

File No. 250461

Committee Item No. 11

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date May 14, 2025

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

- |   |                          |  |
|---|--------------------------|--|
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>  | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | Contract/Agreement                           |
| <ul style="list-style-type: none"><li>• Draft Amended and Restated Loan Agreement</li><li>• Draft Ground Lease</li><li>• Draft Amended and Restated Promissory Note</li><li>• Draft Declaration of Restrictions</li><li>• Draft Deed of Trust</li><li>• Draft Easement Agreements<ul style="list-style-type: none"><li>○ Door Swing &amp; Cornice Encroachment</li><li>○ Joint Trench</li><li>○ Light, Air, and Access</li><li>○ Public Access and Trash Pick Up</li><li>○ Temporary and Permanent Emergency Vehicle Access</li></ul></li></ul> |                          |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | Form 126 – Ethics Commission (2)             |
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**OTHER** (Use back side if additional space is needed)

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|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Request for Qualifications 11/30/2020</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PLN General Plan Referral 2/6/2023</u>    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PLN Notice of Approval 2/9/2023</u>       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>MOHCD Presentation 5/14/2025</u>          |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
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Completed by: Brent Jalipa Date May 8, 2025

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Ground Lease, Easement Agreements, and Amended and Restated Loan Agreement - 160  
2 Freelon Housing Partners, L.P. - 160 Freelon Street - 100% Affordable Housing - \$15,000  
Annual Base Rent - Loan Not to Exceed \$22,577,900]

3  
4 **Resolution 1) approving and authorizing the Director of Property and the Director of the**  
5 **Mayor's Office of Housing and Community Development ("MOHCD") to enter into a**  
6 **Ground Lease for real property owned by the City located at 160 Freelon Street**  
7 **("Property") with 160 Freelon Housing Partners, L.P. ("Developer") for a lease term of**  
8 **75 years and one 24-year option to extend and an annual base rent of \$15,000 ("Ground**  
9 **Lease") in order to construct a 100% affordable, 84-unit multifamily rental housing**  
10 **development affordable to low-income households, plus one manager's unit, including**  
11 **22 LOSP units reserved for formerly homeless households and five units for referrals**  
12 **from the City's Plus Housing List (the "Project"); 2) approving and authorizing an**  
13 **Amended and Restated Loan Agreement in an amount not to exceed \$22,577,900 for a**  
14 **minimum loan term of 57 years ("Loan Agreement") with Developer to finance the**  
15 **development and construction of the Project; 3) approving and authorizing easement**  
16 **agreements between the City, 598 Brannan Street Phase 1, L.L.C., and the Developer to**  
17 **benefit the Project and maintain compliance with the Building Code and Fire Code**  
18 **("Easement Agreements"); 4) determining that the less than market rent payable under**  
19 **the Ground Lease will serve a public purpose by providing affordable housing for low-**  
20 **income households in need, in accordance with Administrative Code, Section 23.30; 5)**  
21 **adopting findings declaring that the Property is "exempt surplus land" pursuant to the**  
22 **California Surplus Lands Act; 6) adopting findings that the Project and proposed**  
23 **transactions are consistent with the General Plan, and the eight priority policies of**  
24 **Planning Code, Section 101.1; and 7) authorizing the Director of Property and/or the**  
25 **Director of MOHCD to execute the Ground Lease, Loan Agreement, and Easement**

1     **Agreements, make certain modifications to such agreements, and take certain actions**  
2     **in furtherance of this Resolution, as defined herein.**

3  
4             WHEREAS, The City and County of San Francisco ("City") owns certain real property  
5     located at 160 Freelon Street in San Francisco, California, which is comprised of  
6     approximately 13,091 square feet and known as Assessor's Parcel Block No. 3777, Lot No.  
7     176 (the "Property"); and

8             WHEREAS, Pursuant to Resolution 112-23, the City acquired the Property from 598  
9     Brannan Street Phase 1, L.L.C. ("Seller"), and placed the Property under the jurisdiction of the  
10    Mayor's Office of Housing and Community Development ("MOHCD") for the purpose of  
11    developing affordable housing on the Property; and

12            WHEREAS, The City, acting through MOHCD, administers a variety of housing  
13    programs that provide financing for the development of new affordable housing and the  
14    rehabilitation of single- and multi-family housing for low- and moderate-income households  
15    and resources for homeowners in San Francisco; and

16            WHEREAS, MOHCD provides loans to affordable housing developers and operators;  
17    administers loan agreements; reviews annual audits and monitoring reports; monitors  
18    compliance with affordable housing requirements in accordance with capital funding  
19    regulatory agreements; and if necessary, takes appropriate action to enforce compliance; and

20            WHEREAS, On November 30, 2020, MOHCD issued a Multi-Site Request for  
21    Qualifications ("RFQ"), for a developer to work with the City to develop affordable housing on  
22    the Property; and

23            WHEREAS, The Related Companies of California, LLC, a California limited liability  
24    company ("Related"), and San Francisco Housing Development Corporation ("SFHDC"), a  
25    California nonprofit public benefit corporation, responded to the RFQ and were selected as

1 the joint developers of a 100% affordable, 84-unit multifamily rental housing development  
2 affordable to low-income households, plus one manager's unit, including twenty-two (22)  
3 LOSP units reserved for formerly homeless households and five units for referrals from the  
4 City's Plus Housing List (collectively, the "Project"); and

5 WHEREAS, Related and SFHDC formed 160 Freelon Housing Partners, L.P., a  
6 California limited partnership (the "Developer"), to develop and construct the Project;  
7 and

8 WHEREAS, By letter dated February 6, 2023 (the "General Plan Referral"), the  
9 Planning Department by case No. 2023-000990GPR determined that the Project is  
10 consistent with the General Plan, and eight priority policies of Planning Code,  
11 Section 101.1; a copy of the General Plan Referral is on file with the Clerk of the Board  
12 of Supervisors in File No. 250461, and is incorporated herein by reference; and

13 WHEREAS, On February 9, 2023, by Notice of Final Approval of an AB 2162 Project,  
14 the Planning Department determined that the development of the Project met all the  
15 standards of the Planning Code and would be eligible for ministerial approval under California  
16 Government Code, Section 66583 (Assembly Bill 2162), and CEQA Guidelines, Sections  
17 15002(i)(1), 15268 and 15369, and would therefore not be subject to the California  
18 Environmental Quality Act (CEQA); said determination is on file with the Clerk of the Board of  
19 Supervisors in File No. 250461 and is incorporated herein by reference; and

20 WHEREAS, The Property is owned in fee simple by City but it is "exempt surplus land",  
21 as defined in California Government Code, Section 54221, because the Project will be a  
22 100% affordable housing project under California Government Code,  
23 Section 54221(f)(1)(F)(i); and

24 WHEREAS, The MOHCD Director and the Director of Property have approved the form  
25 of the Ground Lease between the City and the Developer ("Ground Lease"), pursuant to which



1 the City will lease the Property to the Developer for a term of 75 years and one 24-year option  
2 to extend and a base rent of \$15,000 per year, in exchange for the Developer's agreement,  
3 among other things, to construct and operate the Project with rent levels affordable to  
4 households up to 80% of unadjusted San Francisco Area Median Income published by  
5 MOHCD, and a copy of the substantially final form of Ground Lease is on file with the Clerk of  
6 the Board of Supervisors in File No. 250461, and is incorporated herein by reference; and

7 WHEREAS, The proposed rent of the Ground Lease is less than Market Rent (as  
8 defined in Administrative Code, Section 23.2), but the lower rent will serve a public purpose by  
9 providing affordable housing for low-income households in need; and

10 WHEREAS, In order to construct and maintain the Project in compliance with San  
11 Francisco Building Code and San Francisco Fire Code, Seller has agreed to grant to the City  
12 and the Developer easements across Seller's adjacent real property to ensure the Project  
13 remains in such compliance and benefit the Project at no cost to the City, on the terms and  
14 conditions set forth in the easement agreements (collectively, the "Easement Agreements"),  
15 including limited City indemnification of Seller in certain circumstances; copies of the  
16 substantially final forms of easements are on file with the Clerk of the Board of Supervisors in  
17 File No. 250461; and

18 WHEREAS, MOHCD is also providing the Developer with financial assistance to  
19 leverage equity from an allocation of low-income housing tax credits and tax exempt bonds in  
20 order for Developer to construct the Project; and

21 WHEREAS, On April 4, 2025, the Citywide Affordable Housing Loan Committee,  
22 consisting of MOHCD, Department of Homeless and Supportive Housing, the Office of  
23 Community Investment and Infrastructure, and the Controller's Office of Public Finance  
24 recommended approval to the Mayor of the Loan Agreement for the Project in an amount not  
25 to exceed \$22,577,900 in local funds, and a copy of the substantially final form of Loan

1 Agreement and related documents are on file with the Clerk of the Board of Supervisors in  
2 File No. 250461, and are incorporated herein by reference; and

3 WHEREAS, The Loan Agreement would be entered into under the following material  
4 terms: (i) a minimum term of 57 years; (ii) an interest rate of up to three percent (3%); (iii)  
5 annual repayment of the loan by Developer through residual receipts from the Project; (iv) the  
6 Project shall be restricted for life of the Project as affordable housing to low-income  
7 households with annual maximum rent and income established by MOHCD; and (v) the loan  
8 shall be secured by a deed of trust recorded against the Developer's leasehold interest in the  
9 Property; a copy of the substantially final forms of the Loan Agreement, promissory note, deed  
10 of trust, and declaration of restrictions is on file with the Clerk of the Board of Supervisors in  
11 File No. 250461, and is incorporated herein by reference; now, therefore, be it

12 RESOLVED, That the Board of Supervisors hereby finds that the Project (and  
13 associated actions necessary to effectuate the Project) is consistent with the General Plan,  
14 and with the eight priority policies of Planning Code, Section 101.1, for the same reasons as  
15 set forth in the General Plan Referral, which letter is on file with the Clerk of the Board of  
16 Supervisors in File No. 230263, and hereby incorporates such findings by reference as though  
17 fully set forth in this Resolution; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby finds, in consideration  
19 of the foregoing, that the Property is surplus to the City's needs and not necessary for the  
20 City's use, and further declares it to be "exempt surplus land" under Government Code,  
21 Sections 54221 and 54221(f)(1)(F)(i), because the Project will restrict 100% of the residential  
22 units to low-income persons and families; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the City and  
24 the Project will benefit from the Easement Agreements, including limited City indemnification  
25 of Seller in certain circumstances, which are serving a public purpose by allowing the

1 construction of affordable housing for low-income households in need on the Property; and,  
2 be it

3 FURTHER RESOLVED, That in accordance with the recommendation of the Director  
4 of MOHCD and the Director of Property, the Board of Supervisors approves the Ground  
5 Lease in substantially the form presented to the Board, and authorizes the Director of  
6 Property (or the Director's designee, as used throughout) and Director of MOHCD (or the  
7 Director's designee, as used throughout), to execute and deliver the Ground Lease, in  
8 substantially the form presented to the Board, and any such other documents or agreements  
9 (including such agreements to provide adequate or additional security or indemnities as  
10 required by lenders to consummate the financing of the Project or lease of the Property) that  
11 are necessary or advisable, in consultation with the City Attorney, to complete the transaction  
12 contemplated by the Ground Lease and to effectuate the purpose and intent of this  
13 Resolution, and determines that the less than Market Rent payable under the Ground Lease  
14 will serve a public purpose by providing affordable housing for low-income households in  
15 need; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Easement  
17 Agreements and the transaction contemplated thereby in substantially the form presented to  
18 the Board, and authorizes the Director of Property and the Director of MOHCD, to execute  
19 and deliver the Easement Agreements and any such other documents that are necessary or  
20 advisable to complete the transaction contemplated by the Easement Agreements and to  
21 effectuate the purpose and intent of this Resolution; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Loan  
23 Agreement and the transaction contemplated thereby in substantially the form presented to  
24 the Board, and authorizes the Mayor and the Director of MOHCD, to execute and deliver the  
25 Loan Agreement and any such other documents that are necessary or advisable to complete

1 the transaction contemplated by the Loan Agreement and to effectuate the purpose and intent  
2 of this Resolution; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
4 Property and/or Director of MOHCD, in consultation with the City Attorney, to enter into any  
5 additions, amendments, or other modifications to the Ground Lease, Easement Agreements,  
6 Loan Agreement, and any other documents or instruments necessary in connection therewith  
7 (including, without limitation, preparation and attachment, or changes to, any of all of the  
8 exhibits, ancillary agreements, and notices of special restrictions required for construction of  
9 the Project), that the Director of Property and/or Director of MOHCD determine are in the best  
10 interests of the City, do not materially decrease the benefits to the City with respect to the  
11 Property, do not materially increase the obligations or liabilities of the City, and are necessary  
12 or advisable to complete the transaction contemplated in the Ground Lease, Easement  
13 Agreements, and Loan Agreement, and that effectuate the purpose and intent of this  
14 Resolution, such determination to be conclusively evidenced by the execution and delivery by  
15 the Director of Property and/or the Director of MOHCD of any such additions, amendments, or  
16 other modifications; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and  
18 delegates to the Director of MOHCD and/or the Director of Property, the authority to  
19 undertake any actions necessary to protect the City's financial security in the Property and  
20 enforce the affordable housing restrictions, which may include, without limitation, acquisition  
21 of the Property upon foreclosure and sale at a trustee sale, acceptance of a deed in lieu of  
22 foreclosure, or curing the default under a senior loan; and, be it

23 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and  
24 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors;  
25 and be it

FURTHER RESOLVED, That within thirty (30) days of the Ground Lease, Easement Agreements, and Loan Agreement being fully executed by all parties, MOHCD shall provide the final agreements to the Clerk of the Board for inclusion into the official file.

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RECOMMENDED:

/s/  
Andrico Q. Penick, Director of Property

/s/  
Daniel Adams, Director  
Mayor's Office of Housing and Community Development

<b>Item 11</b> <b>File 25-0461</b>	<b>Department:</b> Mayor's Office of Housing and Community Development (MOHCD)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolution would: (1) approve a ground lease between the Mayor's Office of Housing and Community Development (MOHCD) and 160 Freelon Housing Partners, L.P. for property at 160 Freelon Street for a lease term of 75 years with a 24-year option to extend, and annual base rent of \$15,000 to construct affordable housing; (2) approve an amended and restated loan agreement for an amount not to exceed \$22,577,900 for a minimum term of 57 years to finance the project; and (3) approve certain agreements and adopt certain findings in support of the project.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>160 Freelon Street is a parcel of land that was conveyed to the City to develop affordable housing to satisfy inclusionary housing requirements for a nearby commercial development. After a competitive process, MOHCD selected Related Companies of California and San Francisco Housing Development Corporation to develop the site. In 2023, the Citywide Affordable Housing Loan Committee approved gap financing commitments for the project, which enabled the project to receive tax credits and California Affordable Housing and Sustainable Communities (AHSC) financing.</li> <li>The 160 Freelon project consists of 85 affordable housing units, including 22 units for the chronically homeless or at risk of homelessness through the City's Local Operating Subsidy Program (LOSP), five units for HIV-positive residents, through the Plus Housing program, 57 general affordable units, and one manager's unit. The City has agreed to a ground lease with the Developer and various easements to facilitate the development.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>Under the ground lease, the City would receive \$1,125,000 in rent over the initial 75-year term, or \$1,485,000 over 99 years if the option to extend is exercised. The proposed loan would provide up to \$22,577,900 to the Developer for construction of the project. The loan is soft debt repaid based on residual income in the project.</li> <li>The loan amount is equal to \$265,622 per unit. Total development costs are approximately \$1.2 million per unit. According to the 20-year cash flow analysis for the project, the project's revenues are sufficient to cover operating expenses, reserves, and hard debt service for the first 18 years of the project, but the project is cash flow negative afterwards. MOHCD may have to forgive its loan and/or provide additional subsidies to continue providing affordable housing at this site.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Because of the cash flow issues with the project, approval of the proposed resolution is a policy matter for the Board of Supervisors.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease of real property for a period of ten years or more or that has revenue to the City of \$1 million or more is subject to Board of Supervisors approval.

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

## BACKGROUND

Brannan Square is an entitled development by Tishman Speyer that would include approximately 1 million square feet of office and commercial spaces at 5<sup>th</sup> and Brannan Streets, with three buildings built in two phases. To satisfy inclusionary housing requirements, Tishman Speyer agreed to convey an approximately 12,800-square foot parcel at 160 Freelon Street to the City to develop affordable housing. The Board of Supervisors approved the property conveyance in March 2023 (File 23-0263), and the site was dedicated to the City in February 2025.

In November 2020, the Mayor's Office of Housing and Community Development (MOHCD) issued a Request for Qualifications (RFQ) to select developers for nine affordable housing sites, including 160 Freelon Street. MOHCD received three responses for the Freelon site, and an evaluation panel scored them, as shown in Exhibit 1 below.<sup>1</sup>

### Exhibit 1: Responses and Scores from RFQ for 160 Freelon Site

Respondent	Score (out of 100 Points)
Related Companies of California/San Francisco Development Corp.	92
Jonathan Rose Companies/Young Community Developers	89
Tabernacle Community Development Corp./The Pacific Companies	82

Source: MOHCD

MOHCD selected Related Companies of California (Related) and San Francisco Housing Development Corporation (SFHDC) to develop the 160 Freelon site as the highest scoring team. In the RFQ, the Freelon site was intended to be used for affordable family housing, including 25 percent of units reserved for formerly homeless households and subsidized by the City's Local Operating Subsidy Program and 5 Plus Housing units for low-income people living with HIV. The

<sup>1</sup> The evaluation panel consisted of a Pastor from Church Without Walls, a Member of the Dignity Fund Oversight and Advisory Committee, a Housing Program Manager for the Office of Community Investment and Infrastructure, a Director of Construction Services at MOHCD, an HIV Housing Programs Manager from MOHCD, a Marketing and Lottery Program Manager from MOHCD, a Business Development Manager from the Office of Economic and Workforce Development (OEWD), a Project Manager from OEWD, a Director of Real Estate and Facilities from the Department of Homelessness and Supportive Housing (HSH), a Family Housing Program Manager from HSH, a Subsidy Administration Manager from HSH, a Director of In-Home Supportive Services from the Human Services Agency (HSA), and a Director of Construction Services from MOHCD.

