditions required by City.

15.2 Prohibited Uses. Except as otherwise consented to in writing by Landlord, which consent Landlord may withhold in its sole and absolute discretion, the uses prohibited on the Premises are as follows:

(a) Prohibited Uses. No part of the Premises shall be used or operated for: (i) any use which violates any applicable zoning ordinance, (ii) any unlawful or disreputable purpose or any

activity which is inappropriate for a comparable mixed-use residential complex conducted in accordance with good and generally accepted standards of operations, or (iii) any activity that exposes occupants or permittees to health or safety risks. No noxious or offensive activities shall be carried on, upon or within the Premises, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable disturbance, or hazard or annoyance to the Residential Project, or its residents.

(b) Other Prohibited Uses. Other uses not permitted under the City Codes, and any use causing excessive noise, odor or hazardous materials in quantities that could damage the residential project or disrupt the residential occupants, including, but not limited to the following:

(i) any activity, or the maintaining of any object, that is not within the Permitted Use;

(ii) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents, or cause a substantial increase in the cost of insurance for City or the Residential Project;

(iii) any activity or object that will overload or cause damage to the Premises;

(iv) any activity that constitutes a public or private nuisance or waste, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;

(v) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(vi) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of the City, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of the City;

(vii) any vehicle and equipment maintenance, including but not limited to, washing, fueling, changing oil, transmission or other automotive fluids;

(viii) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except to the extent necessary during construction of the Project;

(ix) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except to the extent necessary during construction of the Project;

(x) the washing of any vehicles or equipment; or

(xi) bars, retail liquor sales, marijuana sales, or any other uses that cater exclusively to adults.

15.3 Compliance with Reciprocal Easement Agreement. Tenant shall at all times comply with the provisions in the REA and shall require in the Space Sublease that all Space Subtenants, if applicable, comply with the REA.

15.4 Reserved.

15.5 Purchase of Personal Property by Landlord. At the termination of this Lease, if no Event of Default exists, Landlord has the right to purchase all Personal Property, including, without limitation, all signs, furniture, furnishings, equipment and supplies, placed in or on the Premises by Tenant, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant. at a price, determined by Tenant and agreed to by Landlord, not to exceed the fair market value thereof. If at the termination of this Lease, no Event of Default exists and Landlord elects not to purchase such Personal Property, Tenant must remove all such Personal Property within sixty (60) days of the termination of this Lease. If Tenant fails to remove such Personal Property within said period of time, such Personal Property will be deemed abandoned by Tenant and become the property of Landlord.

15.6 Surrender. Subject to the limitations of Section 15.4, Tenant must surrender to Landlord the Improvements, all other leased property and renewals and replacements thereof in good order, condition and repair, normal wear and tear excepted, upon termination of this Lease. Upon termination of this Lease, Landlord has the right to terminate all Space Subleases (if applicable). At the request of Landlord, Tenant must surrender the Premises to Landlord free of all Personal Property and fixtures belonging to Tenant, and in any event, Tenant must repair any damage to the Premises caused by such removal.

15.7 Temporary Cessation of Business. Temporary cessation of business by Tenant when necessary for the purpose of making alterations, repairs or Restoration or by reason of such reasonable interruptions as may be incidental to the conduct of its business will not be deemed a discontinuance of the operation of Tenant so long as the Premises are reopened promptly upon completion of such act or event. Nothing contained in this Section limits the effect of the Force Majeure provisions herein.

## ARTICLE 16 QUIET ENJOYMENT

Subject to the Permitted Exceptions, Landlord covenants and agrees that Tenant, upon observing and keeping all of the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy said Premises during the Term without hindrance or molestation of anyone claiming by, through or under Landlord.

Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event of any defect in the title of Landlord whether or not such defect affects Tenant's rights of quiet enjoyment and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant and Tenant's sole remedy shall be to obtain compensation for such event by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

## ARTICLE 17 EVENTS OF DEFAULT; TERMINATION

17.1 Events of Default.

The occurrence of any one or more of the following events, which event shall not have been cured as provided in this Commercial Ground Lease, shall constitute an "Event of Default" under the terms of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which has or might have the effect of preventing Tenant from complying with the terms

of this Lease). Notwithstanding any provision in this Lease to the contrary, no Event of Default will be deemed to have occurred until the Mortgagees and Permitted Limited Partners have been notified as required by Section 35.10 and the applicable period of time in which the Mortgagees may cure the Event of Default pursuant to Section 35.10 has expired without the Event of Default having been cured.

(a) Failure to Pay Ground Rent Within Certain Time Period. Tenant shall fail to pay any Ground Rent, in the manner prescribed in Section 2.1 of the Lease, when due to Landlord within five (5) days after notice thereof from Landlord.

(b) Failure to Terminate Certain Proceedings Within Certain Time Period. Subject to the provisions of Sections 28.2 and 28.3, the filing by or against Tenant of any proceedings under any state or federal insolvency or bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(c) Failure to Stop Certain Order for Relief Under Certain Conditions. Subject to the provisions of Sections 28.2 and 28.3, the entry of an order for relief against Tenant under any bankruptcy or reorganization case which order has not been stayed or dismissed within sixty (60) days;

(d) Final Appointment of a Receiver Under Certain Conditions. Subject to the provisions of Sections 28.2 and 28.3, the appointment of a receiver, trustee or custodian of all or any part of the property of Tenant which appointment with respect to Tenant is not dismissed or stayed within sixty (60) days; provided, however, that the appointment of a receiver pursuant to the exercise by a Mortgagee of its rights under a Mortgage shall not be an Event of Default hereunder;

(e) Unauthorized Assignment of Certain Property. Except for a transfer by the First Mortgage Lender through foreclosure or deed in lieu of foreclosure, the assignment of all or any part of the Commercial Parcel, by Tenant;

(f) Tenant's Failure to Notify Landlord Within Certain Time Period in Filing Certain Proceedings. The failure of Tenant to give written notice to Landlord of Tenant's intention to commence proceedings under any state or federal insolvency, bankruptcy or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, at least thirty (30) days prior to the commencement of such proceedings;

(g) Failure to Release Attachment Within Certain Time Period. A writ of attachment or execution is levied on this Lease which is not released within sixty (60) days;

(h) Abandonment of Premises Under Certain Conditions. Except as permitted by Article 11, the Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within thirty (30) days after notice thereof from Landlord;

(i) Unauthorized Assignment of, or Changes to, this Lease Under Certain Conditions. Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises in violation of this Lease, which violation is not remedied within thirty (30) days after notice thereof from Landlord;

(j) Failure to Comply With Lease Terms Under Certain Conditions. Tenant shall fail to perform or comply with any other term hereof, and such failure shall continue beyond the

applicable cure period, if any, or, if none, for more than thirty (30) days after notice thereof from Landlord, or if such default cannot reasonably be cured within such thirty (30)-day period, Tenant shall not within such period commence with due diligence and dispatch the curing of such default, or having so commenced, shall thereafter cease, fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

17.2 Special Provisions Concerning Mortgagees and Events of Default. Notwithstanding anything in this Lease to the contrary, however, the exercise by a Mortgagee of any of its remedies under its Mortgage or the exercise by the City of any of its remedies under the Residential Ground Lease shall not, in and of itself, constitute a default under this Lease.

17.3 Rights of Permitted Limited Partner. For so long as the Partnership is the tenant under this Lease, the following will apply to this Lease:

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

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

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

## ARTICLE 18 IMPROVEMENTS

18.1 Construction of Clinic Project.

(a) Schedule of Performance. Tenant agrees to undertake and complete all physical construction of the Clinic Project as approved by the City, in accordance with the Schedule of Performance, Attachment \_\_\_\_\_. [ need to see -will this match residential schedule?]

(b) General Requirements and Rights of City. All construction documents, including but not limited to preliminary and final plans and specifications for the construction of the Improvements by Tenant (collectively the "Construction Documents") must be prepared by a person registered in and by the State of California to practice architecture and must be in conformity with this Ground Lease, including any limitations established in the City's reasonable approval of the schematic drawings, if any, preliminary construction documents, and final construction documents for the Premises, and all applicable Laws. The architect will use, as necessary, members of associated design professions, including engineers and landscape architects. [Notwithstanding anything to the contrary contained in this ARTICLE 18, the City hereby acknowledges that for purposes of this Ground Lease, the Final Construction Documents for the Cold Shell Improvements have been approved as of the Agreement Date.].

(c) City Approvals and Limitation Thereof. The Construction Documents must be approved by the City in the manner set forth below:

(1) Compliance with Commercial Ground Lease. The City's approval with respect to the Construction Documents is limited to determination of their compliance with this Commercial Ground Lease. The Construction Documents will be subject to general architectural review and guidance by the City as part of this review and approval process.

(2) MOHCD Does Not Approve Compliance with Construction Requirements. The City's approval is not directed to engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Tenant further understands and agrees that City is entering into this Ground Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Ground Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards, or commissions having jurisdiction over the Premises. By entering into this Ground Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

(d) Construction to be in Compliance with Construction Documents and Law.

(1) Compliance with City Approved Documents. The construction must be in compliance with the City-approved Construction Documents.

(2) Compliance with Local, State and Federal Law. The construction must be in strict compliance with all applicable Laws. Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted under this Ground Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant may not seek any regulatory approval without first obtaining the written consent of City as Landlord under this Ground Lease. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and City will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 14 above) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval.

(e) Approval of Construction Documents by City. Tenant will submit and City will approve or disapprove the Construction Documents referred to in this Ground Lease within the times established in the Schedule of Performance, so long as each set of the applicable Construction Documents are complete and properly submitted within the time frames set forth in the Schedule of Performance. Failure by City either to approve or disapprove within the times established in the Schedule of Performance will entitle Tenant to a day for day extension of time for completion of any activities delayed as a direct result of City's failure to timely approve or disapprove the Construction Documents. [City hereby acknowledges that, as Landlord under this Ground Lease, as of the Agreement Date, MOHCD has approved the Construction Documents for the Cold Shell Improvements.]

(f) Disapproval of Construction Documents by City. If the City disapproves the Construction Documents in whole or in part as not being in compliance with this Ground Lease, Tenant will submit new or corrected Construction Documents which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents will continue to apply until the Construction Documents have been approved by the City; provided, however, that in any event Tenant must submit satisfactory Construction Documents (i.e., approved by City) no later than the date specified therefor in the Schedule of Performance.

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

(h) Performance and Payment Bonds. Before commencement of construction of the Cold Shell Improvements, Tenant will deliver to City performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds will name the City as co-obligee, or such other completion security which is acceptable to the City. [The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and City as co-obligees.]

(i) City Approval of Changes after Commencement of Construction. Tenant may not approve or permit any change to the Construction Documents approved by the City without the City's prior written consent. City approval of any change orders during the initial construction of the Clinic Improvements, will be provided in the manner set forth in the Residential Ground Lease (which references the Loan Agreement between Landlord and Tenant dated substantially concurrently herewith.).

(j) 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 will promptly begin and diligently prosecute to completion the construction of the Improvements upon the Site, and that such construction will be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by the City.

(k) Force Majeure. For the purposes of any of the provisions of this Ground Lease, and notwithstanding anything to the contrary, neither the City nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and completion of 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 limited to, acts of God, acts of the public enemy, terrorism, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, acts of the government or other party, or delays of subcontractors due to such causes or unusual scarcity of materials or labor, or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, will be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and its causes in writing within thirty (30) days after the beginning of any such enforced delay and requested an extension for the reasonably estimated period of the enforced delay; and, provided further, that this paragraph does apply to, and nothing contained in this paragraph will extend or will be construed to extend, the time of



performance of any of Tenant's obligations to be performed before the commencement of construction, and the failure to timely perform pre-commencement of construction obligations will not extend or be construed to extend Tenant's obligations to commence, prosecute, and complete construction of the Improvements in the manner and at the times specified in this Ground Lease.

(l) Reports. Commencing when construction of the Cold Shell Improvements commences and continuing until completion of construction of the Clinic Project, Tenant will make a report in writing to the City every month, in such detail as may reasonably be required by the City, as to the actual progress of the Tenant with respect to the construction. The MOHCD Monthly Project Update required under the MOHCD Loan Documents will satisfy this requirement.

(m) Access to Site. As of the Effective Date and until the City issues a Certificate of Completion (as defined in Section 18.2 below), Tenant will permit City access to the Premises whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever City believes that emergency access is required. After the City's issuance of a Certificate of Completion, access to the Premises will be governed by ARTICLE \_\_\_\_, below.

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

(m) Completion of Improvements by New Developer. In the event a Mortgagee 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) the New Developer will not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but will 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 City, (b) the New Developer will 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 City and the New Developer under the following clause (c); and (c) City and New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to this Section 18.1 as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

## 18.2 Changes to the Improvements.

(a) Post Completion Changes. The City has a particular interest in the Commercial Parcel 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 Commercial Parcel and on the Improvements: during the term of this 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 City and obtained, and, if obtained, upon such terms and conditions as the City may require. The City agrees not to withhold or delay its response to such a request unreasonably

(b) Definition of Change. "Change" as used in this Article means any alteration, modification, addition and/or substitution of or to the Commercial Parcel and the Improvements

which differs materially from that which existed upon the completion of construction of the Improvements, and shall include without limitation the exterior design, exterior materials and/or exterior color, and/or relocation or removal of either the control room, the transformer room, or both. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. [ BRIDGE/MHNC to confirm location of control room and transformer room.] “Change” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Project, any tenant improvements to the Commercial Parcel installed for a permitted use of the Commercial Parcel, or as may be required in an emergency to protect the safety and well-being of the employees, guests and invitees of the Tenant.