City subsidy for development costs was to be limited to \$250,000 per unit. Proposals were scored based on developer experience (40 points) and project concept (60 points).

In December 2021, the Citywide Affordable Housing Loan Committee approved a \$4,000,000 predevelopment loan for the project. The loan was executed and did not require Board approval because it was less than \$10 million and ten years. At that time, the project was proposed as 72 units on seven floors, with an estimated development budget of approximately \$69.3 million. The project was subsequently expanded to 85 units on nine floors, with an estimated budget of \$98.6 million. In January 2023, the Loan Committee approved a gap financing request of \$22,577,951, which served as a City commitment for the project to apply for funding from the Affordable Housing and Sustainable Communities (AHSC) program from the California Department of Housing and Community Development (HCD).<sup>2</sup> After an unsuccessful application in 2023, the project was awarded an AHSC loan of \$29,000,000 and grant of \$12,162,574 in March 2024.<sup>3</sup> In December 2024, the California Tax Credit Allocation Committee (TCAC) and California Debt Limit Allocation Committee (CDLAC) awarded the project four percent tax credits and up to \$48,900,000 in tax-exempt bonds to fund construction.

#### DETAILS OF PROPOSED LEGISLATION

The proposed resolution would:

1. Approve and authorize the Director of Property and MOHCD Director to enter into a ground lease at 160 Freelon Street with 160 Freelon Housing Partners, L.P. (the Developer, a partnership of Related and SFHDC), for a lease term of 75 years with a 24-year option to extend, and annual base rent of \$15,000, to construct an 85-unit affordable housing building;
2. Approve and authorize an amended and restated loan agreement with the developer to finance the project, in an amount not to exceed \$22,577,900, for a minimum loan term of 57 years;
3. Approve and authorize easement agreements between the City, 598 Brannan Street Phase 1, LLC (an affiliate of Tishman Speyer), and the Developer, to benefit the project and maintain compliance with the Building and Fire Codes;
4. Determine that the below market rent payable under the ground lease will serve a public purpose, in accordance with Administrative Code Section 23.30;
5. Adopt findings that the property is “exempt surplus land” pursuant to the California Surplus Lands Act;
6. Adopt findings that the project and proposed transactions are consistent with the General Plan and Planning Code; and

<sup>2</sup> The California Affordable Housing and Sustainable Communities (AHSC) program uses state Cap-and-Trade funds to provide loans and grants to affordable housing developments that seek to reduce carbon emissions by being located close to employment centers and public transit and encouraging active transportation.

<sup>3</sup> The grant is for transportation improvements and does not contribute to the development budget.



7. Authorize the Director of Property and/or MOHCD Director to execute the ground lease, loan agreement, easement agreements, and make further immaterial amendments to these agreements.

The documents approved as part of this resolution include: (1) a Ground Lease between the City and the Developer; (2) a Loan Agreement between the City and the Developer; (3) a Declaration of Restrictions for Affordable Housing; (4) a Promissory Note; (5) a Deed of Trust; and (6) Easement Agreements.

### **Ground Lease**

The proposed ground lease provides for the Developer to pay the City annual base rent of \$15,000, without escalation, for a term of 75 years, with a 24-year option to extend. In the event that the MOHCD loan is fully repaid (which is unlikely for several decades), the Developer would also pay annual residual rent of \$1,398,026, which is adjusted every 15 years to 10 percent of the appraised fair market value of the land. Unpaid residual rent would not accrue. The Developer is responsible for paying any costs, taxes, or obligations related to the premises, obtaining the utility connections necessary to develop the project, and maintaining and insuring the site. The Developer would also assume liability for any claims of personal injury or property damage related to the premises.

To conform with ground lease, the Developer must commence demolition, rehabilitation, or construction by August 31, 2025, complete construction by December 31, 2027, and achieve 95 percent occupancy of the units by December 31, 2028.

### **Loan Agreement and Repayment**

The proposed loan agreement provides for a loan amount not to exceed \$22,577,900. The loan has zero to three percent basic interest, to be determined by the MOHCD Director before closing, with repayments based on two-thirds of residual receipts from the project. The loan matures on the later of 57 years after the recording of the deed of trust or 55 years after the conversion date.<sup>4</sup>

### ***Required Rents***

The Declaration of Restrictions outlines required rents for all units in the project. Income restrictions are as follows:

- 22 units must be made available to the chronically homeless or at risk of homelessness through the City's Local Operating Subsidy Program (LOSP) and are restricted to households with up to 50 percent of Area Median Income (AMI). These units are comprised of 11 one-bedrooms, six two-bedrooms, and five three-bedroom units.
- Five units must be made available to HIV-positive residents through the Plus Housing program and are restricted to households with up to 50 percent of AMI. These are comprised of three one-bedrooms and two 2-bedroom units.

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<sup>4</sup> The conversion date is the date when construction financing is converted to permanent financing, which is anticipated to occur approximately one year after the project receives a temporary certificate of occupancy.

- 57 units are generally affordable units. 25 units (comprised of 12 studios, seven one-bedrooms, two 2-bedrooms, and four three-bedrooms) are restricted to households with up to 60 percent of AMI, 14 units (comprised of three studios, three one-bedrooms, four two-bedrooms, and four three-bedrooms) are restricted to households with up to 70 percent of AMI, and 18 units (comprised of eight two-bedrooms and 10 three-bedrooms) are restricted to households with up to 80 percent of AMI.
- One two-bedroom unit is a manager's unit.

### **Project Description**

As mentioned above, the project would include 85 residential units across nine floors. The building would also include a residential lobby, mail room, parcel room, bike room with one bike parking space per unit, property management offices with a break room, conference room, multipurpose room with a kitchen, laundry room, resident services and case management rooms, and an exterior play yard and courtyard. The project does not include vehicular parking.

To facilitate the development, MOHCD is requesting Board of Supervisors approval of easements for temporary and permanent emergency vehicle access, public access and trash pickup, light, air, maintenance, and access, trenching, and door swing and cornice encroachment.

### **FISCAL IMPACT**

#### **Ground Lease**

The proposed ground lease would have annual base rent of \$15,000, without adjustment. Over the initial 75-year term of the lease, the City would receive \$1,125,000 in rent. If the 24-year option to extend is exercised, the City would receive an additional \$360,000 in rent, for total rent of \$1,485,000 over 99 years.

In the event that the MOHCD loan is fully repaid, the Developer would also pay annual residual rent of \$1,398,026, which is adjusted every 15 years to 10 percent of the appraised fair market value of the land. Given that MOHCD's 20-year cash flow pro forma only projects \$69,764 in debt service paid to MOHCD over 20 years, compared to a \$22,577,900 principal loan amount, it is unlikely that MOHCD would receive residual rent for several decades, if ever.

#### **MOHCD Loan**

The proposed loan would provide up to \$22,577,900 to finance the development and construction of 160 Freelon Street. The sources and uses of funding are shown in Exhibit 2 below.

**Exhibit 2: Sources and Uses of Funds for 160 Freelon Project**

<b>Sources</b>	<b>Amount</b>
MOHCD Loan	\$22,577,900
MOHCD Deferred Interest <sup>5</sup>	1,784,000
Tax Credits	44,282,000
Bank Loan	2,770,000
AHSC Loan	29,000,000
GP Equity	100
<b>Total Sources</b>	<b>\$100,414,000</b>

<b>Uses</b>	<b>Amount</b>
Acquisition (Legal/Closing/Broker Costs)	\$20,001
Construction (Includes 7.1% Contingency)	72,158,534
Soft Costs (Includes 7.5% Contingency)	21,316,466
Reserves	919,000
Developer Fee	6,000,000
<b>Total Uses</b>	<b>\$100,414,000</b>

Source: Proposed Loan Agreement

Construction costs include a 7.1 percent hard cost contingency and 7.5 percent soft cost contingency. Operating reserves total \$919,000 to support unanticipated operating costs for at least 20 years. Total costs include \$6,000,000 in developer fees and \$21,316,466 in soft costs.

**Loan Funding Sources and City Subsidy**

The proposed loan is funded by:

- \$4,000,000 from the Affordable Housing Fund: Inclusionary Affordable Housing Program
- \$4,395,328 from the Affordable Housing Fund: Jobs-Housing Linkage
- \$2,500,000 from the Affordable Housing Fund: Jobs-Housing Linkage Permanent Supportive Housing
- \$17,320 from the Eastern Neighborhoods Urban Mixed Use funds
- \$3,840,930 from the Eastern Neighborhoods Alternative funds
- \$5,582,988 from the Downtown Neighborhoods Preservation Fund
- \$2,241,334 from the Low and Moderate Income Housing Asset Fund

The City subsidy per unit is \$265,622. Total development costs per unit are approximately \$1.2 million. The high cost is attributable, in part, to the number of family-sized units in the building, work to connect the site to power, and a contingency for the impact of tariffs on the cost of building materials.

<sup>5</sup> MOHCD Deferred Interest is counted as both a source and use of project funds.

**Operating Revenues and Expenditures**

According to the 20-year cash flow analysis for the project, the project's revenues are sufficient to cover operating expenses, reserves, and debt service for the 14 of the first 18 years. Project revenues consist of tenant rents, LOSP rental assistance (approximately \$0.5 million initially in General Fund costs, with 3.5 percent increase annually over the 15-year contract period), and laundry and vending machine revenue. The budget assumes annual rental income loss of five percent due to vacancies. Two-thirds of residual receipts (net project income) would be used to pay debt service on the proposed loan, and one-third would go to the developer. Of the residual debt service, 56.23 percent would repay HCD and 43.77 percent would repay MOHCD. In addition, HSH will provide approximately \$300,000 in annual spending on supportive housing services for the LOSP units.

However, operating expenses are projected to escalate faster than project revenues, and the project has a negative \$10,000 annual cash flow in year 20 of its pro forma. MOHCD may have to forgive its loan, recapitalize the project, and/or subsidize operating expenses and debt service to continue providing affordable housing at this site. Alternatively, MOHCD could work with the developer to re-design the project to improve cash flow. Because of these cash flow issues, approval of the proposed resolution is a policy matter for the Board of Supervisors.

**RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

**AMENDED AND RESTATED LOAN AGREEMENT  
(CITY AND COUNTY OF SAN FRANCISCO  
AFFORDABLE HOUSING FUND: INCLUSIONARY AFFORDABLE HOUSING  
PROGRAM, AFFORDABLE HOUSING FUND: JOBS-HOUSING LINKAGE,  
EASTERN NEIGHBORHOODS URBAN MIXED USE, DOWNTOWN  
NEIGHBORHOODS PRESERVATION FUND, EASTERN NEIGHBORHOODS  
ALTERNATIVE, AFFORDABLE HOUSING FUND: JOBS-HOUSING LINKAGE  
PERMANENT SUPPORTIVE HOUSING, LOW AND MODERATE INCOME  
HOUSING ASSET FUND)**

By and Between

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

and

**160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

for

**160 Freelon**  
**160 Freelon Street, San Francisco, CA**  
**\$22,577,900**  
AFFORDABLE HOUSING FUND: INCLUSIONARY AFFORDABLE HOUSING  
PROGRAM: \$4,000,000  
AFFORDABLE HOUSING FUND: JOBS HOUSING LINKAGE: \$4,395,328  
EASTERN NEIGHBORHOODS URBAN MIXED USE: \$17,320  
DOWNTOWN NEIGHBORHOODS PRESERVATION FUND: \$5,582,988  
EASTERN NEIGHBORHOODS ALTERNATIVE: \$3,840,930  
AFFORDABLE HOUSING FUND JOBS-HOUSING LINKAGE PERMANENT  
SUPPORTIVE HOUSING: \$2,500,000  
LOW AND MODERATE INCOME HOUSING ASSET FUND: \$2,241,334

Dated as of [\_\_\_\_\_, 2025]

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\* \* \* \* \*

**EXHIBITS**

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## **AMENDED AND RESTATED LOAN AGREEMENT**

(City and County of San Francisco)

Affordable Housing Fund: Inclusionary Affordable Housing Program, Affordable Housing Fund Jobs-Housing Linkage, Low And Moderate Income Housing Asset Fund, Affordable Housing Fund Jobs-Housing Linkage Permanent Supportive Housing, Eastern Neighborhoods Urban Mixed Use, Eastern Neighborhoods Alternative, Downtown Neighborhoods Preservation Fund  
(160 Freelon Street)

**THIS AMENDED AND RESTATED LOAN AGREEMENT** (“Agreement”) is entered into as of [\_\_\_\_\_, 2025], by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “City”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”), and **160 FREELON HOUSING PARTNERS, L.P.**, a California limited partnership (“Borrower”).

### **RECITALS**

A. Under the Inclusionary Affordable Housing Program set forth in Sections 415.1, *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives impact Affordable Housing Fees (“Inclusionary Fees”) paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the Inclusionary Fees received by the Citywide Affordable Housing Fund (the “Affordable Housing Fund”) to finance housing affordable to qualifying households. MOHCD administers the Affordable Housing Fund pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. The funds provided from the Affordable Housing Fund under this Agreement will be referred to herein as the “AHF Inclusionary Funds.”

B. Under the Jobs-Housing Linkage Program set forth in Sections 413.1 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives impact fees paid by developers to satisfy requirements of the Jobs-Housing Linkage Program (“Jobs-Housing Fees”). The City may use the Jobs-Housing Fees received by the Citywide Affordable Housing Fund (the “Affordable Housing Fund”) to finance housing affordable to qualifying households. MOHCD administers the Affordable Housing Fund pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. The funds provided from the Affordable Housing Fund under this Agreement will be referred to herein as the “AHF Jobs-Housing Linkage Funds.”

C. Pursuant to Section 423.5 of the San Francisco Planning Code (“Section 423.5”), the Citywide Affordable Housing Fund receives from the San Francisco Department of Building Inspection a percentage of impact fees paid by sponsors of developments located in Designated Affordable Housing Zones in the Eastern Neighborhoods Program Area (“Eastern Neighborhood Fees”). The City may use the Eastern Neighborhood Fees received by the Citywide Affordable Housing Fund (the “Eastern Neighborhoods Program”) to finance housing affordable to qualifying households and related improvements according to the permitted uses set forth in Section 423.5. MOHCD administers the Eastern Neighborhoods Program pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them.

The funds provided from the Eastern Neighborhoods Program under this Agreement will be referred to herein as the “Eastern Neighborhoods Urban Mixed Use Funds.”

D. Under the Exhibit G - Housing Program of the Development Agreement by and between the City and County of San Francisco and Oceanwide Center, LLC, which was approved by the San Francisco Board of Supervisors on July 29, 2016, under Ordinance 137-16, Oceanwide Center, LLC is required to deposit funds into the Downtown Neighborhoods Preservation Fund (the “DNP Fund”). The DNP Fund funds are to be used for predevelopment and development expenses and administrative costs associated with acquisition, construction, or rehabilitation of permanently affordable housing units in San Francisco. Under Ordinance 137-16, MOHCD is authorized to administer the DNP Fund and enforce agreements relating to them. The loan funds provided under this Agreement shall be referred to herein as the “Downtown Neighborhoods Preservation Funds.”

E. Under Section 417.3 of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives from the San Francisco Department of Building Inspection a percentage of impact fees paid by sponsors of certain developments located in Designated Affordable Housing Zones in the Eastern Neighborhoods Program Area (“Eastern Neighborhood Fees”). The City may use the Eastern Neighborhood Fees received by the Citywide Affordable Housing Fund (the “Eastern Neighborhoods Program”) to finance housing affordable to qualifying households and related improvements according to the permitted uses set forth in Section 417.5. MOHCD administers the Eastern Neighborhoods Program pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. The funds provided from the Eastern Neighborhoods Program under this Agreement will be referred to herein as the “Eastern Neighborhoods Alternative Funds.”

F. Under the Jobs-Housing Linkage Program set forth in Sections 413.1 et seq. of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu fees (“Fees”) paid by developers to satisfy requirements of the Jobs-Housing Linkage Program. The City may use the Fees received by the Citywide Affordable Housing Fund (the “Affordable Housing Fund”) to finance housing affordable to qualifying households. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. The funds provided from the Affordable Housing Fund under this Agreement shall be referred to herein as the “AHF Jobs-Housing Linkage Permanent Supportive Housing Funds.”

G. The San Francisco Board of Supervisors designated the Mayor’s Office of Housing and Community Development the Successor Housing Agency of the San Francisco Redevelopment Agency, effective February 1, 2012, upon dissolution of state redevelopment agencies. Pursuant to California Assembly Bill 1484, the Successor Housing Agency was required to create a fund called the Low and Moderate Income Housing Asset Fund (“LMIH Asset Fund”) to collect proceeds from former redevelopment agency housing assets transferred to the City and County of San Francisco. Monies in the LMIH Asset Fund are derived from loan repayments and other housing asset program income and will be used in accordance with California Redevelopment Law. The funds provided from the LMIH Asset Fund under this Agreement will be referred to herein as the “LMIH Funds.”