(c) Enforcement. The City 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, including without limitation any threatened breach thereof or any actual breach or violation thereof.

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

#### 18.4 Tenant Improvements.

(a) Tenant shall be responsible, at no cost to the City, for performing any work or construction related to the Clinic Improvements, at Tenant’s expense, only by duly licensed and bonded contractors or mechanics, and subject to any conditions that City may reasonably impose. Tenant shall further be responsible, at no cost to the City, for obtaining all permits and licenses required in connection with the Clinic Improvements. Upon completion of the Clinic Improvements, Tenant shall furnish City with a copy of the final as-built plans and specifications. No approval by City of the Plans, any changes thereto or of any alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant’s use hereunder, and nothing herein shall limit Tenant’s obligation to obtain all such regulatory approvals at no cost to the City.

(b) Tenant and its subtenants shall comply with the applicable requirements of San Francisco Administrative Code Section 6.22(G) in the performance of the Tenant Improvement Work, as further set forth in Section 36.19 below.

### ARTICLE 19 REMEDIES

The provisions of this Section 19 and the exercise of Landlord's remedies are subject to the limitations on recourse set forth in Article 31.

#### 19.1 Landlord's Remedies Generally.

(a) Landlord's Rights and Tenant's Obligations Under an Event of Default.

Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, and this Lease shall continue in effect and Landlord shall have the right to collect, Ground Rent, Additional Ground Rent and other sums when and as they become due.

if Tenant abandons the Premises in violation of this Lease, Landlord may enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant's rights, if any, to any such notice under any applicable law being hereby waived, and alter or install or modify the Improvements at the Premises, or any portion thereof, and Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, the reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile expenses, brokers' fees or commissions, the costs of removing and storing the property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of restoration and of repairing and maintaining the Premises or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(b) Lease May Not Terminate Without Landlord's Consent. No act by Landlord allowed by this Section 19.1 shall terminate the Lease unless Landlord notifies Tenant that Landlord elects to terminate the Lease.

(c) Lease Termination Requires Landlord To Notify the Tenant. Landlord may terminate Tenant's right to possession of the Premises or this Lease or both at any time after the occurrence of an Event of a Default by giving written notice of such termination, and such termination shall then occur on the date set forth in such notice. Acts of maintenance and efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice to Tenant shall terminate this Lease.

(d) Cessation of Tenant's Rights to Sublet or Assign. Upon the occurrence of an Event of Default, Tenant shall have no right to sublet or assign its interest in the Premises and/or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and unfettered discretion.

(e) Landlord's Remedies Are Cumulative. The remedies given to Landlord in this Section shall be in addition and supplemental to all other rights or remedies which Landlord may have at law or in equity.

(f) At the termination of this Lease, if an Event of Default exists, title to all Personal Property, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, will vest in Landlord without any further action of any parties

## 19.2 Continuation of Subleases and Other Agreements.

Except as provided in Article 17, in case of default by Tenant in the performance of any of the terms, covenants or agreements herein contained on the part of Tenant to be done, observed, kept and performed and the continuance thereof for the period hereinbefore provided for, or if Landlord shall for any lawful reason or cause recover or come into possession of the Premises before the date hereinbefore fixed for the expiration of the Term hereof, Landlord shall have the right, at its sole option, to take over any and all Space Subleases of the Premises, if applicable, or any part thereof and all concessions and licenses and agreements by Tenant for the maintenance thereof or supplies thereof, and at Landlord's option to have and succeed to all the risks and privileges of said Space Subleases, or concessions, licenses or agreements, or such of them as it may elect to take over and assume, and Tenant upon any such default by Tenant or recovery of possession by Landlord hereby expressly assigns and transfers to Landlord such of the Space Subleases, or concessions, licenses and agreements as Landlord may elect to take over and assume as may exist and be in force and effect at the time of said default and recovery of

possession and all deposits with Landlord pursuant thereto; and Tenant hereby further expressly covenants that, upon request of Landlord, Tenant will execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest in Landlord the then existing Space Subleases of said Premises or any part thereof and the licenses, concessions and agreements then in force, as above specified.

#### ARTICLE 20 LANDLORD'S EQUITABLE RELIEF

No expiration or termination of this Lease pursuant to the terms hereof or by operation of law or otherwise and no repossession of the Premises or any part thereof pursuant to the term hereof or by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder arising prior to termination of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Landlord for indemnification for liability, personal injuries or property damage, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief does not impose personal liability on Tenant which is inconsistent with the provisions of Article 32.

#### ARTICLE 21 NO WAIVER BY LANDLORD OR TENANT

No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial Ground Rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

#### ARTICLE 22 DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Remedies. Landlord shall be deemed to be in default hereunder if Landlord shall fail to perform or comply with any term hereof and such failure shall continue for more than the time of any cure period provided herein, or, if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon such default by Landlord, Tenant may exercise any remedy available at law or at equity. including, but not limited to, specific performance.

22.2 Survival of Certain Obligations. Subject to the provisions of Section 22.1, no expiration, termination or repossession of this Lease pursuant to the term hereof or by operation of law or otherwise, shall relieve Landlord of its liabilities and obligations hereunder arising prior to such expiration, termination or repossession of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Tenant for indemnification for liability, for personal injuries or property damage.

#### ARTICLE 23 ACCEPTANCE OF SURRENDER

No modification, termination or surrender of this Lease or surrender of the Premises or any part thereof or of any interest therein by Tenant shall be valid or effective unless agreed to and accepted in writing by Landlord and Mortgagee, and no act by any representative or agent of

Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an acceptance thereof.

#### ARTICLE 24 NO MERGER OF TITLE

There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by this Lease and (ii) the fee estate in the Premises shall join in and record a written instrument effecting such merger.

#### ARTICLE 25 END OF LEASE TERM

Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Landlord the Premises in first-class order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in a first-class condition. Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence such termination of this Lease. Any holding over by Tenant after the expiration or termination of this Lease shall not constitute renewal hereof or give Tenant any rights hereunder or in the Premises, except with the prior written consent of Landlord, and Tenant shall be a Tenant at sufferance hereunder. Ground Rent during such periods of holding over shall be at the rate of one hundred and fifty percent (150%) of all Ground Rent, which Ground Rent (shall be computed on an actual basis) shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding nine-quarter period.

#### ARTICLE 26 PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

#### ARTICLE 27 CUMULATIVE REMEDIES; NO WAIVER

Subject to the provisions of Article 31, the specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled. The failure of Landlord to insist in anyone or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Landlord for Ground Rent with knowledge of the breach of any covenant hereto shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant. Subject to the provisions of Articles 31 and 32, in addition to the other remedies in this Lease provided, Landlord and Tenant shall be entitled to the restraint by injunction of the violation, or threatened violation, of any of the covenants, conditions, or provisions of this Lease, or to a decree compelling performance of any of such covenants, conditions or provisions.

## ARTICLE 28 NOTICES

### 28.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any party to the other shall be in writing. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date sent if served personally on a day that is a business day, or, if mailed, on the date that is three days after the date when sent in the United States registered or certified mail, return receipt requested, postage prepaid, in either case, addressed as follows:

If to Tenant:

4840 Mission Housing Associates LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: Executive Director

With a copy to the Permitted Limited Partners at:

Bank of America, N.A.  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attn: Asset Manager for 4840 Mission

With copy to: Buchalter, A Professional Corporation  
1000 Wilshire Blvd. Suite 1500  
Los Angeles, CA 90017  
Attn: Michael Williamson  
Re: 4840 Mission (B0965-0551)

After transfer under JDA:

Mission Neighborhood Health Center  
240 Shotwell Street  
San Francisco, CA 94110  
Attn: Chief Executive Officer

If to Landlord:

The San Francisco Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Executive Director

or at such other place or places in the United States as each such party may from time to time designate by written notice to the other.

### 28.2 Form and Effect of Notice.

Every notice given to a party or other person under this Section must state (or must be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto; and
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) did not fully comply with the requirements of Subsection 28.2(a) and (b). The effectiveness of notices sent by Landlord to Tenant shall not be invalidated or impaired by a failure of Landlord to send copies of notices to any person or entity other than Tenant.

### 28.3 Time of Performance.

Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time on the performance or cure date. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day (defined in Section 40.1), then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day. Time is of the essence in the performance of all the terms and conditions in this Lease.

## ARTICLE 29 SEVERABILITY

If any term or provision of this Lease or application thereof to any party, parties, person or circumstances is found to be invalid or unenforceable to any extent, the remainder of this Lease and its application to parties, persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected, and each term and provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

## ARTICLE 30 SUCCESSORS AND ASSIGNS BOUND; GOVERNING LAW

### 30.1 Successors and Assigns Bound.

This Lease shall be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Lease, it shall mean and include their respective successors and assigns; provided, however, that the City shall have no obligation under this Lease to, nor shall any benefit of this Lease accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Lease.

### 30.2 Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

## ARTICLE 31 LANDLORD'S RECOURSE AGAINST TENANT

Landlord may recover from Tenant, but not from any officer, member, director, employee, representative or attorney, past, present or future of Tenant, and/or any Mortgagee that has acquired Tenant's interest in this Lease and/or the Premises at a foreclosure sale or by deed in lieu of foreclosure of the Mortgage held by such Mortgagee and/or any successor to Tenant and any such Mortgagee, only those damages that arise out of or in connection with (i) any Impositions not paid by Tenant; (ii) the amount of any insurance premiums paid for by Landlord pursuant to this Lease; (iii) the application of any insurance or condemnation proceeds in a manner inconsistent with or contrary to the provisions of this Lease, except as applied as required by any Mortgage; (iv) the cost of razing any Improvements Tenant fails to raze in accordance with the terms of this Lease; (v) any damages suffered by Landlord as the result of the breach by Tenant of the covenants contained in this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vi) any expenses in enforcing the limited recourse provisions of this Article 31, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vii) the portion of any amounts paid to Tenant for the period ending on the date of termination of this Lease which Tenant is required to pay Landlord as Ground Rent under this Lease; and (viii) waste committed or permitted by Tenant.

## ARTICLE 32 RECOURSE AGAINST LANDLORD

### 32.1 No Recourse to Other Persons.

Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease or otherwise, against any officer, director, employee, Supervisors, representative or attorney, past, present or future, of Landlord, or against any person other than Landlord, or against Landlord except to the extent of the value of Landlord's interest in the Premises, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder all such liability is expressly waived.

### 32.2 Limitation on Landlord's Liability.

In the event of any transfer of Landlord's interest in and to the Premises, Landlord, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations on the part of Landlord (or such transferor, as the case may be) contained in this Lease thereafter to be performed, but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder prior to the date of such transfer; provided, however, that (a) any funds in Landlord's possession (or in the possession of the then transferor at the time of such transfer) in which Tenant has an interest must be turned over to the transferee, in trust, for application pursuant to the provisions hereof and such transferee shall assume all liability for all such funds so received by such transferee



from Landlord and (b) any amount then due and payable to Tenant by Landlord or the then transferor under any provisions of this Lease must be paid to Tenant.

#### ARTICLE 33 TENANT TO FURNISH AND EQUIP THE IMPROVEMENTS

##### 33.1 Tenant to Furnish and Equip the Improvements.

Tenant covenants and agrees to, and covenants and agrees to furnish and equip the Improvements with all fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary to operate the Premises in accordance with the provisions of this Lease.

##### 33.2 Landlord's Lien.

If Landlord elects such lien, Tenant hereby grants to Landlord a lien in all of its Personal Property, and all products and proceeds thereof, as security for the payment and performance of Tenant's obligations hereunder, and agrees to execute a financing statement evidencing such lien to secure the performance by Tenant of all of its (or their) obligations under this Lease; provided, however, that the foregoing lien shall be subject and subordinate to any lien made in favor of a Mortgagee; upon the request of any such Mortgagee, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Landlord hereby agrees to subordinate its lien in all Personal Property to any purchase money lien in any Personal Property (such subordination shall be self-operative; however, in confirmation thereof, upon the request of each such lienor in Tenant's Personal Property, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such lienor and to Landlord). if any of such Personal Property is leased from third parties, Tenant agrees to collaterally assign its leasehold interest to Landlord upon terms and conditions and pursuant to an assignment acceptable in form and substance to Landlord to secure the performance by Tenant of all of its obligations under this Lease. Tenant shall execute from time to time such additional documents as may be necessary to effectuate and evidence such assignments if requested to do so by Landlord. Upon the occurrence of an Event of Default on the part of Tenant, Landlord shall have the immediate right of possession of all of the Personal Property and the right to assume the leasehold interest of Tenant in such Personal Property, subject to the interest of the lien of any Mortgagee.

#### ARTICLE 34 NO JOINT VENTURE

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Tenant to be responsible in any way for the debts or obligations of Landlord, except as otherwise provided to the contrary herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

#### ARTICLE 35 MORTGAGE OF LEASEHOLD

35.1 No Mortgage Except as Set Forth Herein. Except as permitted in this Article 35 or as consented to by Landlord, Tenant shall not:

(a) No Mortgages, Except as Permitted. Engage in any financing or other transaction creating any mortgage or deed of trust upon the Premises or upon Tenant's leasehold estate therein; or

(b) No Liens/Encumbrances Except as Permitted. Place or suffer to be placed upon the Premises or Tenant's leasehold estate therein any lien or other encumbrances (other than as permitted by this Lease). Any such mortgage, encumbrance or lien not permitted by this Article 35 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

#### 35.2 Leasehold Liens.

(a) Tenant Remains Liable to pay Ground Rent. At any time and from time to time during the Term, Tenant may assign or encumber the estate created by this Lease by way of leasehold mortgages or other security instruments of any kind to the extent permitted hereby; provided, however, that notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Ground Rent and other sums payable hereunder to the extent provided in this Lease.