The funds provided under this Agreement from the AHF Inclusionary Funds, AHF Jobs-Housing Linkage Funds, Eastern Neighborhoods Urban Mixed Use Funds, Downtown Neighborhoods Preservation Funds, Eastern Neighborhoods Alternative Funds, AHF Jobs-Housing Linkage Permanent Supportive Housing Funds, and LMIH Funds will collectively be referred to herein as the “Funds.”

H. City owns that certain real property located at 160 Freelon Street, San Francisco, California (the “Land”). MOHCD issued a Multisite Request for Qualifications on November 30, 2020, to solicit qualified affordable housing developers for the Land. In response to the RFQ, MOHCD selected The Related Companies of California, LLC, a California limited liability company (“Related”) and San Francisco Housing Development Corporation, a California nonprofit public benefit corporation (“SFHDC”), to develop and construct an affordable housing project and lease the Land for the purpose of such new affordable housing. Related and SFHDC formed the Borrower for the purpose of undertaking the activities described in the RFQ.

I. Borrower intends to acquire a leasehold interest in the Land under a ground lease (“Ground Lease”), by and between Borrower and the City (“Ground Lessor”). Borrower desires to use the Funds to construct thereon a multifamily residential building consisting of eighty-four (84) rental units (the “Improvements”) of affordable housing for low-income persons, plus one manager’s unit, including twenty-two (22) LOSP units reserved for formerly homeless households and five (5) units for referrals from the City’s Plus Housing List, together commonly known as 160 Freelon (collectively, the “Project”).

J. The City previously loaned Four Million and No/100 Dollars (\$4,000,000) (“Predevelopment Funding Amount”) in AHF Inclusionary Funds (the “Predevelopment Loan”) to Borrower for predevelopment activities to construct the Project. The Predevelopment Loan is evidenced by: i) a Loan Agreement dated as of August 29, 2022 (“Predevelopment Agreement”); and ii) a Secured Promissory Note made by Borrower to the order of the City dated August 29, 2022 (the “Predevelopment Note”).

K. The Citywide Affordable Housing Loan Committee has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has recommended to the Mayor that the City make a loan of Funds to Borrower (the “Construction Loan” and together with the Predevelopment Loan, the “Loan”) in the principal amount of \$22,577,900 (the “Construction Funding Amount” and together with the Predevelopment Funding Amount, the “Funding Amount”) under this Agreement to fund certain costs related to the Project. The Funding Amount is comprised of the following funding sources: i) Affordable Housing Fund: Inclusionary Affordable Housing Program in the amount of \$4,000,000, ii) Affordable Housing Fund: Jobs Housing Linkage in the amount of \$4,395,328, iii) Eastern Neighborhoods Urban Mixed Use in the amount of \$17,320, iv) Downtown Neighborhoods Preservation Fund in the amount of \$5,582,988, v) Eastern Neighborhoods Alternative in the amount of \$3,840,930, vi) Affordable Housing Fund: Jobs-Housing Linkage Permanent Supportive Housing in the amount of \$2,500,000, and vii) Low And Moderate Income Housing Asset Fund in the amount of \$2,241,334. The aggregate Funding Amount is \$22,577,900.

L. Borrower has secured the following additional financing for the Project (as defined below):

1. a senior construction to permanent loan to Borrower in the aggregate original principal amount of \$[ ] and No/100 Dollars (\$[ ].00)] from the City and County of San Francisco (in such capacity, the “Governmental Lender”), with a tax-exempt tranche in the original principal amount of \$[ ] and a taxable tranche in the original principal amount of \$[ ], which loan is being made using the proceeds of a funding loan from Bank of American, N.A., a national banking association (in such capacity, together with its successors and assigns, the “Funding Lender”), to the Governmental Lender, in the aggregate original principal amount of \$[ ], with a tax-exempt tranche in the original principal amount of \$[ ] and a taxable tranche in the original principal amount of \$[ ].

2. a permanent loan to Borrower from Citibank, N.A. in the total principal amount of \$[ ];

3. federal and/or state low income housing tax credits reserved or allocated to the Project by the California Tax Credit Allocation Committee (“TCAC”), pursuant to its Preliminary Reservation of Low Income Housing Tax Credits dated December 11, 2024; and

4. a State of California Housing and Community Development (“HCD”) Conditional Award Commitment dated August 23, 2024, providing for Affordable Housing Sustainable Communities (“AHSC”) funding in the total principal amount of Twenty-Nine Million and No/100 Dollars (\$29,000,000.00);

5. an equity contribution from the General Partner of Borrower in the amount of One Hundred and No/100 Dollars (\$100.00).

M. On the Agreement Date, this Agreement will amend, restate, supersede and replace the Predevelopment Agreement. Concurrently herewith, Borrower will also (i) execute an amended and restated secured promissory note in favor of the City to supersede and replace the Predevelopment Note to evidence the Loan, (ii) execute and record a leasehold deed of trust to secure such amended and restated secured promissory note, (iii) execute a developer fee agreement, and (iv) execute and record a declaration of restrictions and affordable housing covenants. As of the Agreement Date, the City will cancel and return the Predevelopment Note.

N. On [ ], 2025, the City’s Board of Supervisors and the Mayor approved this Agreement by Resolution No. [ ] for the purpose of developing the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

### ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

“Accounts” means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts will be maintained in accordance with **Section 2.3**.

“Agreement” means this Amended and Restated Loan Agreement.

“Agreement Date” means the date first written above.

“Annual Monitoring Report” has the meaning set forth in **Section 10.3**.

“Annual Operating Budget” means an annual operating budget for the Project attached hereto as **Exhibit B-2**, which may not be adjusted without the City's prior written approval.

“Approved Plans” has the meaning set for in **Section 5.2**.

“Approved Specifications” has the meaning set forth in **Section 5.2**.

“Authorizing Resolutions” means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

“Borrower” means 160 Freelon Housing Partners, L.P., a California limited partnership, whose managing general partner is SFHDC 160 Freelon LLC, a California limited liability company (the “Managing General Partner”), and whose administrative general partner is Related/160 Freelon Development Co., LLC, a California limited liability company (the “Administrative General Partner” and collectively with the Managing General Partner, the “General Partner”), and its authorized successors and assigns.

“CFR” means the Code of Federal Regulations.

“Charter Documents” means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or

statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement.

“City” means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

“City Documents” means this Agreement, the Note, the Deed of Trust, the Declaration of Restrictions, the Developer Fee Agreement, and any other documents executed or, delivered in connection with this Agreement.

“City Project” has the meaning set forth in **Exhibit E, Section 13(c)**.

“CNA” means a 20-year capital needs assessment or analysis of replacement reserve requirements, as further described under the CNA Policy.

“CNA Policy” means MOHCD’s Policy For Capital Needs Assessments dated November 5, 2013, as it may be amended from time to time.

“Completion Date” has the meaning set forth in **Section 5.6**.

“Compliance Term” has the meaning set forth in **Section 3.2**.

“Construction Contract” has the meaning set forth in **Section 5.2**.

“Conversion Date” means the date on which construction financing for the Project is converted into permanent financing, if applicable.

“Declaration of Restrictions” means a recorded declaration of restrictions in form and substance acceptable to the City that requires Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

“Deed of Trust” means the leasehold deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower’s performance under this Agreement and the Note, in form and substance acceptable to the City.

“Department of Building Inspection” has the meaning set forth in **Section 5.2**.

“Developer” means, collectively, San Francisco Housing Development Corporation, a California nonprofit public benefit corporation (“SFHDC”), and Related Development Company of California, LLC, a California limited liability company (“Related”), and their authorized successors and assigns.



“Developer Fee Policy” means the MOHCD Policy on Development Fees for Tax Credit Projects dated October 16, 2020, as amended from time to time, attached hereto as **Exhibit J**.

“Developer Fees” has the meaning set forth in **Section 15.1**.

“Development Expenses” means all costs incurred by Borrower and approved by the City in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

“Development Proceeds” means the sum of: (a) funds contributed or to be contributed to Borrower by Borrower's limited partner as capital contributions, equity or for any other purpose under Borrower's limited partnership agreement; and (b) the proceeds of all other financing for the Project.

“Disbursement” means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

“Distributions” has the meaning set forth in **Section 13.1**.

“Early Retention Release Contractors” means contractors who will receive retention payments upon satisfaction of requirements set forth in **Section 4.7**.

“Environmental Activity” means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

“Environmental Laws” means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the “Superfund” law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 (“NEPA”) (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the “California Superfund” law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”) (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

“Escrow Agent” has the meaning set forth in **Section 4.2**.

“Event of Default” has the meaning set forth in **Section 19.1**.

“Excess Proceeds” means Development Proceeds remaining after payment of Development Expenses. For the purposes of determining Excess Proceeds, no allowed Project Expenses may be included in Development Expenses.

“Expenditure Request” means a written request by Borrower for a Disbursement from the Funding Amount, which will certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower.

“Funding Amount” has the meaning set forth in **Recital K**.

“Funds” has the meaning set forth in **Recital A**.

“GAAP” means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

“General Partner” means, collectively, Related/160 Freelon Development Co., LLC, a California limited liability company, and SFHDC 160 Freelon LLC, a California limited liability company.

“Governmental Agency” means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

“Ground Lease” has the meaning set forth in **Recital I**.

“Ground Lessor” has the meaning specified in **Recital I**.

“Hazardous Substance” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a “hazardous substance,” “hazardous waste,” “hazardous material,” “pollutant,” “contaminant,” “pesticide” or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as “hazardous” or “toxic” under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed “Hazardous Substances” for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

“HCD” means the California Department of Housing and Community Development.

“Hold Harmless Policy” means the Hold Harmless Policy for MOHCD’s Income Limits & Maximum Rents dated May 3, 2019, as amended from time to time, attached hereto as **Exhibit K**.

“Homeless” means an individual or a family who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence in one or more of the following categories: (a) Anyone staying in a mission or homeless or domestic violence shelter, i.e., a supervised public or private facility that provides temporary living accommodations; (b) Anyone displaced from housing due to a disaster situation; (c) Anyone staying outdoors; for example, street, sidewalk, doorway, park, freeway underpass; (d) Anyone staying in a car, van, bus, truck, RV, or similar vehicle; (e) Anyone staying in an enclosure or structure that is not authorized or fit for human habitation by building or housing codes, including abandoned buildings (“squats”) or sub-standard apartments and dwellings; (f) Anyone staying with friends and/or extended family members (excluding parents and children) because they are otherwise unable to obtain housing; (g) Any family with children staying in a Single Room Occupancy (SRO) hotel room (whether or not they have tenancy rights); (h) Anyone staying in temporary housing for less than 6 months where the accommodations provided to the person are substandard or inadequate (for example, in a garage a very small room, or an overly crowded space); (i) Anyone staying in a Single Room Occupancy (SRO) hotel room without tenancy rights; (j) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who is now incarcerated, hospitalized, or living in a treatment program, half-way house, transitional housing; or (k) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who has obtained and resided in supportive housing or permanent housing for less than 30 days.

“Homeless Household” means a household that meets the referring agency’s definition of Homeless Household for initial occupancy and upon available vacancies thereafter, as per the Local Operating Subsidy contract.

“HSH” means the San Francisco Department of Homelessness and Supportive Housing, or other successor agency.

“HUD” means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

“Improvements” has the meaning set forth in **Recital I**.

“In Balance” means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will be sufficient to complete acquisition/construction/rehabilitation of the Project, as determined by the City in its sole discretion.

“Income Restrictions” means the maximum household income limits for Qualified Tenants, as set forth in **Exhibit A**.

“Indemnatee” means, individually or collectively, (i) City, including MOHCD and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials,

directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

“Land” means the real property owned by Ground Lessor on which the Site is located.

“Laws” means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

“Life of the Project” means the period of time in which the Project continues to operate as a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units, and in the event the Project is substantially damaged or destroyed by fire, the elements, an act of any public authority or other casualty, and is subsequently replaced by a multi-family residential project substantially similar to its current condition in terms of square footage and number of units, the life of such replacement project will be deemed to be a continuation of the life of the Project.

“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 that have been admitted as limited partners of Borrower in accordance with the Partnership Agreement, or other successors and assigns as approved by the City.

“Loan” has the meaning set forth in **Recital K**.

“Local Operating Subsidy” means an operating subsidy provided by the City to Borrower for the operation of the Project, the amount of which is sufficient to permit Borrower to operate the Project in accordance with the terms of this Agreement with Qualified Tenants at income levels specified by MOHCD in writing which are below those set forth in **Exhibit A**.

“Local Operating Subsidy Program” or “LOSP” means the program administered by MOHCD that regulates the distribution of Local Operating Subsidy.

“Loss” or “Losses” includes any and all loss, liability, damage, obligation, penalty, claim, action, suits, judgment, fee, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in an investigation or a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

“Marketing and Tenant Selection Plan” has the meaning set forth in **Section 6.1**.

“Maturity Date” has the meaning set forth in **Section 3.1**.

“Median Income” means median income as published annually by MOHCD for the City and County of San Francisco, adjusted solely for household size, and derived in part from the

income limits and area median income determined by HUD for the San Francisco area, but not adjusted for a high housing cost area (also referred to as unadjusted median income).

“MOHCD” means the Mayor’s Office of Housing and Community Development or its successor.

“MOHCD Monthly Project Update” has the meaning set forth in **Section 10.2**.

“Note” means the amended and restated secured promissory note executed by Borrower in favor of the City in the original principal amount of the Funding Amount, in form and substance acceptable to the City.

“Official Records” means the official records of San Francisco County.

“Operating Reserve Account” has the meaning set forth in **Section 12.2**.

“Opinion” means an opinion of Borrower's California legal counsel, satisfactory to the City and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the City Documents and will be bound by their terms when executed and delivered, and that addresses any other matters the City reasonably requests.

“Out of Balance” means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will not be sufficient to complete acquisition/construction/rehabilitation of the Project, as determined by the City in its sole discretion.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of [\_\_\_\_\_, 2025], as amended from time to time.

“Partnership Fees” means (i) combined annual asset management (\$26,010) and annual partnership management fees (\$26,010) in the amount of \$52,0250, increasing by 3.5% annually beginning in 2026, payable to the Tenant’s general partner, and (ii) an annual investor services fee in the amount of \$7,760, increasing annually by 3.5% beginning in 2026 payable to Tenant’s Permitted Limited Partner. In no event will such fees exceed the maximum amount permitted by HCD so long as it is a Lender, as permitted by HCD’s regulations.

“Payment Date” means the first June 30th following Completion Date and each succeeding June 30th until the Maturity Date.

“Permitted Exceptions” means liens in favor of the City, real property taxes and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

“Plus Housing Program” means MOHCD’s housing program for low-income people living with Human Immunodeficiency Virus (HIV).

“Predevelopment Loan” has the meaning set forth in **Recital J**.

“Predevelopment Note” has the meaning set forth in **Recital J**.

“Preferences and Lottery Manual” means MOHCD’s Marketing, Housing Preferences and Lottery Procedures Manual dated October 19, 2020, as amended from time to time.

“Preferences Ordinance” means Chapter 47 of the San Francisco Administrative Code, as amended from time to time.

“Project” means the development described in **Recital I**. If indicated by the context, “Project” means the Site and the improvements developed on the Site.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal and annual servicing fees, if any, on any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City; (d) annual monitoring fees and all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) Annual Base Rent under the Ground Lease; (f) required deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement and/or as required under the Partnership Agreement; (g) the approved annual asset management fees, bond issuer fees, and fiscal agent fees indicated in the Annual Operating Budget and approved by the City; (h) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account); and (i) Supportive Services expenses. Partnership Fees are not Project Expenses.

“Project Income” means all income and receipts in any form received by Borrower from the operation of the Project, including, but not limited to, the following: (a) rents, fees, charges, and deposits (other than tenant’s refundable security deposits); (b) Section 8 or other rental subsidy payments received for the Project, supportive services funding (if applicable); (c) price index adjustments and any other rental adjustments to leases or rental agreements; (d) proceeds from vending and laundry room machines; (e) the proceeds of business interruption or similar insurance; (f) any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established; (g) reimbursements and other charges paid to Borrower in connection with the Project; and (h) other consideration actually received from the operation of the Project, including non-residential uses of the Site. Project Income does not include interest accruing on any portion of the Funding Amount or tenant’s refundable security deposits.

“Project Operating Account” has the meaning set forth in **Section 11.1**.

“Qualified Tenant” means a Tenant household earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in **Exhibit A**. The term “Qualified Tenant” includes each category of Tenant designated in **Exhibit A**. For the avoidance of any doubt, the term “Qualified Tenant” under this Agreement has the same meaning as the term “Qualified Household” under the Ground Lease.

“Rent” means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Article 7**, with utility charges to Qualified Tenants limited to an allowance determined by the SFHA.

“Replacement Cost” means all hard construction costs of the Project, not including the cost of site work and foundations but including construction contingency, for the purpose of establishing the amount of the Replacement Reserve Account. This defined term is not intended to affect any other calculation of replacement cost for any other purpose.

“Replacement Reserve Account” has the meaning set forth in **Section 12.1**.

“Residual Receipts” means Project Income remaining after payment of Project Expenses and Partnership Fees. The amount of Residual Receipts will be based on figures contained in audited financial statements.

“Residual Receipts Policy” means the Mayor’s Office of Housing and Community Development Residual Receipts Policy effective April 1, 2016, as amended from time to time, attached hereto as **Exhibit P**.

“Retention” has the meaning set forth in **Section 4.7**.

“Section 8” means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

“Senior Lien” has the meaning set forth in **Section 22.1**.

“SFHA” means the San Francisco Housing Authority.

“Site” means the Land and the Improvements.

“Supportive Services” means services designed to support Qualified Tenants, including adult education, health, and skill building classes, including, but not limited to, financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition classes, exercise classes, health information/awareness, art classes, parenting classes, on-site food cultivation and preparation classes, and smoking cessation classes; see also **Section 3.8**.