(b) No Greater Rights to Mortgagees, Except as Granted. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Rights Apply to no More Than two Mortgagees. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than two (2) Mortgagees at any one time. Once a Mortgagee is designated by Tenant, Tenant shall not designate different or additional Mortgagees without the written consent of the Mortgagees first designated. In the event that at any time there are more than two (2) Mortgagees, Tenant shall notify Landlord in writing of the Mortgagee to which such rights should apply.

35.3 Notice of Liens. Tenant shall notify Landlord promptly upon becoming aware of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Premises or Tenant's leasehold estate hereunder after the date of this Lease whether by act of Tenant or otherwise, other than Mortgages expressly permitted hereunder or consented to by Landlord.

#### 35.4 Purpose of Mortgage.

(a) During Term. During the Term, a Mortgage can be made for any purpose.

(b) Landlord Statement Permitting Security Instruments. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a mortgage, deed of trust, sale and leaseback or other form of conveyance a statement in recordable form as to whether such mortgage, deed of trust, sale and leaseback or other form of conveyance is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting that such mortgage, deed of trust, sale and leaseback or other form of conveyance is not permitted hereunder, but shall create no liability on Landlord, and, if the same states that such conveyance is not permitted, shall set forth the reasons therefor in reasonable detail. In making a request for such statement, Tenant shall furnish Landlord copies of such financing documents as are required to permit Landlord to make the determination whether such conveyance is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

(c) Mortgagee Not Obligated to Construct. A Mortgagee, including the successors, assigns or designees of the Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; and no covenant or any other provision of this Lease may be construed to obligate the Mortgagee or its successors, assigns or designees. However, if a Mortgagee undertakes to complete or guarantee the completion of the construction of the Improvements, nothing in this Lease will be deemed or construed to permit or authorize a Mortgagee or its successors, assigns or designees to devote the Commercial Parcel or any portion thereof to any uses, or to construct any Improvements on the Commercial Parcel, other than those uses or Improvements authorized under Section 15.1 and any reasonable modifications in plans proposed by a Mortgagee or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion under Section 18.1(m). To the extent any Mortgagee or its successors in interest wish to change such uses or construct different improvements, Mortgagee or its successors in interest must obtain the advance written consent of the City.

(d) Failure of Mortgage to Complete Construction. In any case where six (6) months after assumption of obligations under Section 35.4(c) above, a Mortgagee, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City will have all the rights against the Mortgagee it would otherwise have against Tenant under this Lease for events or failures occurring after

#### 35.5 Interest Covered by Mortgage.

A Mortgage recorded for the Commercial Parcel shall cover no interest in any real property other than (a) Tenant's leasehold interest in the Commercial Parcel and fee interest in the Improvements thereon or some portion thereof, (b) any subleases thereon, if applicable, (c) any Personal Property of Tenant, (d) Tenant's interest, and (e) real property interests of Tenant directly related to Tenant's interest in or use of the foregoing interests described in clauses (a)-(d), unless expressly approved by Landlord.

35.6 Institutional Lender; Other Permitted Mortgagees. A Mortgage may be given only to a lender which shall have been approved in writing by Landlord. The City, acting solely in its capacity as landlord under this Commercial Ground Lease and not in its capacity as a lender, hereby acknowledges and accepts Bank of America, NA as the First Mortgage Lender, and its successor and/or assigns, and no further consent from the City is required until the First Mortgage Lender's loan is repaid in full and its lien has been released.

#### 35.7 Rights Subject to Lease.

(a) Rights Acquired by a Mortgagee. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage.

(b) Mortgagee's Right to Exercise Extension Option. If Tenant does not exercise its option to extend the Term, as applicable, Landlord shall notify any Mortgagee of Tenant's failure to extend promptly, but in no event later than four (4) months before the expiration of the Term.

(c) Mortgagee's Rights to Prevent Termination. Subject to the terms and conditions of Section 35.10 below, each Mortgagee has the right, but not the obligation, at any time before termination of this Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements,

covenants, and conditions of this Lease to prevent a termination of this Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Mortgagee.

(d) Rights of Permitted Limited Partner. For so long as the Partnership is the tenant under this Lease, the Permitted Limited Partners of Tenant will have the same rights as any Mortgagee under this Article 35, and any reference to a Mortgagee will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of any Mortgagee.

35.8 Required Provisions of any Mortgage. Except for the First Mortgage Lender, Tenant agrees to have any Mortgage provide the following:

(a) That the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default under the Mortgage;

(b) That Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action. It shall not be deemed a breach of this Lease if Landlord acknowledges compliance with this Section 35.8 in a separate agreement entered into with a Mortgagee.

(c) In the event of a default or breach by Tenant under any Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, Landlord may, at its option, cure such breach or default during the one hundred ten (110) days after the date that the Mortgagee files a notice of default. In such event, Landlord will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. Landlord will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Mortgage authorized by this Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Mortgage filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Mortgage, the City will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Mortgagees' and Permitted Limited Partner's written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Mortgage and the assignee meeting all reasonable underwriting standards of the Mortgage.

35.9 Notices to Mortgagee.

(a) Landlord's Notice to Mortgagee about Tenant's Default. If Tenant shall have granted any Mortgage and if the Mortgagee thereunder shall have given to Landlord written notice substantially in the form provided in Subsection (b), Landlord shall give to Mortgagee a copy of any and all notices of default or of the occurrence of an Event of Default from time to time given to Tenant by Landlord at the same time as and whenever any such notice shall be given by Landlord to Tenant, addressed to such Mortgagee at the address last furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. No such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 28.2.

(b) Mortgagee's Notice Requesting Landlord to Notify Mortgagee. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form: "The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered

into by and between the City and County of San Francisco, as Landlord, and, 4840 Mission Housing Associates, LP as Tenant ("Lease"), of Tenant's interest in this Lease demising the Commercial Parcel. The undersigned hereby requests that copies of any and all notices from time to time given under this Lease to Tenant by Landlord be sent to the undersigned at the following address:." The City hereby acknowledges that Bank of America is the First Mortgage Lender and is deemed to have given written notice as First Mortgage Lender.

35.10 Mortgagee's Right to Cure. If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 35, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply and Landlord may not terminate this Lease or enforce any of its remedies hereunder so long as any Mortgagee has a right to cure the applicable default of Tenant:

(a) Periods for Mortgagee to Cure Tenant's Default. In the case of any notice of default given by Landlord to Tenant and Mortgagee in accordance with this Lease, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of (30) days after the later to occur of (i) the expiration of such cure period provided Landlord has delivered timely notice to the Mortgagee in accordance with this Lease, or (ii) the date that Landlord has served a notice of default upon Mortgagee provided Mortgagee shall have the entirety of the applicable initial cure period available to it in addition to the stated thirty (30) day period, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied within such additional thirty (30) period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease) in Landlord's reasonable discretion so long as the Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings.

(b) Instances When Landlord Would Forebear From Taking Action on Tenant's Default. Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession (each of which shall be subject to the cure provision set forth in Section 35.10(a) above), Landlord shall take no action to effect a termination of this Lease if, prior to the expiration of the cure provision set forth in Section 35.10(a), including any extension granted by Landlord, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) commenced foreclosure proceedings or otherwise acquire Tenant's interest under this Lease, and thereafter promptly prosecutes and completes such proceedings with diligence and dispatch (subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings). A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all other defaults for which the Mortgagee has received notice pursuant to Section 35.10 then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the period Landlord forebears from terminating this Lease with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee prior to obtaining possession of the Premises. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence,

Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease as otherwise herein provided. Upon any such termination, the provisions of Section 35.10(d) shall apply. Notwithstanding anything to the contrary contained herein, in no event shall the First Mortgage Lender be required, as a condition to preventing the termination of this Lease, or obtaining a new ground lease hereunder, to (A) cure any default by Tenant under Section 35.8(c) of this Lease, or (B) the cure any default by Tenant in the payment of any amounts payable by Tenant under any indemnification provisions of this Lease, and upon completion of a foreclosure (or deed in lieu thereof), all such defaults shall automatically be deemed cured and waived.

(c) **Court Action Preventing Foreclosure.** If a Mortgagee is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 35.10(a) and 35.10(b) above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Lease is terminated or rejected by Tenant in bankruptcy, then Landlord agrees to enter into a new ground lease with the Lender (or its designee) as set forth in Section 35.10(d) below.

(d) **Landlord's Notice to Mortgagee Upon Lease Termination and Mortgagee's Option.** In the event of the termination of this Lease prior to the expiration of the Term, except (i) by eminent domain, or (ii) as the result of damage or destruction as provided in Article 10, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease in accordance with land upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period;

(ii) If there is more than one Mortgagee, Landlord will offer the new lease to each Mortgagee in the order of priority until accepted; and

(iii) Such new Lease shall be entered into at the reasonable cost of the Mortgagee thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Ground Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal or extension. Such new Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Improvements, which obligations shall be performed by Mortgagee in accordance with this Lease. Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. Upon the execution of such new Lease, Landlord shall allow the Mortgagee, and such Mortgagee shall be entitled to, an adjustment in Ground Rent in an amount equal to the net income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of execution of such new Lease.

(e) Exercise of Mortgagee's Rights. Any rights of a Mortgagee under this Section, as amended hereby, may be exercised by or through its nominee or designee other than Tenant; provided, however, that no Mortgagee shall acquire title to this Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that a Mortgagee may acquire title to this Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Automatic Transfer of Tenant's Rights Under Subleases. If applicable, effective upon the commencement of the term of any new Lease executed pursuant to Section 35.10(d), all subleases then in effect shall be assigned and transferred without recourse by Landlord to Mortgagee and all monies on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Mortgagee for the purposes of and in accordance with the provisions of such new lease. Between the date of termination of this Lease and the later of (1) the expiration of the election period for Mortgagee to elect to execute a new Lease or (2) if so elected by the Mortgagee, the commencement of the term of the new lease, Landlord shall not (i) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new lease, (ii) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (iii) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Benefits Inure to Mortgagee Holder. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(h) Mortgagee's Written Consent Required for Material Revisions to this Lease. No agreement between Landlord and Tenant materially amending, terminating or surrendering this Lease, or election by Tenant not to continue this Lease as provided for herein, shall be valid or effective without Mortgagee's written consent.

(i) No Merger of Landlord and Tenant's Interests in this Lease Without Mortgagee's Consent. No union of the interests of Landlord and Tenant herein shall result in a merger of this Lease in the fee interest, so long as any Mortgage shall be unsatisfied, without Mortgagee's written consent.

(j) Mortgagee not Liable without Ownership of Leasehold Interest. Anything herein contained to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of this Leasehold estate created hereby.

(k) Instances of When Mortgagee is Not Obligated to Cure an Event of Default. Except as provided herein, a Mortgagee, and its designee or nominee (other than Tenant), shall have no obligation to cure any Event of Default by Tenant under this Lease.

35.11 Assignment by Mortgagee. If a Mortgagee or a purchaser at a foreclosure sale shall acquire Tenant's interest in this Lease as a result of a sale under said Mortgage pursuant to a power of sale contained therein, pursuant to a judgment of foreclosure, through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure, bankruptcy or insolvency action, or in the event a Mortgagee becomes Tenant under

this Lease or any new Lease obtained pursuant to the terms hereof, such Mortgagee's or purchaser's right thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Article 15. In the event Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to the terms thereof, and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

35.12 Preservation of Leasehold Benefits. Until such time as a Mortgagee notifies Landlord in writing that the obligations of the Tenant under its Mortgage have been satisfied, the City agrees:

(i) That subject to Section 17.1 the City shall not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or amend this Lease to materially increase the obligations of the Tenant or the rights of Landlord under this Lease, without the prior written consent of the Mortgagee (which may not be unreasonably withheld or delayed);

(ii) That Landlord shall not enforce against a Mortgagee any waiver or election made by the Tenant under this Lease that has a material adverse effect on the value of the Leasehold Estate without the prior written consent of the Mortgagee (which will not be unreasonably withheld or delayed); and

(iii) That Landlord shall provide reasonable prior notice to each Mortgagee of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit each Mortgagee to participate in the proceedings as an interested party.

## ARTICLE 36 CITY REQUIREMENTS

### 36.1 Nondiscrimination.

(a) Tenant's Covenant not to Discriminate. In the performance of this Lease, Tenant agrees not to discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes. .

(b) Others Bound by the Nondiscrimination Provisions. Any transferee, successor, assign, or holder of any interest in this Lease or the Premises, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed or mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, will be bound hereby and shall not violate in whole or part, directly or indirectly, these nondiscrimination requirements. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of



the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

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

36.2 **No Relocation Assistance; Waiver of Claims.** Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

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

36.4 **Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco

Environment Code, Tenant shall not provide any items to the construction of Tenant Improvements or alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

36.5 Restrictions on the Use of Pesticides . Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

36.6 Sunshine Ordinance . In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

36.7 Conflicts of Interest . Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately

notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, that Tenant believes any officer or employee of the City presently has or will have in this Commercial Ground Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, will constitute grounds for City's termination and cancellation of this Commercial Ground Lease.