“Table” means: (a) the Table of Sources and Uses, (b) the Annual Operating Budget, and (c) the 20-Year Cash Flow Proforma.

“Table of Sources and Uses” means a table of sources and uses of funds attached hereto as **Exhibit B-1**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City’s prior written approval.

“TCAC” means the California Tax Credit Allocation Committee.

“Tenant” means any residential household in the Project, whether or not a Qualified Tenant.

“Tenant Screening Criteria Policy” has the meaning set forth in **Section 6.3**.

“Title Policy” means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

“20-Year Cash Flow Proforma” means the 20-year cash flow proforma for the Project attached as **Exhibit B-3**.

“Unit” means a residential rental unit within the Project.

“Waiting List” has the meaning set forth in **Section 6.5**.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word “include(s)” means “include(s) without limitation” and “include(s) but not limited to,” and the word “including” means “including without limitation” and “including but not limited to” as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.



(c) Accounting terms and financial covenants will be determined, and financial information will be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement will be construed as a whole according to its fair meaning.

## ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance the development and construction of a multifamily residential building consisting of eighty-four (84) rental units of affordable housing for low-income persons, plus one manager's unit, including twenty-two (22) LOSP units reserved for formerly homeless households and five (5) units for referrals from the City's Plus Housing List. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses. Notwithstanding anything to the contrary contained herein, City will not approve expenditure of Funds for expenses incurred by Borrower prior to the Agreement Date.

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement will be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, Borrower will use any interest earned on funds in any Account for the benefit of the Project.

2.4 Records. Borrower will maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition, Borrower will provide to the City promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by Borrower for additional financing for the Project in its sole discretion.

2.6 Other Restrictions. As a condition of the Loan, Borrower covenants to perform the following:

(a) Borrower will give ongoing construction updates to neighbors and report any issues to MOHCD.

(b) Borrower will provide MOHCD with detailed monthly updates via the Post Closing Report.

(c) Borrower will provide quarterly updated responses to any letters requesting corrective action.

(d) Borrower will apply for Continuum of Care (“CoC”) subsidies, if available, to replace and/or supplement the City’s funding under LOSP. In the event Borrower obtains additional subsidies for the Project, including CoC subsidies, Borrower will re-evaluate opportunities to obtain permanent debt to reduce the Funding Amount or partially repay the Loan and provide such evaluation to MOHCD.

(e) Borrower will provide initial draft marketing plan prior to the year the Project receives its first certificate of occupancy, outlining the affirmative steps they will take, subject to applicable law, including without limitation, fair housing law, to market the Project to the City’s preference program participants, including COP Holders, Displaced Tenants, and Neighborhood Residents, as well as how the marketing is consistent with the Mayor’s Racial Equity statement and promotion of positive outcomes for African American San Franciscans.

(f) Borrower will submit an updated first year operating budget and 20-year cash flow, if any changes have occurred, by no later than November 1st prior to the year the Project receives its first certificate of occupancy so that MOHCD may request the LOSP funding for the Project.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower will repay all amounts owing under the City Documents on the date that is the later of (a) the fifty-seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder’s Office of San Francisco County or (b) the fifty-fifth (55th) anniversary of the Conversion Date (the “Maturity Date”).

3.2 Compliance Term; Declaration of Restrictions. Borrower will comply with all provisions of the City Documents relating to the use of the Site and the Project as set forth in the Declaration of Restrictions to be recorded in the Official Records, for the period commencing on the date the Deed of Trust is recorded in the Official Records and continuing for the Life of the Project (the “Compliance Term”), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed before the end of the Compliance Term.

3.3 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of [three percent (3.00%)] per annum, as provided in the Note. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal and Interest. Except as set forth in Section 3.5., the outstanding principal balance of the Loan, together with all accrued and unpaid interest, if any, will be due and payable on the Maturity Date according to the terms set forth in full in the Note. Except as set forth in the Note, no prepayment of the Loan will be permitted without the prior written consent of the City in its sole and absolute discretion.

3.5.1 Notification and Repayment of Excess Proceeds. Borrower will notify the City in writing within thirty (30) days after the later of the date on which Borrower receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Borrower receives Excess Proceeds from its Limited Partner or other financing sources. To the extent permitted by the California Department of Housing and Community Development ("HCD"), Borrower will repay all Excess Proceeds to the City no later than sixty (60) days after receipt of such notification, unless the City has elected to waive such payment. The City will use such Excess Proceeds to reduce the balance of the Loan. The Director of MOHCD may elect to waive all or a portion of repayment of Excess Proceeds upon receipt from Borrower of adequate documentation supporting the need for such waiver in order to make the Project financially feasible.

3.6 Changes in Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the City within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in funding under Continuum of Care, Section 8 or similar programs.

3.7 Additional City Approvals. Borrower understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement will be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, City is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all local laws. Borrower

understands that any development of the Property will require approvals, authorizations and permits from governmental agencies with jurisdiction over the Property, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the “No Project” alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3.8 Failure to Provide Budgeted Supportive Services. If Borrower fails to provide Supportive Services in the amount shown in the approved 20-Year Cash Flow Proforma, Borrower will provide notice to the City within ten (10) business days of the date the Supportive Services were terminated, which notice will include, at a minimum, a proposed plan to restore the Supportive Services within a reasonable period of time. If at the time such notice is provided, Borrower is unable to propose a feasible plan for restoring the Supportive Service, Borrower will include in the notice a detailed explanation as to the cause of the termination of Supportive Services and the reasons why it would not be feasible to restore the Supportive Services within a reasonable period of time.

#### ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. Unless otherwise agreed by the City and Borrower in writing, Borrower will establish an escrow account with the title company issuing the Title Policy, or any other escrow agent Borrower chooses, subject to the City's approval (the “Escrow Agent”). The parties will execute and deliver to the Escrow Agent written instructions consistent with the terms of this Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by the City, or any other mutually agreed date, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. The City will authorize the close of the Loan only upon satisfaction of all conditions precedent in this Section as follows:

(a) Borrower will have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Note; (ii) this Agreement (in duplicate); (iii) the Deed of Trust; (iv) the Declaration of Restrictions; (v) the Opinion; (vi) the Authorizing Resolutions;

(vii) the Developer Fee Agreement; and (viii) any other City Documents reasonably requested by the City.

(b) Borrower will have delivered to the City: (i) Borrower's Charter Documents; (ii) a comprehensive maintenance and operating plan for the Project duly approved by Borrower's governing body that includes, but is not limited to, plans for emergencies and emergency maintenance, vacant unit turnover, preventive maintenance and inspection schedule, and marketing and resident selection. The Charter Documents will be delivered to the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

(c) Borrower will have delivered to the City evidence of all insurance policies and endorsements required under **Exhibit L** of this Agreement and, if requested by the City, copies of such policies.

(d) Borrower will have delivered to the City satisfactory evidence that Borrower has obtained commitments for any additional financing that may be required for the Project, in amounts and from lenders or investors satisfactory to the City in its sole discretion.

(e) Borrower will have delivered to the City a preliminary report on title for the Site dated no earlier than thirty (30) days before the Agreement Date.

(f) Borrower will have delivered to the City a "Phase I" environmental report for the Site, or any other report reasonably requested by the City, prepared by a professional hazardous materials consultant acceptable to the City.

(g) Borrower will have delivered to the City the construction license and easement agreements from the three neighboring property owners.

(h) The Escrow Agent will have received and is prepared to record the Declaration of Restrictions and Deed of Trust as valid liens in the Official Records, subject only to the Permitted Exceptions.

(i) The Escrow Agent will have committed to provide to the City the Title Policy in form and substance satisfactory to the City.

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, the City will authorize the Escrow Agent to disburse Funds as provided in the City's escrow instructions.

4.5 Disbursements. The City's obligation to approve any expenditure of Funds after Loan closing is subject to Borrower's satisfaction of the conditions precedent under this Section as follows:

(a) Borrower will have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, Borrower will obtain the City's prior written approval for all requested reallocations of Funds for line items previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower will have certified to the City that the Project complies with the labor standards set forth in **Section 5.1**, if applicable.

(d) With respect to any Expenditure Request that covers travel expenses, Borrower's travel expenses will be reasonable and will comply with the following:

(i) Lodging, meals and incidental expenses will not exceed the then-current per diem rates set forth by the United States General Services Administration for the County of San Francisco found at: <https://www.gsa.gov/portal/category/104711>.

(ii) Air transportation expenses will use fares for coach-class accommodations, provided that purchases for air travel will occur no less than one week before the travel day.

(iii) If ground transportation is required, the City urges the use of public transit or courtesy shuttles if provided by a lodging. If courtesy transportation is not provided by a lodging, ground transportation expenses for travel to or from regional airports will not exceed Fifty Dollars (\$50.00) each way. Other ground transportation expenses will not exceed then-current San Francisco taxi rates found at: <https://www.sfmta.com/getting-around/taxi/taxi-rates>. Ground transportation will not include any expenses for luxury transportation services, such as a limousine, or any expenses related to travel to or from Project site meetings by Borrower's employees.

(iv) Miscellaneous travel expenses will not exceed Fifty Dollars (\$50.00) without prior written approval of the City.

(v) Any Expenditure Request for travel expenses will include supporting documentation, including, without limitation, original itemized receipts showing rates and cost, air travel itinerary, proof of payment, and any written justification requested by the City.

For the purpose of this Section, the terms “lodging,” “meals” and “incidental expenses” will have the same meanings defined in 41 CFR Part 300-3; the term “coach-class” will have the same meaning defined in 41 CFR Part 301-10.121(a); and the term “miscellaneous” means copying services, printing services, communication services, or other services reasonably related to travel for the Project and approved by the City.

(e) The Loan will be In Balance.

4.6 Loan In Balance. The City may require Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City determines that the Loan is Out of Balance. When the City is satisfied that the Loan is again In Balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.7 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. The remaining ten percent (10%) of approved budgeted hard costs or tenant improvement costs associated with rehabilitation or construction will be held by the City and/or other Project lenders (the “**Retention**”) and may be released only upon satisfaction of all requirements listed in the Construction Manager’s Checklist for Release of Retention as follows:

(a) Early Retention Release. After fifty percent (50%) of the rehabilitation or construction of the Project is complete as determined by the City, Borrower may submit a written request to the City to release up to fifty percent (50%) of the Retention, provided that the following prerequisites have been met: (i) all work required to be performed by all parties for whom the City agrees to release the Retention (the “**Early Retention Release Contractors**”) has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (ii) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the City; (iii) no liens or stop notices have been filed against the Project and no claims are pending; (iv) the City determines that the contingency is in balance and adequate to complete the Project; (v) the Project is on schedule, and (vi) Expenditure Requests will not exceed 95% of the approved budgeted costs on a line item basis. [A list of Early Release Retention Contractors is set forth in Exhibit N.](#)

(b) Retention Release After Project Completion. Borrower may request disbursement of the remaining percentage amount of the Retention only upon the satisfaction of each of the following conditions, unless otherwise approved in writing by the City:

(i) completion of rehabilitation or construction of the Project in accordance with the plans and

specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (ii) timely recordation of a notice of completion; and (iii) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

4.8 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Funding Amount.

## ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Labor Requirements. Borrower's procurement procedures, contracts, and subcontracts will comply, and where applicable, require its contractors and subcontractors to comply, with the applicable labor requirements under **Exhibit E** of this Agreement, including, but not limited to, the selection of all contractors and professional consultants for the Project and payment of prevailing wage.

5.2 Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Site, Borrower will deliver to the City, and the City will have reviewed and approved, plans and specifications and the construction contract for the Project entered into between Borrower and Borrower's general contractor and approved by the City (the "**Construction Contract**"). The plans approved by the City will also be approved by the City and County of San Francisco's Department of Building Inspection (the "**Department of Building Inspection**") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Site. The Approved Plans will be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") will also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. After completion of the Project, Borrower will retain the Approved Plans as well as "as-built" plans for the Project, the Approved Specifications and the Construction Contract, all of which Borrower will make available to the City upon request.

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Borrower will provide adequate and complete justification for analysis of any change order request to the City. The City will provide any questions, comments or requests for additional information to Borrower within five (5) business days of receipt of a change order request. City will review and approve or disapprove of a change order request within ten (10) business days of a complete



submission by Borrower. In the event the City fails to approve or disapprove the change order request within such ten (10) business day period, the change order will be deemed approved. Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

5.4 Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Site, Borrower will deliver to the City insurance endorsements and bonds as described in **Exhibit L**. At all times, Borrower will take prudent measures to ensure the security of the Site.

5.5 Notice to Proceed. No demolition, rehabilitation or construction may commence until Borrower has issued a written notice to proceed with the City's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by the City, Borrower will: (a) commence demolition, rehabilitation or construction by a date no later than [August 31, 2025]; (b) complete construction by a date no later than [December 31, 2027], in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date"); and (c) achieve occupancy of ninety-five percent (95%) of the Units by a date no later than [December 31, 2028].

5.7 Rehabilitation/Construction Standards. All rehabilitation or construction will be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

## ARTICLE 6 MARKETING.

6.1 Marketing and Tenant Selection Plan. No later than twelve (12) months before the Completion Date, Borrower will deliver to the City for the City's review and approval an affirmative plan for initial and ongoing marketing of the Units and a written Tenant selection procedure for initial and ongoing renting of the Units based on MOHCD's then-current form of marketing and tenant selection plan (the "Marketing and Tenant Selection Plan"), all in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to the City. Borrower will obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower will market and rent the Units in the manner set forth in the Marketing and Tenant Selection Plan, as approved by the City.

6.2 Affirmative Marketing and Tenant Selection Plan Requirements. Borrower's Marketing and Tenant Selection Plan will address how Borrower intends to market vacant Units and any opportunity for placement on the Waiting List, as defined in 6.5. The Marketing and Tenant Selection Plan will include as many of the following elements as are appropriate to the Project, as determined by the City:

(a) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(b) A plan that satisfies the requirement to give preference in occupying units in accordance with the Preferences and Lottery Manual and the Preferences Ordinance.

(c) Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising will display the Equal Housing Opportunity logo.

(d) Notices to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(e) Notices to SFHA.

(f) Notices to MOHCD

(g) To the extent practicable, without holding Units off the market, the community outreach efforts listed above will take place before advertising vacant Units or open spots on the Waiting List to the general public.

(h) An acknowledgement that, with respect to vacant Units, the marketing elements listed above will only be implemented if there are no qualified applicants interested or available from the Waiting List.

(i) Borrower will use access points and accept Qualified Tenant referrals from HSH, MOHCD (for Plus Housing Program Units), or their successor agencies.

### 6.3 Marketing and Tenant Selection Plan & Tenant Screening Criteria Requirements:

(a) Borrower's Marketing and Tenant Selection Plan will comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached Exhibit H. The Marketing and Tenant Selection Plan will be kept on file at the Project at all times.

(b) Borrower's tenant screening criteria will comply with the Tenant Screening Criteria Policy set forth in the attached Exhibit I.

6.4 Marketing Records. Borrower will keep records of: (a) activities implementing the Marketing and Tenant Selection Plan; (b) advertisements; and (c) other community outreach efforts.

6.5 Waiting List. Borrower's Marketing and Tenant Selection Plan will contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list

that complies with the Marketing and Tenant Selection Plan (the “Waiting List”). The Marketing and Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but will limit the number of refusals without cause as approved by the City. Borrower will at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower will first attempt to select the new Tenant for such Unit from the Waiting List, and will only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List will be kept on file at the Project at all times.

## ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the Deed of Trust; (b) for any Unit that has been subject to a regulatory agreement with TCAC, for a period ending three (3) years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the 3-year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

### 7.2 Borrower's Covenant.

(a) Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**. In addition, twenty-two (22) Units will be rented to Homeless Households during the period in which the City’s Local Operating Subsidy Program is in operation and the City provides the Local Operating Subsidy to the Project, and five (5) Units will be rented to households referred from MOHCD’s Plus Housing Program.

(b) A Tenant who is a Qualified Tenant at initial occupancy will not be required to vacate the Unit due to subsequent rises in household income, except as provided in **Section 7.3**. After the over-income Tenant vacates the Unit, the vacant Unit will be rented only to Qualified Tenants as provided in this **Article 7**.

### 7.3 Rent Restrictions.

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* Rents may be adjusted annually, subject to the limitations below.

(b) Subject to the Hold Harmless Policy, rents for all Units may be increased once annually up to the maximum monthly rent by unit type as published by MOHCD.

(c) With the City's prior written approval, Rent increases for Units exceeding the amounts permitted under **Section 7.3(b)** may be permitted once annually in order to recover increases in approved Project Expenses, provided that: (i) in no event may single or aggregate increases exceed ten percent (10%) per year unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of Section 8 or other rental subsidies; and (ii) Rents for each Unit may in no event exceed the maximum Rent permitted under **Section 7.3(a)**. City approval for such Rent increases that are necessary to meet all approved Project Expenses will not be unreasonably withheld.

(d) For any Qualified Tenant participating in a Rent or operating subsidy program where the Rent charged is calculated as a percentage of household income, adjustments to Rent charged may be made according to the rules of the relevant subsidy program. There is no limit on the increase/decrease in Rent charged under this provision, as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**. There is no limit on the number of Rent adjustments that can be made in a year under this provision.

(e) For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, there is no limit on the increase in Rent charged as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**.

(f) Unless prohibited under any applicable Laws, including without limitation Section 42 of the Internal Revenue Code of 1986, as amended, if the household income of a Qualified Tenant exceeds the maximum permissible income during occupancy of a Unit, then, upon no less than thirty (30) days' prior written notice to the Tenant or as otherwise required under the Tenant's lease or occupancy agreement, Borrower may adjust the charges for Rent for the previously Qualified Tenant to be equal to thirty percent (30%) of the Tenant's adjusted household income. Rents charged under this provision may exceed the Maximum Rent permitted under **Section 7.3(a)**.