36.8 Reserved.

36.9 Prohibition of Tobacco Sales and Advertising . Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as those capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

36.10 Prohibition of Alcoholic Beverage Advertising . Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

36.11 Requiring Health Benefits for Covered Employees . Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

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

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails

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

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

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

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

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

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

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Fifty Thousand Dollars (\$50,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

36.12 Notification of Limitations on Contributions . For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its 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 a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the

commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that 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 \$100,000 or more. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant's board of directors, Tenant's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

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

36.14 Resource Efficient City Buildings . Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

36.15 Food Service Waste Reduction . Tenant will comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Tenant acknowledges that City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) where the Food Service Ware is Compostable and not Fluorinated Chemical Free. The capitalized terms (other than Tenant and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

36.16 San Francisco Packaged Water Ordinance . Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the

performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

### 36.17 Criminal History in Hiring and Employment Decisions .

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

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

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

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

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

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or

other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

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

36.19 Local Hiring Policy. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy"). The Tenant Improvements and any alterations are subject to the Local Hiring Policy unless the cost for such Tenant Improvement Work or alteration is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Policy. Accordingly, as a condition of this Lease, Tenant agrees that it shall comply with the requirements of the Local Hiring Policy applicable to the Tenant Improvements or any Alteration and shall require its subtenants to comply with those requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if any Local Hiring Ordinance requirements apply to such Tenant Improvement Work or Alteration. Tenant shall comply with all such applicable requirements. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease and may subject Tenant and its subtenants to the consequences of noncompliance specified in the Local Hiring Policy, including but not limited to penalties. Without limiting the foregoing:

(a) For a Covered Project estimated to cost more than \$750,000, Tenant and its subtenants shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in San Francisco Administrative Code Section 6.22(G)(4).

(b) For a Covered Project estimated to cost more than \$1,000,000, Tenant and its subtenants shall prepare and submit a local hiring plan to OEWD for approval as set forth in San Francisco Administrative Code Section 6.22(G)(6) prior to commencing any of the work subject to the Local Hiring Policy.

(c) Tenant and its subtenants shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy, including access to employees of its contractors and subcontractors and other witnesses at the Premises.

(d) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable by Tenant and its subtenants; and (iii) Tenant has had, and its subtenants will have prior to signing their subleases for the Premises, a full and fair opportunity to review and understand the terms of the Local Hiring Policy.

36.20 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Commercial Parcel and encouraging use of such facilities, all at Tenant's sole expense.

36.21 First Source Hiring. Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit pursuant to San Francisco Administrative Code, Chapter 83 (the "First

Source Agreement”). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

36.22 Graffiti Removal. Tenant agrees to remove all graffiti from the Premises within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

36.23 Drug-Free Workplace . Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

36.24 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of the [Director of Property]. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 36.24 will be a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

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

36.26 Tenant’s Compliance with City Business and Tax Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

36.27 Consideration of Salary History. In addition to Tenant's obligations as an employer under San Francisco Police Code Article 33J, Tenant must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Tenant for work of eight (8) or more hours per week at the Premises, Tenant must not consider the applicant's current or past salary (a "Salary History") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Tenant must not (1) ask those applicants about their Salary History, (2)



refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement. Tenant is subject to the posting, enforcement, and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

36.28 GASB 87 Lease Accounting. The Governmental Accounting Standards Board (GASB), an independent organization that establishes accounting and financial reporting standards for U.S. state and local governments, issued Statement 87 to improve certain reporting and accounting practices. In connection with GASB 87, Tenant agrees to complete a checklist provided by the City within thirty (30) days of the Effective Date in order to facilitate the City's collection and evaluation of information for City's financial reporting purpose.

## ARTICLE 37 GENERAL PROVISIONS

37.1 Cooperative Drafting. This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

37.2 Amendments. Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

37.3 Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

37.4 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

## ARTICLE 38 RECORDATION OF LEASE

Landlord and Tenant shall record on, or as of, the Effective Date a memorandum of this Lease for the Premises, substantially in the form and substance as set forth in Exhibit 3, in the Official Records. This Commercial Ground Lease shall not be recorded.

## ARTICLE 39 RESERVED

## ARTICLE 40 DEFINITION OF CERTAIN TERMS; MISCELLANEOUS

### 40.1 Definitions.

“Additional Ground Rent” means all sums (other than Ground Rent) that may be or become payable by Tenant to Landlord under this Lease.

“Affiliate” means any partnership or corporation directly controlling, controlled by or under common control with the partnership, company, or corporation in question.

“Annual Statement” is defined in Section 2.2(b).

“Base Rent” is defined in Section 2.1(b).

“Business Day” means a day in which normal business is transacted. Generally, Monday through Friday but not weekends or holidays.

“City” means the City and County of Francisco, a municipal corporation.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

“Commercial Expenses” is defined in Section 2.2(a).

“Commercial Income” is defined in Section 2.2(a).

“Commercial Ground Lease” means this Lease.

“Commercial Parcel” has the meaning set forth in Recital A.

“Condemnation” means the taking of all or any part of any property or the possession thereof under the power of eminent domain or voluntary sale of all or any part of any property to any person having the power of eminent domain, provided that the property or such part thereof is then under the threat of condemnation.

“Condemnation Date” means the earlier of: (a) the date when possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

“Effective Date” is defined in the first sentences of this Lease.

“Event of Default” is defined in Article 17.

“First Mortgage Lender” means Bank of America, N.A. and its successors, assigns, and participants or other entity holding the first Mortgage on Tenant’s leasehold estate in the Commercial Parcel for the purpose of initially constructing the Improvements.

“Force Majeure” means events which result in delays in a party's performance of its obligations hereunder due to causes beyond such party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, terrorist actions, acts of the other 59 party, fires, floods, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's title to the Premises. Force Majeure does not include failure to obtain financing or to have adequate funds.

“Ground Rent” is defined in Section 2.1(a).

“Hazardous Material” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“Hazardous Materials Claims” means any and all enforcement, cleanup, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against Landlord, Tenant or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

“Hazardous Materials Laws” (or Environmental Law) means any federal, state or local laws, ordinances or regulations relating to the environment, health and safety, any Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, soil, groundwater and indoor and ambient air conditions.

“Impositions” is defined in Section 3.1.

“Improvements” means all buildings (or portions thereof), structures and anything else erected, built, placed, installed or constructed upon or within the Premises (exclusive of personal property, and furniture, fixtures and equipment), whether existing at the date hereof or hereafter constructed.

“Index” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 =100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term, the modified Index shall be used in place of the Index. If compilation or publication of the Index is discontinued during the Term, the City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

“Indexed” means, whenever any amount is referred to in this Lease as being "Indexed," that such amount or amounts shall be adjusted on the anniversary date of this Lease or where applicable the anniversary date of the completion of the Improvements, using the Index as a mutually determined index by the Parties for such adjustment.