#### 7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project will be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person will be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant's income. Certifications provided to and accepted by the SFHA will satisfy this requirement.

(b) Borrower will require each Qualified Tenant in the Project to recertify to Borrower on an annual basis the Qualified Tenant's household income, and in accordance with applicable tax credit requirements.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year will be maintained on

file at Borrower's principal office, and Borrower will file or cause to be filed copies thereof with the City promptly upon request by the City.

7.5 Form of Lease. The form of lease for Tenants will provide for termination of the lease and consent to immediate eviction for failure to: (i) qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification, or (ii) submit to Borrower an annual recertification of income. The initial term of the lease will be for a period of not less than one (1) year. Borrower will not terminate the tenancy or refuse to renew any lease of a Unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for a Unit will be preceded by not less than thirty (30) days' written notice to the Tenant specifying the grounds for the action.

7.6 Nondiscrimination. Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable state law and this Agreement. Borrower will segregate any security deposits collected from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account will at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

## ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

### 8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower will maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building

and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35.

(b) Borrower will take prudent measures to ensure the security of the Site. Measures may include erecting a fence; covering and securing all openings in any vacant building and hiring security guards, as appropriate for the circumstances.

## 8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Borrower and the management agent, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract will contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. As of the Agreement Date, the City has approved RA Management, LLC as Borrower's management agent, subject to approval of the management contract.

(b) The City will provide written notice to Borrower of any determination that the contractor performing the functions required in **Section 8.1(a)** has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period, as determined by the City, Borrower will exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Section 8.1(a)**, subject to the City's approval.

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 8.1(a)**.

## ARTICLE 9 GOVERNMENTAL APPROVALS AND REQUIREMENTS.

9.1 Approvals. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to **Section 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

9.2 Borrower Compliance. Borrower will comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including those set forth in **Exhibit E** and **Exhibit L**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

## ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

### 10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that the City may also conduct periodic on-site inspections of the Project. Borrower will cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) Borrower will keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. Borrower will maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports will be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower will provide written notice of the replacement of its executive director, director of housing development, director of property management and/or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Borrower will submit monthly reports (the “MOHCD Monthly Project Update”) describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The MOHCD Monthly Project Update will be submitted by email in substantially the form requested by MOHCD until such time as the Project Completion Report is submitted to the City pursuant to **Section 10.5** below.

10.3 Annual Reporting. From and after the Completion Date, Borrower will file with the City annual report forms (the “Annual Monitoring Report”) that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Partnership Fees (if any), Residual Receipts and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred fifty (150) days after the end of Borrower's fiscal year. The Annual Monitoring Report will be in substantially the form attached as **Exhibit G** or as later modified during the Compliance Term.

10.4 Capital Needs Assessment. In accordance with the CNA Policy, Borrower will deliver to MOHCD an updated CNA every five (5) years after the Completion Date for approval.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower will provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower will provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within ninety (90) days after the Completion Date, a draft cost certification (or other similar project audit performed by an independent certified public accountant) identifying the sources and uses of all Project funds including the Funds;

(b) within one hundred-eighty (180) days after the Completion Date, a report on compliance with the applicable requirements under **Section 5.1** of this Agreement, including the type of work and the dollar value of such work; and

(c) within ninety (90) days after the Completion Date, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower will respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.7 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower will provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:



(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which will be certified by an auditor satisfactory to the City; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

**10.8 Access to the Project and Other Project Books and Records.** In addition to Borrower's obligations under **Sections 2.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7** and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.9.**

**10.9 Records Retention.** Borrower will retain all records required for the periods required under applicable Laws.

## **ARTICLE 11 USE OF INCOME FROM OPERATIONS.**

### **11.1 Project Operating Account.**

(a) Borrower will deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the City's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Partnership Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

(b) Borrower will keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. Borrower will provide copies of the records to the City upon request.

## ARTICLE 12 REQUIRED RESERVES.

### 12.1 Replacement Reserve Account.

(a) Commencing no later than the Conversion Date, or any other date the City designates in writing, Borrower will establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15th day of each month following establishment of the Replacement Reserve Account, Borrower will make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) Monthly deposits will equal a minimum of \$500 per Unit per year. After the Project's first five (5) years of operation, Borrower may request adjustments every five (5) years based on its most recently approved CNA.

(c) Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve the Project. Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval, which approval shall not be unreasonably withheld or conditioned.

### 12.2 Operating Reserve Account.

(a) Commencing no later than the Conversion Date, or any other date the City designates in writing, Borrower will establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to fifty (50%) of the approved budget for Project Expenses for the first full year of operation of the Project. The City may review the adequacy of deposits to the Operating Reserve Account periodically and require adjustments as it deems necessary.

(b) No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, Borrower will make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to twenty-five percent (25%) of the prior year's actual Project Expenses, subject to availability of Project Income.

(c) Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies and other expenses that vary seasonally or from month to month in the Project. Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the City's prior written approval.

## ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. “Distributions” refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management or other services performed in connection with the Project.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-2 includes projections of annual Distributions. Exhibit B-2 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) City approval of the Annual Monitoring Report submitted for that year; (b) the City's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the City for the Project; and (c) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to Borrower within thirty (30) business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

- (a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or
- (b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or
- (c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or
- (d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or
- (e) if the Loan is to be repaid from Residual Receipts, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or
- (f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time the City determines the Loan is out of balance) under any City Document.

13.4 Borrower's Use of Residual Receipts for Development. To the extent that making a Distribution is not inconsistent with any other financing agreement for the Project, and subject

to the limitations in this Article, with the City's prior written approval Borrower may retain a portion of Residual Receipts in lieu of using them to repay the Loan in an amount consistent with the Residual Receipts Policy attached hereto as **Exhibit P**. Borrower acknowledges that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Note. For so long as HCD's loan is outstanding, the City's share of Residual Receipts available for Payment is the proportional amount between the City's financial assistance amount and HCD's financial assistance amount 43.77% to MOHCD and 56.23% to HCD.

#### ARTICLE 14 SYNDICATION PROCEEDS.

14.1 Distribution and Use. If Borrower is a limited partnership or limited liability company, and unless otherwise approved by the City in writing, Borrower will allocate, distribute and pay or cause to be allocated, distributed and paid all net syndication proceeds and all loan and grant funds as specified in the Table. Borrower will notify the City of the receipt and disposition of any net syndication proceeds received by Borrower during the term of this Agreement.

#### ARTICLE 15 DEVELOPER FEES.

15.1 Amount. The City has approved the payment of development fees to the Developer in an amount not to exceed [Six Million Dollars (\$6,000,000)] [Three Million Five Hundred Thousand Dollars (\$3,500,000)] for developing the Project ("Developer Fees"), subject to the Developer Fee Policy and the terms and conditions set forth in full in the Developer Fee Agreement between the City and Developer.

15.2 Fee Payment Schedule. Developer will receive payment of the Developer Fees pursuant to Section 2(b) of the Developer Fee Agreement.

#### ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower will not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units and/or Commercial Space in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion; (c) transfers from Borrower to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Borrower or an affiliated nonprofit public benefit corporation is the sole general partner, member, or manager of that entity or is the manager or sole member of a limited liability company that is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Borrower to an investor pursuant to the tax credit syndication of the Project and transfers of any limited partner interest in Borrower to affiliates of the Permitted Limited Partner in accordance with the terms of the Partnership Agreement; (f) any

transfer by foreclosure or deed in lieu of foreclosure, (g) the grant or exercise of an option agreement or a right of first refusal 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 Partnership Agreement. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement. For clarity, SFHDC is deemed an affiliate of Borrower.

#### ARTICLE 17 INSURANCE AND BONDS; INDEMNITY.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower will procure and keep in effect, and cause its contractors and subcontractors to obtain and maintain at all times during any work or construction activities on the Property, the insurance and bonds as set forth in **Exhibit L** from the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County until the expiration of the Compliance Term at no expense to the City.

17.2 Borrower's Indemnity Obligations. Borrower will indemnify, protect, defend and hold harmless each of the Indemnitees from and against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 18** below); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) from and after the effective date of the Ground Lease until Borrower is no longer lessee under the Ground Lease, injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) from and after the effective date of the Ground Lease until Borrower is no longer lessee under the Ground Lease, any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site, or the Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, from and after the effective date of the Ground Lease until Borrower is no longer lessee under the Ground Lease, until the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring from and after the effective date of the Ground Lease before

the expiration of the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 9.2 and 18.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct.

17.3 Duty to Defend. Borrower acknowledges and agrees that its obligation to defend the Indemnitees under **Section 17.2**: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of **Section 17.2**, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Borrower by the Indemnitee and continues at all times thereafter. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower will answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The Indemnitee will give Borrower prompt notice of any Loss and Borrower has the right to defend, settle and compromise any such Loss; provided, however, that the Indemnitee has the right to retain its own counsel at the expense of Borrower if representation of such Indemnitee by the counsel retained by Borrower would be inappropriate due to conflicts of interest between such Indemnitee and Borrower. An Indemnitee's failure to notify Borrower promptly of any Loss does not relieve Borrower of any liability to such Indemnity under **Section 17.2**, unless such failure materially impairs Borrower's ability to defend such Loss. Borrower will seek the Indemnified Party's prior written consent to settle or compromise any Loss if Borrower contends that such Indemnitee shares in liability with respect thereto.

17.4 No Limitation. Borrower's obligations under **Section 17.2** are not limited by the insurance requirements under this Agreement.

17.5 Survival. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

## ARTICLE 18 HAZARDOUS SUBSTANCES.

18.1 Borrower's Representations. Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct, except as disclosed in the Phase I Environmental Site Assessment prepared by Rambol US Consulting, Inc. dated July 11, 2023, that certain Phase II Environmental Site Assessment prepared by Rambol US Consulting, Inc. dated July 12, 2023, and that certain updated Phase I Environmental Site Assessment prepared

by Ramboll Americas Engineering Solutions, Inc. dated February 4, 2025, or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

18.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower will: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

18.3 Survival. Borrower and City agree that this Article 18 is intended as City's written request for information (and Borrower's response) concerning the environmental condition of the Site as security as required by California Code of Civil Procedure § 726.5; and each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the Site as security is intended by City and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify City hereunder will survive: (a) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof, (b) the release and reconveyance or cancellation of the Deed of Trust; and (c) the satisfaction of all of Borrower's obligation under the City Documents.

## ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, and the lien is not removed from title or otherwise remedied to the City's satisfaction within thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under **Section 16.1**; or

(g) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any



portion of the ownership interests in Borrower or of its right, title or interest in the Project or the Site except as permitted under **Article 16**; or

(i) Without the City's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) Either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project, provided that, if the Borrower provides an alternate funding source to cover a loss of funding or rental subsidy that is reasonably satisfactory to the City, a material adverse impact shall not be deemed to have occurred; or

(m) Borrower fails to make any payments or disbursements required to bring the Loan in balance after the City determines that the Loan is out of balance; or

(n) Before a certificate of occupancy or equivalent certification is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of twenty five (25) consecutive calendar days, and the cessation is not excused under **Section 19.3**; or

(o) Borrower is in default of its obligations with respect to the Ground Lease or any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) Borrower is in default of its obligations under any other agreement entered into with the City and County of San Francisco, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Site from the Deed of Trust or Declaration of Restrictions, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the Deed of Trust or Declaration of Restrictions upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Borrower's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in **Section 19.1(k)**, the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses the City within ten (10) days of the City's demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls, including, but not limited to, government health orders related to a pandemic or epidemic; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event

will excuse Borrower's performance only in the event that Borrower has provided notice to the City within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

19.4 City's Recourse. The City's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Note.

## ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or, to Borrower's knowledge, threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the City, the Department of Industrial Relations, or any Governmental Agency, nor has Borrower, any of its principals or its general contractor has been suspended, disciplined or prohibited from contracting with the City or any Governmental Agency. Further, Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(f) The Loan is in balance, and the Funding Amount, together with all other committed sources of financing for the Project, are sufficient to complete the Project in accordance with this Agreement.

(g) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

(h) The Borrower is duly organized and in good standing under applicable laws of the State of California and is qualified to do business in the City and County of San Francisco.

## ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement will be made in writing and may be communicated by personal delivery, by a nationally recognized courier that obtains receipts, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices will be addressed as follows:

To the City:	City and County of San Francisco Mayor's Office of Housing and Community Development 1 South Van Ness Avenue, 5 <sup>th</sup> Floor San Francisco, CA 94103 Attn: Director
To Borrower:	160 Freelon Housing Partners, L.P. 44 Montgomery Street, Suite 1310 San Francisco, CA 94104 Attn: Ann Silverberg
With a copy to:	The Related Companies of California, LLC 18210 Von Karman Avenue, Suite 900 Irvine, CA 92612 Attn: Asset Management
With a copy to:	San Francisco Housing Development Corporation 4439 3 <sup>rd</sup> Street San Francisco, CA 94124 Attn: Chief Executive Officer
With a copy to:	GOLDFARB & LIPMAN LLP 1300 Clay Street, 11th Floor Oakland, CA 94612 Attn: Lynn Hutchins Email: lhutchins@goldfarblipman.com

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2 Required Notices. Borrower agrees to provide notice to the City in accordance with **Section 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be Out of Balance; or (c) will have a material adverse effect on Borrower's operation of the Property or ability to repay the Loan.

21.3 Notice to Limited Partner. The City agrees to deliver a copy of any notice of default to the Limited Partner at the address set forth below at the same time and in the same manner as notice is delivered to Borrower. The City's failure to deliver notice under this Section will not affect or impair the City's right to enforce its rights at law or in equity arising by reason of an Event of Default.

To: Bank of America, N.A.  
100 Federal Street  
MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management

Banc of America, CDC Special Holding Company, Inc.  
100 Federal Street, 4th Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

With a copy to: Buchalter, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017  
Attention: Michael Williamson  
Email: mwilliamson@buchalter.com  
Matter No. B0965-0842 (160 Freelon – Equity)

## ARTICLE 22 GENERAL PROVISIONS.

22.1 Subordination. The Deed of Trust may be subordinated to other financing secured by and used for development of the Project (in each case, a “**Senior Lien**”), but only if MOHCD determines in its sole discretion that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by MOHCD and approval as to form by the City Attorney's Office, the Director of MOHCD or his/her successor or designee will be authorized to execute any approved subordination agreement without the necessity of any further action or approval. The Declaration of Restrictions will not be subordinated to any financing secured by and used for the Project.

22.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party

beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

22.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower will include this requirement as a provision in any contracts for the development of the Project.

22.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or Borrower.

22.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

22.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

22.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

22.8 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

22.9 Governing Law; Venue. This Agreement is governed by California law and the City's Charter and Municipal Code without regard to its choice of law rules. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

22.10 Joint and Several Liability. If Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.

22.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

22.12 Reserved.

22.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

22.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action will be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

22.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

22.16 Binding Covenants. The provisions of the City Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

22.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

22.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

22.19 Borrower's Personnel. The Project will be implemented only by competent personnel under the direction and supervision of Borrower.

22.20 Borrower's Board of Directors. Borrower, or Borrower's manager or general partner, or such entity's managing member, as applicable, will at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors will meet regularly and maintain appropriate membership, as established in the bylaws and other governing documents of Borrower, Borrower's manager or Borrower's general partner, or such entity's managing member, as applicable, and will adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Such board of directors will exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

22.23 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

#### EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Form of Tenant Income Certification
- D First Source Hiring Requirements and Numerical Goals
- E Governmental Requirements
- F Lobbying/Debarment Certification Form
- G Form of Annual Monitoring Report
- H Tenant Selection Plan Policy
- I MOHCD Tenant Screening Criteria Policy
- J Developer Fee Policy
- K Hold Harmless Policy
- L Insurance Requirements
- M MOHCD Residual Receipts Policy
- N Early Retention Contractors



IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

**THE CITY:**

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Daniel Lurie  
Mayor

By: \_\_\_\_\_  
Daniel Adams  
Director, Mayor's Office of Housing  
and Community Development

APPROVED AS TO FORM:

DAVID CHIU,  
City Attorney

By: \_\_\_\_\_  
Jessica Alfaro-Cassella  
Deputy City Attorney

**BORROWER:**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON  
DEVELOPMENT CO., LLC,  
a California limited liability company  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing  
Development Corporation,  
a California nonprofit public  
benefit corporation, its sole  
member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

**EXHIBIT A**  
**Schedules of Income and Rent Restrictions**

1. **Income and Rent Restrictions.** Maximum rent is 30% of maximum income level. As used in this Agreement, the term “Qualified Tenant” includes each category of Tenant included below:

Unit Size	No. Of Units	Maximum Income Level
<b>PSH LOSP UNITS - SUBSIDIZED</b>		
1BR – LOSP	11	50% of Median Income
2BR – LOSP	6	50% of Median Income
3BR – LOSP	5	50% of Median Income
<b>PLUS UNITS - UNSUBSIDIZED</b>		
1BR – PLUS Housing	3	50% of Median Income
2BR – PLUS Housing	2	50% of Median Income
<b>GENERAL AFFORDABLE UNITS - UNSUBSIDIZED</b>		
Studio	12	60% of Median Income
1BR	7	60% of Median Income
2BR	2	60% of Median Income
3BR	4	60% of Median Income
Studio	3	70% of Median Income
1BR	3	70% of Median Income
2BR	4	70% of Median Income
3BR	4	70% of Median Income
2BR	8	80% of Median Income
3BR	10	80% of Median Income
2BR	1	Manager's Unit
<b>Total</b>	<b>85</b>	

5 Units must be rented at all times to tenants qualifying under MOHCD’s Plus Housing Program. If the Plus Housing Program is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, the Plus Housing Program units may be made available to Qualified Tenants whose income does not exceed fifty percent (50%) of Median Income.

22 Units must be made available to the chronically homeless or those at risk of homelessness during the period in which the City’s Local Operating Subsidy program is in operation and the City provides such subsidy to the Project under the LOSP Agreement.

If the LOSP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City’s reasonable discretion, provided that:

(a) Borrower diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(b) One hundred percent (100%) of the Units formerly under the LOSP must at all times be occupied by Qualified Tenants whose income does not exceed sixty percent (60%) of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (i) thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for household size, (ii) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

(c) If the Project continues to demonstrate financial infeasibility after the rent alterations above, to the extent financially feasible as determined in City's reasonable discretion, the City will waive the average income restriction of sixty percent (60%) of Median Income for all Residential Units, and increase rents to the extent necessary for Project to remain financially feasible (not past TCAC maximums); provided that one hundred percent (100%) of the Units must at all times be occupied by Qualified Tenants whose adjusted income does not exceed eighty percent (80%) of area median income, as published by TCAC (the "TCAC Median Income"), and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of TCAC Median Income (b) less utility allowance. On an annual basis, Borrower will convert to the TCAC Median Income and maximum rent to the corresponding published MOHCD maximum income level and maximum rent level, respectively, and provide MOHCD with supporting documentation. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of TCAC Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance.

In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. The relief provided by the foregoing will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by CDLAC, CTCAC, or under any other agreement. Borrower covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

[To the extent the Borrower needs to repay the full outstanding loan balance by the Maturity Date, the rent restrictions above may be altered, but only to the extent necessary for the Project to refinance and repay the full outstanding loan balance by the Maturity Date, as determined in City's reasonable discretion. One hundred percent (100%) of the Units will at all times be occupied by Qualified Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income, and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of eighty percent (80%) of Median Income (b) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty

percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. In such event, Borrower will provide the City with a written request no less than one year prior to the Maturity Date, and the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.]

2. Rent and Utilities. The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed the greater of:

(i) thirty percent (30%) of the applicable maximum income level, adjusted for household size; or

(ii) the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

Notwithstanding the foregoing, rents may be increased as permitted pursuant to Section 7.3 of the Agreement.

**EXHIBIT B-1**  
**Table of Sources and Uses of Funds**

Application Date:2/18/25  
Project Name:160 Freelon  
Project Address:160 Freelon Street  
Project Sponsor:Related California & SFHDC

# Units:85  
# Bedrooms:225  
# Beds:

LOSP Project

SOURCES	22,577,900	1,784,000	44,282,000	2,770,000	29,000,000	-	100	-	Total Sources	Comments
Name of Sources:	MOHCD/OCII	MOH Interest	TC Equity	Perm Loan	HCD AHSC	Def Dev Fee	GP Equity		100,414,000	

USES

ACQUISITION

Acquisition cost or value	1		0						1	
Legal / Closing costs / Broker's Fee	20,000		0						20,000	
Holding Costs									0	
Transfer Tax									0	
TOTAL ACQUISITION	20,001	0	0	0	0	0	0	0	20,001	

CONSTRUCTION (HARD COSTS)

* Unit Construction/Rehab	12,568,849		13,842,942	2,770,000	29,000,000		100		58,181,891	
* Commercial Shell Construction			0						0	
* Demolition			0						0	
Environmental Remediation			0						0	
* Onsite Improvements/Landscaping	140,000		0						140,000	Public Art Budget
* Offsite Improvements			0						0	
* Infrastructure Improvements									0	
Parking	283,506		963,920						1,247,426	GC Contingency
GC Bond Premium/GC Insurance/GC Taxes	366,099		1,244,738						1,610,837	2.4%
GC Overhead & Profit	559,557		1,902,495						2,462,052	3.7%
CG General Conditions	850,480		2,891,632						3,742,112	5.6%
Sub-total Construction Costs	14,768,492	0	20,845,727	2,770,000	29,000,000	0	100	0	67,384,318	
Design Contingency (remove at DD)	100,000		0						100,000	Pracon GC Fee
Bid Contingency (remove at bid)	500,000		0						500,000	Plan Check Contingency
Plan Check Contingency (remove/reduce during Plan Review)	800,000		0						800,000	Tariff Contingency
Hard Cost Construction Contingency	766,867		2,607,349						3,374,216	5% Owner Conting. (based on all of the above)
Sub-total Construction Contingencies	2,166,867	0	2,607,349	0	0	0	0	0	4,774,216	
TOTAL CONSTRUCTION COSTS	16,935,359	0	23,453,075	2,770,000	29,000,000	0	100	0	72,158,534	

SOFT COSTS

Architecture & Design

Architect design fees	2,584,461		287,162						2,871,623	See MOHCD A&E Fee Guidelines: <a href="http://sfmohcd.org/documents-reports-and-forms">http://sfmohcd.org/documents-reports-and-forms</a>
Design Subconsultants to the Architect (incl. Fees)									0	
Architect Construction Admin									0	
Reimbursables									0	
Additional Services									0	
Sub-total Architect Contract	2,584,461	0	287,162	0	0	0	0	0	2,871,623	
Other Third Party design consultants (not included under Architect contract)	690,576		75,620						756,195	Title 24, Acoustical, Utility, Waterproofing, Testing & Inspection, Graphic Designer
Total Architecture & Design	3,265,036	0	362,782	0	0	0	0	0	3,627,818	

Engineering & Environmental Studies

Survey	24,000								24,000	
Geotechnical studies	269,500								269,500	
Phase I & II Reports	80,000								80,000	
CEQA / Environmental Review consultants	42,750								42,750	
NEPA / 106 Review									0	
CNA/PNA (rehab only)									0	
Other environmental consultants									0	
Total Engineering & Environmental Studies	416,250	0	0	0	0	0	0	0	416,250	

Financing Costs

Construction Financing Costs			530,286						530,286	Origination Expenses
Construction Loan Origination Fee			530,286						530,286	Incl. MOHCD Deferred Interest
Construction Loan Interest		1,784,000	7,740,000						9,524,000	Constr. Lender's Closing Expenses, Escrow/Title
Title & Recording			195,000						195,000	
CDLAC & CDIAC fees	29,747		0						29,747	
Bond Issuer Fees	328,743		0						328,743	Advisor, Trustee, Underwriting Fees
Other Bond Cost of Issuance	27,500		0						27,500	
Sub-total Const. Financing Costs	385,990	1,784,000	8,465,286	0	0	0	0	0	10,635,276	
Permanent Financing Costs			20,775						20,775	
Permanent Loan Origination Fee			20,775						20,775	
Credit Enhance. & Appl. Fee			0						0	
Title & Recording			40,000						40,000	Perm Lender's Closing Expenses
Sub-total Perm. Financing Costs	0	0	60,775	0	0	0	0	0	60,775	
Total Financing Costs	385,990	1,784,000	8,526,061	0	0	0	0	0	10,696,051	

Legal Costs

Borrower Legal fees			425,000						425,000	
Land Use / CEQA Attorney fees									0	
Tax Credit Counsel									0	
Bond Counsel			65,000						65,000	
Construction Lender Counsel			85,000						85,000	
Permanent Lender Counsel			75,000						75,000	
* Other Legal (specify)									0	
Total Legal Costs	0	0	650,000	0	0	0	0	0	650,000	

Other Development Costs

Appraisal			10,000						10,000	
Market Study	25,000								25,000	
* Insurance			1,564,750						1,564,750	
* Property Taxes			5,000						5,000	
* Accounting / Audit	55,102								55,102	
* Organizational Costs									0	
* Entitlement / Permit Fees			1,500,000						1,500,000	
* Marketing / Rent-up			479,250						479,250	
* Furnishings			278,500						278,500	\$2,000/unit; See MOHCD U/W Guidelines on: <a href="http://sfmohcd.org/documents-reports-and-forms">http://sfmohcd.org/documents-reports-and-forms</a>
PGE / Utility Fees									0	FF&E includes \$66,000 for PSH unit furnishing (\$3,000 x 22 PSH units)
TCAC App / Allow / Monitor Fees	107,863								107,863	
* Financial Consultant fees									0	
Construction Management fees / Owner's Rep	140,300		140,300						280,600	
Security during Construction									0	
* Relocation									0	
Title & Recording									0	
Community Engagement & Celebrations	42,000								42,000	
Permit Expeditor	85,000								85,000	
Total Other Development Costs	455,265	0	3,977,800	0	0	0	0	0	4,433,065	

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)			1,493,282						1,493,282	Total Soft Cost Contingency as % of Total Soft Costs 7.5%
TOTAL SOFT COSTS	4,522,541	1,784,000	15,009,925	0	0	0	0	0	21,316,466	

RESERVES

* Operating Reserves			919,000						919,000	
* Replacement Reserves									0	
* Tenant Improvements Reserves									0	
* Other (specify)									0	
* Other (specify)									0	
* Other (specify)									0	
TOTAL RESERVES	0	0	919,000	0	0	0	0	0	919,000	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones	1,100,000		0						1,100,000	
Developer Fee - Cash-out At Risk			4,900,000						4,900,000	
Commercial Developer Fee									0	
Developer Fee - GP Equity (also show as source)									0	
Developer Fee - Deferred (also show as source)									0	
Development Consultant Fees									0	
Other (specify)									0	
TOTAL DEVELOPER COSTS	1,100,000	0	4,900,000	0	0	0	0	0	6,000,000	

TOTAL DEVELOPMENT COST

Development Cost/Unit by Source	22,577,900	1,784,000	44,282,000	2,770,000	29,000,000	0	100	0	100,414,000	
Development Cost/Unit as % of TDC by Source	265,622	20,988	520,965	32,588	341,176	0	1	0	1,181,341	
	22.5%	1.8%	44.1%	2.8%	28.9%	0.0%	0.0%	0.0%	100.0%	

Acquisition Cost/Unit by Source

	0	0	0	0	0	0	0	0	0	
Construction Cost (inc Const Contingency)/Unit By Source	199,240	0	275,919	32,588	341,176	0	1	0	848,924	
Construction Cost (inc Const Contingency)/SF	165.67	0.00	229.42	27.10	283.69	0.00	0.00	0.00	705.87	

\*Possible non-eligible GO Bond/COP Amount:  
City Subsidy/Unit

12,708,849  
265,622

Tax Credit Equity Pricing:  
Construction Bond Amount:  
Construction Loan Term (in months):  
Construction Loan Interest Rate (as %):

0.950  
48,900,000  
34 months  
7.75%

**EXHIBIT B-2**  
**Annual Operating Budget**





**EXHIBIT B-3**  
**20-Year Cash Flow Proforma**



**EXHIBIT C**  
**Tenant Income Certification Form**

[To be attached.]

**EXHIBIT D**  
**First Source Hiring Requirements and Numerical Goals**

Borrower's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83). Borrower will, or will require its general contractor to, separately execute a First Source Hiring Agreement with the City as set forth below, although the lack of such a separate execution will not affect the requirements of Chapter 83 as incorporated herein.

A. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor will comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement have the meanings assigned to such terms in Chapter 83.

B. First Source Hiring Agreement. On or before the effective date of the Ground Lease, Borrower will, or will require its general contractor to, enter into a first source hiring agreement ("FSH Agreement") with the City, that will include the terms as set forth in Section 83.9(b). Borrower also enter into an FSH Agreement with the City for any other work that it performs in the City.

C. Hiring Decisions. Borrower or its general contractor will make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

D. Exceptions. Upon application by Contractor, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

E. Liquidated Damages. Borrower agrees:

1. To be liable to the City for liquidated damages as provided in this Section;
2. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;
3. That the Borrower's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result

of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4. That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5. That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

a. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

b. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to a contractor and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6. That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

7. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorney's fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors will be made by the FSHA.

F. Subcontracts. Any subcontract entered into by Borrower or its general contractor will require the subcontractor to comply with the requirements of Chapter 83 and will contain contractual obligations substantially the same as those set forth in this Section.

**EXHIBIT E**  
**Governmental Requirements**

1. **Prevailing Wages and Working Conditions.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.1. Every contract for the rehabilitation or construction of housing assisted with Funds must comply with Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) and contain a provision requiring: (1) the payment of not less than the Prevailing Rate of Wage to all laborers and mechanics employed in the development of any part of the housing, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with state law and San Francisco Administrative Code Section 6.22(n), (collectively, "Prevailing Wage Requirements"). The Prevailing Wage Requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units. Borrower agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements. If applicable, Borrower must include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Chapter 6.

2. **Environmental Review.** The Project will meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

3. **Conflict of Interest.**

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower will incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Borrower will take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower represents that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that the City may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to the City's satisfaction, in the City's sole discretion.

4. Disability Access. Borrower will comply with all applicable disability access Laws, including the Americans With Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Borrower will provide to the City a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower will satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Borrower will also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Borrower will comply with any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83). To ensure compliance with those requirements, Borrower must include the provisions attached as **Exhibit D** in its contract with the general contractor for the Project. Borrower will be responsible to the City for ensuring compliance with the requirements listed on **Exhibit D**.



8. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Borrower Will Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate against any employee, City and County employee working with Borrower or any subcontractor, applicant for employment with Borrower or any subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, 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) Subcontracts. Borrower will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code. Borrower's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, 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(b) of the San Francisco Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, Borrower will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the executed form by the San Francisco Contract Monitoring Division.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B ("Nondiscrimination in Contracts") and 12C ("Nondiscrimination in Property Contracts") of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Borrower will comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Borrower understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this

Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

9. MacBride Principles. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Borrower acknowledges and agrees that he or she has read and understood this Section.

10. Tropical Hardwood & Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees and borrowers not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11. Preservative-Treated Wood Containing Arsenic. Borrower may not purchase preservative-treated wood products containing arsenic until the Deed of Trust has been fully reconveyed unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” will 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, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Borrower may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Borrower from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” will mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

12. Submitting False Claims; Monetary Penalties. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim will be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Sunshine Ordinance.

(a) Borrower acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, will be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request. Further, Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to Borrower's performance under this Agreement will be conducted as a passive meeting.

(b) By executing this Agreement, Borrower agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code to the extent applicable. By executing this Agreement, Borrower agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. Borrower further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Borrower acknowledges that its material failure to comply with any of the provisions of this paragraph will constitute a material breach of this Agreement. Borrower further acknowledges that such material breach of the Agreement will be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

(c) In accordance with the Citizen's Right to Know Act of 1998 (S. F. Admin. Code Chapter 79), no officer, department, board or commission of the City may approve a City Project, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days before approval. A City Project is a project that involves new construction, a change in use or a significant expansion of an existing use where the City funding for the project is \$50,000 or more. If the Loan will be used for a City Project, this Agreement will not become effective until fifteen (15) days

following the posting of the requisite sign, or, in the alternative, thirty (30) days following the delivery of written notices to residents and owners within 300 feet of the Site, and the City will have the right to nullify or revoke this Agreement without cost or liability of any sort whatsoever at any time before that date. If Borrower believes that this Agreement relates to a City Project and that the requisite sign has not been posted, Borrower will notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

14. Prohibition on Use of Public Funds for Political Activities. Borrower will comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

15. Nondisclosure of Private Information. Borrower has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information”, and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Borrower agrees that any failure of Borrower to comply with the requirements of Section 12M.2 of this Chapter will be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Borrower.

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

(a) Borrower will remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of Borrower'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 Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of

the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" will not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(b) Any failure of Borrower to comply with this section of this Agreement will constitute an Event of Default of this Agreement.

17. Resource-Efficient Building Ordinance. Borrower acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Borrower hereby agrees it will comply with the applicable provisions of such code sections as such sections may apply to the Property.

18. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Borrower agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Borrower's obligations under Chapter 12T is set forth in this Section. Borrower is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T will only apply to a Borrower's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, will apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, will apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and will not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Borrower will incorporate by reference in all subcontracts the provisions of Chapter 12T, and will require all subcontractors to comply with such provisions. Borrower's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(d) Borrower or Subcontractor will 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.

(e) Borrower or Subcontractor will 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 16.16(d), above. Borrower or Subcontractor will 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.

(f) Borrower or Subcontractor will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Borrower or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Borrower and Subcontractors will post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Borrower or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Borrower understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, 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 Agreement.

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount will not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

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

22. Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Borrower will comply with the applicable requirements of the Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance under Administrative Code Chapter 14B ("LBE Ordinance") and will incorporate such requirements in contracts with any Contractors and Subcontractors.

**EXHIBIT F**  
**Lobbying/Debarment Certification Form**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

*This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.*

3. Neither the undersigned nor its principals are listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

[signatures follow]



160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

**EXHIBIT G**  
**Form of Annual Monitoring Report**

[To be attached]

## **EXHIBIT H**

### **Tenant Selection Plan Policy**

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),<sup>1</sup> **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

#### **Application Process**

- **Application Materials.** MOHCD will provide an application to be used prior to the housing lottery. The housing provider agrees to use this application to determine lottery eligibility. The housing provider's written and/or electronic application materials should:
  - outline the screening criteria that the housing provider will use;
  - be in compliance with San Francisco Police Code Article 49 or the Fair Chance Ordinance,
  - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
  - be written in language that is clear and readily understandable,
- **First Interview.** In accordance with the housing provider policies, an initial interview is required to assess each applicant's minimum eligibility requirements for housing units. All applicants will be offered the opportunity for an interview in lottery rank order.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process. All applicant information will be retained for 12 months after the final applicant interview.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider will immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.