“Landlord” is defined in the introductory paragraph hereof.

“Laws and Ordinances” or “Laws or Ordinances” shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, including, without limitation, all consents or approvals required to be obtained from, and all rules

and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, or the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to the Premises or any part thereof, including, without limitation, any vault space, sidewalks, curbs or alleyways, use thereof and the buildings and Improvements thereon, and similarly the phrase "Law and Ordinance" shall be construed to mean the same as the above in the singular as well as the plural.

"Lease Year" means the time interval between the Effective Date and the December 31<sup>st</sup> of that year, and thereafter, each succeeding twelve-month calendar year

"MNHC" has the meaning set forth in Recital C.

"MOHCD Loan Agreement" has the meaning set forth in Recital B.

"Mortgagee" means the holder of a Mortgage.

"Occupant" or "Occupants" means any Commercial Parcel subtenant, licensees, concessionaire, or other person, firm or entity entitled to use and occupy any area within the Premises under Tenant.

"Permitted Exceptions" means liens in favor of the Landlord, real property taxes and assessments that are not delinquent, any leasehold liens created pursuant to Section 35.2(a); any liens and encumbrances in connection with a grant from Community Vision to MNHC and any other liens and encumbrances the Landlord expressly approves in writing.

"Permitted Limited Partner" means Bank of America, N.A., a national banking association, as investor limited partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as special limited partner and their successors and assigns as approved by City.

"Permitted Transferee" means MNHC or a transferee or proposed transferee, with whom Landlord is not otherwise prevented by law or adopted policy of Landlord from transacting business or entering into contract, possessing the experience, qualifications and financial resources necessary for the proper performance of Tenant's obligations under this Lease in a manner consistent with the operational quality and character and requirements for economic viability of the Premises and business practices of Tenant as applied to Tenant's operation of the Premises (collectively, "Transferee Criteria"), as determined by Landlord, in its reasonable judgment; provided however, that if the Premises are owned by a party other than Landlord or other governmental entity and there shall exist a dispute between Tenant and Landlord as to whether a proposed transferee constitutes a Permitted Transferee, such dispute shall be resolved by a court of competent jurisdiction provided, however, in any such proceeding Landlord shall have burden of proof in establishing that the proposed transferee does not meet the Transferee Criteria.

"Personal Property" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other personalty that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“Premises” is defined in Section 1.1.

“Prime Rate” as reported by the Wall Street Journal’s bank survey.

“Project” is defined in Recital B.

“REA” is defined as that certain Declaration Establishing Reciprocal Easements and Covenants Running with the Land for the Mixed Use Development Located at \_\_\_\_\_, and recorded in the official records of the City and County of San Francisco (the “Official Records”) on \_\_\_\_\_, 2021, under Recorder’s Serial Number \_\_\_\_\_.

"Replacement Cost" means all Clinic Improvement costs estimated at \$5,000,000, for the purpose of establishing the amount of the Replacement Reserve in Article 7.3(c). This defined term is not intended to affect any other calculation of replacement cost for any other purpose.

“Replacement Reserve Account” is defined in Recital B.

“Residential Project” is defined in 7.3(a).

“Significant Change” means voluntary or involuntary sale, assignment, conveyance, lease, trust or power, or transfer in any other form with respect to this Lease or any portion of or interest in the Premises, or any contract or agreement to do any of the same (except for a transfer to MNHC, or the contracts and agreements referred to in this Lease).

“Space Sublease” means any lease, sublease, license, concession or other agreement by which any Tenant leases, subleases, demises, licenses or otherwise grants to any person, firm or corporation, in conformity with the provisions of this Lease, the right to occupy portions of the Premises to the exclusion of others.

“Space Subtenant” means any person, firm or corporation leasing, occupying or having the right to occupy under and by virtue of a Space Sublease.

“Tenant” is defined in the introductory paragraph hereof.

“Supervisors” means members of the City and County of San Francisco Board of Supervisors

“Term” means the term commencing as of the Effective Date and ending upon the expiration or termination of the Term.

“Transferee Criteria” is defined in the definition of Permitted Transferee.

#### ARTICLE 41 LIST OF EXHIBITS

The following Exhibits are attached and by this reference incorporated into this Lease as if fully set forth above:

- |           |                                     |
|-----------|-------------------------------------|
| Exhibit 1 | Description of Site                 |
| Exhibit 2 | Commercial Parcel Legal Description |

- Exhibit 3      Schedule of Performance
- Exhibit 4      Form of Memorandum of Lease
- Exhibit 5      MNHC Initial Operating budget after Cold Shell Improvement transfer as defined  
in JDA
- Exhibit 6      20 Year Proforma for Initial Tenant, if applicable, or 5 Year for MNHC

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

**LANDLORD:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

By: \_\_\_\_\_

Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_

Deputy City Attorney

**TENANT:**

**4840 MISSION HOUSING ASSOCIATES LP,**  
a California limited partnership

By: 4840 Mission Housing LLC,  
a California limited liability company,  
its general partner

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

By: \_\_\_\_\_  
Smitha Seshadri  
Vice President

**EXHIBIT 1**

**Legal Description of the Site**

[To be attached a acquisition transfer of the land for residential construction]



**EXHIBIT 2**

**Commercial Parcel Legal Description**

[To be attached a acquisition transfer of the land for residential construction]

**EXHIBIT 3**

Schedule of Performance

- a) Commence demolition, rehabilitation or construction of Residential Project by a date no later than July 1, 2021.
- b) Complete demolition, rehabilitation or construction of Residential Construction and Cold Shell Improvements by a date no later than December 30, 2023.
- c) Transfer Cold Shell Improvements by a date no later than [December 30, 2024.]

**EXHIBIT 4**  
Form of Memorandum of Lease

Free Recording Requested Pursuant to  
Government Code Section 27383

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

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of \_\_\_\_\_, 2015, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Mayor's Office of Housing and Community Development ("City" or "Landlord"), and 4840 Mission Housing Associates LP, a California limited partnership ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated \_\_\_\_\_, 2021, between City and Tenant.

Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease shall commence on the date set forth above and shall end on June 1, 2096, unless terminated earlier or extended pursuant to the terms of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

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

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

Executed as of \_\_\_\_\_, 2021 in San Francisco, California.

**LANDLORD:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

By: \_\_\_\_\_

Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_

Deputy City Attorney

**TENANT:**

**4840 MISSION HOUSING ASSOCIATES LP,**  
a California limited partnership

By: 4840 Mission Housing LLC,  
a California limited liability company,  
its general partner

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

By: \_\_\_\_\_

Smitha Seshadri  
Vice President

**EXHIBIT 5**

MNHC Initial Operating budget after Cold Shell Improvement transfer as defined in JDA



**EXHIBIT 6**

20 Year Proforma for Initial Tenant  
5 Year Proforma for MNHC