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<sup>1</sup>See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2**; **Unruh Civil Rights Act, Civil Code § 51**; **California Disabled Persons Act, Civil Code § 51.4**; Dymally-Alatorre Bilingual Services Act, Gov't Code §7290-7299.8; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**

- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider will immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.
- **Limited English Proficiency Policy.** Throughout the application process, the housing provider will comply with City policy for language access requirements for applicants with limited English proficiency.

### **Reasonable Accommodation and Modification Policy**

**Reasonable Accommodation:** The application process should provide information about how an applicant may make a reasonable accommodation request. At any stage in the admission process, an applicant may request a reasonable accommodation, if the applicant has a disability and as a result of the disability needs a modification of the provider's rules, policies or practices, including a change in the way that the housing provider communicates with or provides information to the applicant that would give the applicant an equal chance to be selected by the housing provider to live in the unit.

**Reasonable Modification:** Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

**Response to Request:** The housing provider will respond to a request for reasonable accommodation or modification within ten (10) business days. The response may be to grant, deny, or modify the request, or seek additional information in writing or by a meeting with the applicant. The housing provider will work with the applicant and referring agency to determine if there are ways to accommodate the applicant.

The housing provider will grant the request if the provider determines that:

- the applicant has a disability;
- reasonable accommodation or modification is necessary because of the disability; and
- the request is reasonable (i.e., does not impose an undue financial or administrative burden or fundamentally alter the nature of the housing program.)

If the reasonable accommodation request is denied, the rejection will explain the reasons in writing. If the denial of the reasonable accommodation request results in the applicant being denied admission to the unit, the provisions of the section on Notice of Denial and Appeal Process apply.

## **Notice of Denial and Appeal Process**

- The housing provider will:
  - Hold a comparable unit for the household during the entire appeal process.
  - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
    - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
    - explain how the applicant can request an in person appeal to contest the decision;
    - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
    - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
    - provide referral information for local legal services and housing rights organizations;
    - describe the evidence that the applicant can present at the appeal;
  - give applicants denied admission a date within which to file the appeal, which will be at least ten (10) business days from the date of the notice;
  - unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
  - confine the subject of the appeal to the reason for denial listed in the notice;
  - give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
  - have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
  - within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision will be sent (electronically or otherwise) to the referring agency and the funding agency.
- If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Chance Ordinance imposes additional notice requirements.

## **EXHIBIT I**

### **Tenant Screening Criteria Policy**

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants. These requirements are also designed to satisfy the requirements of San Francisco Police Code Article 49, Sections 4901-4920 or the Fair Chance Ordinance. This policy describes a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

#### **Screening Criteria**

- Housing providers will not automatically bar applicants who have a criminal record<sup>2</sup> in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers will not consider:
  - arrests that did not result in convictions, except for an open arrest warrant;
  - convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;<sup>3</sup>
  - juvenile adjudications.
- Housing providers will consider:
  - the individual circumstances of each applicant; and
  - the relationship between the offense, and
    - (1) the safety and security of other tenants, staff and/or the property; and
    - (2) mitigating circumstances such as those listed below.
  - only those offenses that occurred in the prior 7 years, except in exceptional situations, which will be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity.
  - mitigating factors, including, but not limited to:
    - (1) the seriousness of the offense;
    - (2) the age and/or circumstances of the applicant at the time of the offense;
    - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;

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<sup>2</sup> The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

<sup>3</sup> The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release “from all penalties and disabilities resulting from the offense.”

- (4) if the offense is related to acts of domestic violence committed against the applicant;
- (5) if the offense was related to a person's disability.

**EXHIBIT J**

Developer Fee Policy

[To be attached]



**Mayor's Office of Housing and Community Development**  
**Policy on Development Fees For Tax Credit Projects**  
**Effective October 16, 2020**

This MOHCD Policy on Development Fees for Tax Credit Projects applies to all developments seeking City funding in conjunction with new Tax Credit financing for the current project, including recapitalization projects with existing MOHCD loans. This does not apply to non-Tax Credit projects such as Small Sites Program (SSP) projects, which are subject to the SSP Program Guidelines. It also does not apply to HOPE SF or RAD projects, which are subject to separate developer fee policies.

Developers may include fees in their project budgets according to the terms below.

**I. MINIMUM FEES:** 5% of total development costs.

**II. MAXIMUM FEES:** Notwithstanding any other section of this Policy, the maximum Total Fee that may be included in basis is the Tax Credit limit (currently 15% of Eligible Basis) subject to the additional limitations identified below.

**A. Total Development Fee**

("Total Fee") for different project types are further detailed below, and reflect the sum of the Cash-Out Fee (Base, Additional, and Deferred) and Non Cash-Out Fee (Deferred and General Partner Equity Contribution).

**B. Fee Components**

**1. Cash-Out Fee (Base and Additional)**

Project Type	9% Project - Maximum Cash-Out Fee	4% Project - Maximum Cash-Out Fee	Notes
New Construction	TCAC Maximum	The lesser of TCAC Maximum or \$2,200,000 (Base) + \$10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	
Newly Acquired and Substantially Rehabilitated (Per unit Hard Cost >= \$75,000)	TCAC Maximum	Same as new construction fee.	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U.
Substantial Rehabilitation (Per unit Hard Cost >= \$75,000) by Existing or Affiliate GP -- <b>Includes New City Funds or Re-structured City Debt</b>	50% TCAC Maximum	The lesser of TCAC maximum or \$1,100,000 (Base) + \$10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	-Sponsor may take the allowable fee for Newly Acquired and Rehabilitated projects described above if 1) in the project's original syndication, sponsor did not take the maximum allowable developer fee; or 2) sponsor adds new affordable units to the project.

			<p>-Hard Cost is defined as “Total Construction Costs” summed in the MOHCD Application in cell K37, Tab 4b-Perms&amp;U.</p> <p>-Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.</p>
Recapitalization, acquisition, or transfer with less than \$75,000 Per unit hard cost capital improvements	No Fee	No Fee	<p>-Hard Cost is defined as “Total Construction Costs” summed in the MOHCD Application in cell K37, Tab 4b-Perms&amp;U.</p> <p>-Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.</p>

- a. A note about Cash-Out Additional Fee: If Eligible Basis is less than Threshold Basis, projects over 100 units may take up to \$10,000 per unit over 100 as cash-out fee, but only if such cash payment does not require additional gap funding from MOHCD (see MOHCD Application, Tab 8-DevFeeCalc, for calculation).
2. Cash-Out Fee (Deferred): If Eligible Basis is less than Threshold Basis, Developers may include a Cash-Out Deferred Fee component in the Total Fee up to the aggregate of 50% of surplus cash flow taken over the project’s first 15 years of operation (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable). Cash-Out Deferred Fee is shown as both a source and a use of funds in the capital budget. Developers may use industry standard inflators of income and expenses to calculate Cash-Out Deferred Fee.
  - a. Distributions of surplus cash as Deferred Fee are in lieu of (not in addition to) the typical 33.3% distribution of surplus cash to the Sponsor. At Year 15 of operations, or earlier if the Deferred Fee is fully repaid before then, a surplus cash distribution shall commence at 33.3% of surplus cash (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable).
  - b. For projects supported by the Local Operating Subsidy Program, Cash-Out Deferred Fee must be taken over a minimum time period of 5 years.
3. Non-Cash Out Fee (Deferred and General Partner Equity Contribution): Where Eligible Basis is less than Threshold Basis, Developers should include in Total Fee the maximum amount available for re-contribution as General Partner Equity or as Non-Cash Out Deferred Fee. It is

MOHCD's intent to use Deferred Fee and General Partner Equity Contribution up to 15% of Eligible Basis to reduce MOHCD's overall contribution to projects, so that MOHCD may invest its funds in the most projects possible. MOHCD will work with developers, lenders, and investors to ensure that the developer fee structure meets MOHCD financing goals and feasibility considerations.

4. Commercial Developer Fee is not addressed in this Policy. Please see MOHCD's Commercial Underwriting Guidelines for information regarding development fees associated with Commercial, Community Serving Commercial, and Public Benefit Use spaces.

**III. FEE DISTRIBUTION:** The Cash-Out Base Fee shall be divided equally between "Project Management Fee" and "At-Risk Fee" (subject to the "At-Risk Fee Adjustment" described below). Any Cash-Out Additional Fee will be distributed as At-Risk Fee. Cash-Out Fees (Base and Additional) shall be distributed according to achievement of certain development milestones, as follows:

*Example below assumes Base Fee is \$2.2 M and Additional Fee is \$300,000.*

Project Management Milestone	% of Fee Distributed	Fee Amount
Acquisition, if applicable, or predevelopment loan closing (or another agreed-upon milestone if acquisition is not applicable, e.g. being awarded a City-owned site through a RFQ/RFP process)*	15%	\$165,000
During Predevelopment with no more than 50% of the total Project Management Fee to be disbursed prior to construction closing*	35%	\$385,000
At Construction Closing	20%	\$220,000
During Construction (disbursed upon request depending on % of construction completion) or at Completion of Construction	20%	\$220,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	10%	\$110,000
<b>TOTAL PROJECT MANAGEMENT FEE</b>	<b>100%</b>	<b>\$1,100,000</b>

**\*Joint Venture development team partners must split all Fee during the pre-development period 50%-50%. This helps ensure the new or emerging partner has access to Fee upfront to support their participation in the project and their capacity building.**

<b>At-Risk Fee Milestone</b>	<b>% of Fee Distributed</b>	<b>Fee Amount</b>
Qualified Occupancy (95% Leased up and Draft Cost Certification Audit)	20%	\$280,000
Permanent Loan Closing/Conversion (Final Cost Certification Audit)	50%	\$700,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	30%	\$420,000
<b>TOTAL AT-RISK FEE</b>	<b>100%</b>	<b>\$1,400,000</b>

**A. At-Risk Fee Adjustment**

When outside funding sources limit the Cash Out Fee to a value less than allowed under this Policy (e.g., California's Department of Housing and Community Development), the Developer may still be paid a maximum of \$1.1M as a Project Management Fee and the At-Risk Fee shall be reduced to bring the total Cash-Out Fee (Base and Additional) in line with the outside funding source cap.

**IV. WAIVERS OF THE DEVELOPER FEE POLICY**

The Citywide Affordable Housing Loan Committee may approve a waiver or modification of any portion of this Policy for the purpose of assuring project feasibility. All recommendations related to this Policy are subject to the Mayor's approval in his or her sole discretion.

**V. CDBG or HOME REQUIREMENTS**

If MOHCD uses CDBG or HOME funds to pay the development fee, it is considered "program income", and, should MOHCD request it, the Sponsor must provide a report to MOHCD on its use of developer fees.

Recipients of CDBG administrative funding may not also receive a Project Management Fee for the same project covering the same time period.

**VI. POLICY IMPLEMENTATION**

This Policy applies to any development that has not received its gap financing commitment or debt restructuring approval from MOHCD by the effective date of the Policy.

**EXHIBIT K**

**Hold Harmless Policy**

[To be attached]

**Mayor's Office of Housing and Community Development**  
City and County of San Francisco



**London N. Breed**  
Mayor

**Kate Hartley**  
Director

**Hold Harmless Policy for MOHCD's Income Limits & Maximum Rents**  
**Effective: 5/3/2019** (update to the initial policy that was effective 2/19/2016)

**Background**

Every year, the United States Department of Housing and Urban Development ("HUD") publishes area median income ("AMI") data for jurisdictions across the United States. The City and County of San Francisco, acting through its Mayor's Office of Housing and Community Development ("MOHCD"), is a part of the San Francisco HUD Metropolitan Fair Market Rent Area ("SF HMFA"), which contains San Francisco, San Mateo and Marin County. MOHCD uses HUD's unadjusted AMI for SF HMFA as opposed to adjusted AMI, which is inflated to reflect high cost factors, to establish the income limits, maximum rents and sales prices that apply to affordable housing projects and programs regulated by MOHCD.

In 2016, MOHCD established a Hold Harmless Policy which stated that in any year when AMI decreased, MOHCD would maintain the income limits, maximum rents and sales prices at the previous year's levels in order to protect the operational integrity of affordable and inclusionary housing developments.

**Purpose**

This update to the Hold Harmless Policy (this "Policy") adds a limit to annual increases to income limits, maximum rents and sales prices published by MOHCD in order to mitigate the significant financial burden on low- and moderate-income tenants and homebuyers during periods of high escalation of AMI in San Francisco.

This Policy establishes the following:

- Limit annual increases to income limits, maximum rents, and sale prices to a maximum of 4%<sup>i</sup>
- Uphold the current policy of maintaining income limits, maximum rents and sales prices at the previous year's levels in years when AMI, as published by HUD, has decreased.

This Policy is intended to limit harm by:

1. Protecting tenants from displacement due to annual rent increases that would cause a significant financial burden; and
2. Protecting the operational integrity of housing developments so that owners are able to cover operating costs that typically increase annually, even when AMI decreases; and

3. Ensuring that San Francisco’s low-, moderate- and middle-income workforce retain access to homeownership opportunities.

### **Hold Harmless Limits**

For the purpose of this Policy:

**“HUD SF AMI”** means the maximum income by household size, maximum rent by unit type, and maximum sales prices as published annually by MOHCD, derived from the median income determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as “Unadjusted Median Income”.

**“MOHCD AMI”** means the maximum income by household size, maximum rent by unit type, and maximum sales prices as published annually by MOHCD under this Policy.

**“Housing Provider”** means any person or entity that owns a multi-family property that is restricted for the purpose of affordable housing and/or subject to MOHCD administration, regulations, or policies.

**Limited Increases:** Annual increases to MOHCD AMI shall be limited to the lesser of: (1) the percentage amount necessary to adjust MOHCD AMI to match the then-current year’s HUD SF AMI, or (2) four percent (4%)<sup>i</sup>. This Policy limits year-over-year increases to MOHCD AMI to 4% in periods of high HUD SF AMI escalation, while allowing MOHCD AMI to “catch up” to HUD SF AMI during periods when HUD SF AMI grows slowly, is static, or decreases.

**Limited Decreases:** This update to the Policy does not eliminate the Hold Harmless Policy adopted in 2016. In years when the MOHCD AMI matches the HUD SF AMI, and the subsequent year’s HUD SF AMI decreases, MOHCD will maintain the MOHCD AMI from the previous year. If, in subsequent years, HUD SF AMI decreases again, stays flat, or increases to a level that is still lower than before the initial decrease, MOHCD will maintain its published AMI until such time as the HUD SF AMI increases to a level that is greater than the MOHCD AMI.

The application of this Policy may result in the creation of a calculation of MOHCD AMI that is different than the HUD SF AMI. The below chart demonstrates how this Policy would be applied over a hypothetical 6-year period:

	Base Year	Year 2		Year 3		Year 4		Year 5		Year 6	
	AMI	AMI	% Change	AMI	% Change	AMI	% Change	AMI	% Change	AMI	% Change
<b>HUD SF AMI</b>	100.0	108.0	8.0%	107	-0.9%	111	3.9%	109.0	-2.0%	112.5	3.2%
<b>MOHCD AMI</b>	100.0	104.0	4.0%	107	2.9%	111	3.9%	111	0.0%	112.5	1.2%

### Utility Allowances

Notwithstanding anything to the contrary in this Policy, it is important to note that a Housing Provider will be required to lower net rents (i.e. tenant-paid rent) as the result of increases in utility allowances in years when the MOHCD AMI matches the HUD SF AMI, and HUD SF AMI has decreased or remained flat. MOHCD AMI establishes the limits for maximum gross rent (aka “Tier 2 rent” under the City’s Inclusionary Housing Manual),” which consists of tenant rent plus utility allowance. If HUD SF AMI decreases or remains flat, and therefore MOHCD AMI remain the same as the previous year, an increase in the utility allowance means that the tenant rent would have to be lowered.

Limited Hardship Waiver

MOHCD will consider, in its sole discretion, a waiver of this Policy from a Housing Provider with rental units restricted under contracts (i.e., loan agreement, grant agreement, or other agreement for funding from the City) with MOHCD upon demonstration that: (1) the MOHCD AMI imposes a financial hardship that puts at risk the Housing Provider's ability to cover reasonable operating costs and debt service, (2) existing tenants will not be unreasonably financially burdened by the Housing Provider's proposed rent increases, and (3) the Housing Provider is not in default under any contract with MOHCD. Any waiver from this Policy approved by MOHCD, in its sole discretion, shall apply for only one year. Housing Providers are solely responsible for providing MOHCD with any documentation requested by MOHCD to support a hardship waiver of this Policy.

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<sup>i</sup> The application of the 4% increase is made on the amount for the 100% AMI level for a 4-person family. MOHCD continues to using rounding to the nearest \$50 on the calculations for all of the other income levels and household sizes. The use of rounding may create nominal differences in the percentage increases for all of the other max income levels and household sizes, as well as for all of the maximum rents.



**EXHIBIT L**  
**Insurance Requirements**

Subject to approval by the City's Risk Manager of the insurers and policy forms Borrower will obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement or other applicable date set forth below throughout the Compliance Term at no expense to the City:

1. **Liability Insurance.** Borrower will obtain and maintain, or cause its contractors, subcontractors, property managers and/or agents, as appropriate for each, to obtain and maintain, insurance and bonds as follows:

(a) to the extent Borrower or its contractors and subcontractors have “employees” as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Borrower is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is “Claims made” coverage, Borrower will assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim will be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(f) as applicable, pollution liability and/or asbestos pollution liability covering the work being performed with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This

coverage will be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy will be "claims made" coverage and Borrower will require Borrower's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance. Borrower will maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

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

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower 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, ordinance or regulation; 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 Borrower as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, Tenant will 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 Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such

machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender will require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

3. General Requirements.

(a) Required Endorsements. Borrower's insurance policies will include the following endorsements:

(i) Commercial General Liability and Commercial Automobile Liability Insurance policies will be endorsed to name as "Additional Insured" the City and County of San Francisco, its officers, agents, and employees.

(ii) The Workers' Compensation policy(ies) will be endorsed with a waiver of subrogation in favor of the City for all work performed by the Borrower, its employees, agents, contractor(s), and subcontractors.

(iii) Commercial General Liability and Commercial Automobile Liability Insurance policies will provide that such policies are primary insurance to any other insurance available to the "Additional Insureds," with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(iv) All policies will be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices will be sent to the City address set forth in **Section 21.1** of the Agreement.

Borrower will provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

(b) Certificates of Insurance. By no later than Loan closing and annually thereafter, Borrower will furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Borrower's liability under this Agreement.

(c) Waiver of Subrogation – Property Insurance. With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Claims Based Policies. All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made form, Borrower will maintain coverage as follows:

(i) for builder's risk, continuously for a period ending no less than three (3) years after recordation of a notice of completion without lapse, to the effect that, if any occurrences give rise to claims made after completion of the Project, then those claims will be covered by the claims-made policies; or

(ii) for all other insurance under this Exhibit L, continuously through the Compliance Term and, without lapse, for a period of no less than three (3) years beyond the expiration of the Compliance Term, to the effect that, if any occurrences during the Compliance Term give rise to claims made after expiration of the Agreement, then those claims will be covered by the claims-made policies.

(e) Additional Requirements.

(i) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit will be double the occurrence or claims limits specified above.

(ii) Any and all insurance policies required under this Exhibit L will contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(iii) On City's request, Borrower and City will periodically review the limits and types of insurance carried under this Exhibit L. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Borrower for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Borrower to conform to the general commercial practice, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(iv) Borrower's compliance with the insurance requirements under this Exhibit L will in no way relieve or decrease Borrower's indemnification obligations under this Agreement or any of Borrower's other obligations under this Agreement.

**EXHIBIT M**  
**Residual Receipts Policy**

[To be attached]

# Mayor's Office of Housing and Community Development

## Residual Receipts Policy

### Effective April 1, 2016

#### INTRODUCTION

The Mayor's Office of Housing and Community Development (MOHCD) typically requires annual payments under the Ground Leases and Loans provided for the purpose of developing or preserving affordable housing to the extent that making payments is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Payments may be required under one or a combination of several structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When a development financed by MOHCD is projected to enjoy more income than is needed to pay expenses, service other debt, fully fund its reserves, and make approved payments out of surplus, it is MOHCD's policy that a portion of the remaining "residual" income be directed toward repayment of MOHCD's investment.

MOHCD also permits a modest portion of "residual" income to be distributed by the borrower. Distribution of any portion of "residual receipts" is conditioned on MOHCD's annual determination that certain performance standards and benchmarks have been met.

#### SUMMARY (see below for detailed requirements)

<b>I. Definition of Residual Receipts</b>	As depicted in the approved MOHCD Operating Budget Proforma for each project, the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments of surplus. .
<b>II. Annual Residual Receipts Payments Due to MOHCD</b>	Generally, $\frac{2}{3}$ <sup>rd</sup> s of residual receipts is payable to the City. Larger Tax Credit projects may be eligible to use an alternative $\frac{1}{2}$ - $\frac{1}{2}$ split for up the first 10 years of a new tax credit period, see the Developer Fee Policy for more details.
<b>III. When more than one MOHCD contract requires residual payments</b>	The approved MOHCD Operating Budget Proforma is a required exhibit to the last-executed MOHCD contract and must reflect a comprehensive summary of approved cash flow waterfall, listing of all lenders, relative lien positions, underlying loan terms and amounts owed to MOHCD annually across all MOHCD contracts.
<b>IV. When a project has other Lenders in addition to MOHCD that require residual payments</b>	The portion to be repaid to each Lender is typically determined by the proportional amount of capital funded under each loan. The approved MOHCD Operating Budget Proforma must include a list of all loans and details about projected amounts owed annually, including how the portion of residual receipts to be paid to each lender will be calculated, if not based on a proportional amount.
<b>V. Conditions to Distribution of Residual Receipts to Borrower</b>	Distribution of Residual Receipts may be made only upon: (1) MOHCD approval of Annual Monitoring Report; (2) determination by MOHCD that borrower is not in default; and (3) approval by MOHCD of amount of

	Distribution.
<b>VI. Use of Residual Receipts Distributed to the Borrower</b>	MOHCD strongly encourages borrowers to use distributions for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).
<b>VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project</b>	Any other use of the income derived from housing developed or preserved with MOHCD financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOHCD financing is committed and approved.
<b>MOHCD Repayment Waiver Option</b>	The repayment waiver option has been terminated.

**I. Definition of Residual Receipts**

- A. Residual Receipts is the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments from surplus.
- B. The project-specific Funding Agreements and/or Ground Leases define what Project Income entails and which Project Expenses are allowable. In general, the definition of allowable Project Expenses will include mandatory or “hard” debt service payments, minimum or Base Rent owed under a Ground or Land lease, and required annual payments into Reserve accounts. Each MOHCD contract will include a copy of the approved Operating Budget Proforma.
- C. When MOHCD requires repayments from Residual Receipts, the formula usually requires payment of a portion of the available Residual Receipts. The use of a proportional formula makes it is essential to clearly define which uses of surplus cash have been approved for payment prior to the calculation of the amount owed to MOHCD.
- D. The approved uses of any available surplus may also be referred to as the cash flow waterfall. The approved MOHCD Operating Budget Proforma is used to document the approved cash flow waterfall. In general, the following expenses may be a part of a cash flow waterfall:
  - 1. Fees payable to the project, the GP, the LP or the parent entity
  - 2. Fees payable to project funders
  - 3. “Soft” debt repayments to lenders / lessors

Please see the City’s Developer Fee Policy and Operating Fees Policy for a list of allowable fees and any applicable limits.

- E. Limited Partnership Agreements may also provide a narrative summary of the cash flow waterfall. In the event that a Limited Partnership Agreements is found to be inconsistent with the MOHCD Funding Agreement and/or the approved MOHCD Operating Budget Proforma, the MOHCD documents shall control.

**II. Annual Residual Receipts Payments due under MOHCD Ground Leases & Loans**

Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the portion to be paid to the City shall be  $\frac{2}{3}$ <sup>rd</sup>s of Residual Receipts. Larger Tax Credit projects may be eligible to use an alternative  $\frac{1}{2}$  -  $\frac{1}{2}$  split for up the first 10 years of a new tax credit period and the borrower's portion of Residual Receipts shall be considered payment of Deferred Developer Fee. See the Developer Fee Policy for more details.

Any residual receipts payments shall be applied toward the unpaid balance of MOHCD loan/s according to the terms in the Promissory Note and/or Funding Agreement, and toward the payments required under the MOHCD Ground Lease.

**III. When more than one MOHCD contract requires residual payments:**

Some projects supported by MOHCD may be governed by more than one MOHCD contract. The MOHCD Operating Budget Proforma provides a comprehensive summary of the approved cash flow waterfall, a listing of all lenders, the relative position of each lien, the amounts owed and the relevant repayment terms, and will also reflect the cumulative amount of repayments owed to MOHCD annually across all MOHCD contracts. Projects governed by more than one MOHCD contract that extend or initiate a MOHCD contract after the effective date of this policy will be required to get approval of a new MOHCD Operating Budget Proforma.

**IV. When a project has other Lenders in addition to MOHCD that require residual payments**

- A. If any other project lenders besides MOHCD require repayment from residual receipts, the portion to be repaid to each Lender will typically be determined by the proportional amount of capital supplied under each loan. For example, if a project received a \$2 million loan from MOHCD and a \$3 million loan from another lender, MOHCD would receive  $\frac{2}{5}$ <sup>th</sup>s of the amount available to be repaid, and the other lender would receive  $\frac{3}{5}$ <sup>th</sup>s of the amount available to be repaid. The approved MOHCD Operating Budget Proforma must include a list of all Loans and provide an appropriate amount of detail about the projected amounts owed annually including details about how the portions to be paid to each lender will be calculated. If a project makes an agreement with any other lender/s after executing a MOHCD contract containing the final MOHCD-approved Operating Budget Proforma, prior to making any payments to such other lender/s, the project must request and be approved in writing to amend the MOHCD-approved Operating Budget Proforma to include the new lender/s.
- B. During operations, MOHCD will require Residual Receipts payments using MOHCD's method of calculating surplus and any amounts owed to the MOHCD. If there is a difference in the amount calculated to be owed to any other lenders under another lender's repayment calculation method when compared to MOHCD method, then each lender will be paid according to its calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

**V. Conditions to Distribution of Residual Receipts to Borrower**

- A. Distribution of Residual Receipts to the borrower of a MOHCD loan, or lessee of a MOHCD ground lease, may be made only upon:
  - 1. MOHCD approval of the Annual Monitoring Report submitted for that year; and
  - 2. Determination by MOHCD that the borrower is not in default under terms of the Loan; and



3. Approval by MOHCD of the amount to be distributed.
- B. No distribution of Residual Receipts shall be made under any of the following circumstances:
  1. When a written notice of default has been issued by any lender or investor and such default has not been cured; or
  2. When the City determines that the borrower or the borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes; or
  3. If any operating expense, including debt service on non-City loans remains unpaid; or
  4. If any required reserve account is not fully funded according to the terms of the MOHCD contract/s; or
  5. In the event of any other material failure to comply with the provisions of the MOHCD contract/s.

**VI. Use of Residual Receipts Distributed to the Borrower**

MOHCD strongly encourages borrowers to use the portion of Residual Receipts that is not applied toward repayment of MOHCD's loan or payment of residual rent under a MOHCD ground lease for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).

**VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project**

- A. With the exception of Residual Receipts retained by a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOHCD financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOHCD financing is committed and approved.
- B. The Loan Committee may approve variations of this policy on a project-specific basis, including the payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents either as a project expense or out of that portion of Residual Receipts that would otherwise be repaid to the City.

**EXHIBIT N**

Early Retention Contractors

[waiting on list from borrower]

## GROUND LEASE

This Ground Lease is dated as of [\_\_\_\_], 2025 (the “**Agreement Date**”), by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**” or “**Landlord**”), acting by and through its Real Estate Division and the Mayor's Office of Housing and Community Development (“**MOHCD**”), and **160 FREELON HOUSING PARTNERS, L.P.**, a California limited partnership, as tenant (the “**Tenant**”).

## RECITALS

A. The City is the fee owner of the land described in Attachment 1 and the existing improvements located thereon (“**Land**”). The Land is held under MOHCD’s jurisdiction.

B. MOHCD issued a Multisite Request for Qualifications (“**RFQ**”) on November 30, 2020, to solicit qualified affordable housing developers for the Land. In response to the RFQ, MOHCD selected The Related Companies of California, LLC, a California limited liability company (“**Related**”), and San Francisco Housing Development Corporation, a California nonprofit public benefit corporation (“**SFHDC**”), to develop and construct an affordable housing project and lease the Land for the purpose of such new affordable housing. Related and SFHDC formed the Tenant for the purpose of undertaking the activities described in the RFQ.

C. On April 4, 2025, the Citywide Affordable Housing Loan Committee made a recommendation to approve MOHCD’s financing of Tenant’s plan to develop the Land and construct thereon a multifamily residential building consisting of eighty-four (84) rental units of affordable housing for low-income persons, plus one manager’s unit, including twenty-two (22) LOSP units reserved for formerly homeless households and five (5) units for referrals from the City’s Plus Housing List, together commonly known as 160 Freelon (collectively, the “**Project**”).

D. On April 1, 2023, the City and the Tenant entered into that certain Option to Lease Agreement under which City granted the Tenant an option to ground lease the Land (the “**Option**”) that expires on June 30, 2026, including applicable extensions.

E. The Tenant is now exercising its Option to enter into this Ground Lease, under which City agrees to lease the Land to the Tenant to construct the Project. The Tenant will construct the Project to serve the needs of the low-income residents and will restrict rents for all units in accordance with the terms described herein.

F. On [\_\_\_\_\_, 2025, the City’s Board of Supervisors and the Mayor approved Resolution No. [\_\_\_\_\_, authorizing the City to enter into a ground lease with the Tenant to construct the Project on the Land.

G. The City believes that the fulfillment of the terms and conditions of this Ground Lease are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in full accord with the public purposes and provisions of applicable Laws.

**NOW THEREFORE**, in consideration of the mutual obligations of the parties to this Ground Lease, the City hereby leases to the Tenant, and the Tenant hereby leases from the City, the Land for the Term (as defined in ARTICLE 2) to construct the Project, and subject to the terms, covenants, agreements, and conditions set forth below, each and all of which the City and the Tenant mutually agree.

## **ARTICLE 1 DEFINITIONS**

Terms used herein have the meanings given them when first used or as set forth in this ARTICLE 1, unless the context clearly requires otherwise. Whenever an Attachment is referenced, it means an attachment to this Ground Lease unless otherwise specifically identified. Whenever a section, article, or paragraph is referenced, it is a reference to this Ground Lease unless otherwise specifically referenced.

**“Agreement Date”** means the date first set forth above.

**“Annual Rent”** has the meaning set forth in the Section 4.01(a).

**“Area Median Income”** (or **“AMI”**) means median income as published annually by MOHCD for the City and County of San Francisco, adjusted solely for household size, and derived in part from the income limits and area median income determined by the U.S. Department of Housing and Urban Development for the San Francisco area, but not adjusted for a high housing cost area.

**“Change”** has the meaning set forth in Section 12.02.

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

**“Effective Date”** means the date the City records the Memorandum of Ground Lease against the Land, but in no event will the date be before the date of approval of the Ground Lease by the City’s Board of Supervisors and the Mayor.

**“Extension Notice”** has the meaning set forth in Section 2.03.

**“First Lease Payment Year”** means the year in which the earlier of: (i) the date the first certificate of occupancy of the Project is issued evidencing completion of construction activities are completed on the Project, or (ii) the third anniversary of the Effective Date.

**“First Mortgage Lender”** means any lender and its successors, assigns, and participants or other entity holding the senior leasehold deed of trust on the Leasehold Estate.

**“Ground Lease”** means this Ground Lease, as amended from time to time in accordance with the terms herein.

**“Improvements”** means all physical improvements to be constructed and/or rehabilitated on the Land, including all structures, fixtures, and other improvements, including but not limited to the Project.

**“Land”** has the meaning set forth in Recital A.

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

**“Laws”** means all applicable statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.

**“Lease Year”** means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the first Lease Year will commence on the Effective Date and continue through December 31st of that same calendar year and the last Lease Year will end upon the expiration of the Term.

**“Leasehold Estate”** means the Tenant’s leasehold estate in the Land created by and pursuant to this Ground Lease.

**“Leasehold Mortgage”** means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits, that constitutes a lien on the Leasehold Estate and is approved in writing by the City.

**“Lender”** means any entity holding a Leasehold Mortgage.

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

**“LOSP”** means the local operating subsidy provided by the City to the Tenant for the operation of the Project, the amount of which is sufficient to permit Tenant to operate the Project with residential units for Qualified Households with income levels below those set forth in the MOHCD Declaration of Restrictions.

**“LOSP Program”** means the program administered by MOHCD that regulates the distribution of LOSP.

**“MOHCD”** means the Mayor’s Office of Housing and Community Development for the City.

**“MOHCD Declaration of Restrictions”** means that certain Declaration of Restrictions and Affordable Housing Covenants dated on or about the date hereof, executed by Tenant for the benefit of the City pursuant to the MOHCD Loan Agreement, and recorded against the Leasehold Estate concurrently with the Memorandum of Ground Lease.

**“MOHCD Loan Agreement”** means that certain Amended and Restated Loan Agreement dated [\_\_\_\_\_, 2025], by and between City and Tenant for the purpose of the City providing a loan to Tenant for the development, construction, and permanent financing of the Project.

**“Partnership Agreement”** means the [Amended and Restated Agreement of Limited Partnership of Tenant] dated [\_\_\_\_\_, 2025], as amended from time to time.

**“Partnership Fees”** means (i) a combined annual asset management (\$26,010) and partnership management fee (\$26,010) in the total amount of \$52,020, increasing by 3.5% annually beginning in 2026, payable to the Tenant’s general partners, and (ii) an annual investor services fee in the amount of \$7,760, increasing annually by 3.5% beginning in 2026, payable to the Tenant’s Permitted Limited Partner. In no event will such fees exceed the maximum amount permitted by HCD so long as it is a Lender, as permitted by HCD’s regulations.

**“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 that have been admitted as limited partners of Tenant in accordance with the Partnership Agreement, or other successors and assigns as approved by the City.

**“Permitted Use”** has the meaning set forth in Section 9.01.

**“Personal Property”** means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Premises and that can be removed from the Premises without substantial economic loss to the Premises or substantial damage to the Premises and that is incidental to the ownership, development, or operation of the Improvements or the Premises, belonging to the Tenant, any Residential Occupant, any Non-residential Occupant, or any subtenant or other occupant of the Premises and/or in which the Tenant, Residential Occupant, Non-residential Occupant, or any subtenant or other occupant has an ownership interest, together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.

**“Plus Housing Program”** means the housing program managed by MOHCD for low-income people living with Human Immunodeficiency Virus (HIV).

**“Premises”** means the Land and all Improvements.

**“Project”** is defined in Recital C.

**“Project Expenses”** means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate and/or possessory interest taxes, assessments, and all insurance premiums required under this Agreement or by lenders providing secured financing for the Project; (b) salaries, wages, and other compensation due and payable to the employees or agents of the Tenant who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) required payments of interest, principal, or annual servicing fees, if any, on any construction or permanent financing secured by the Project that has been approved by the City; (d) annual monitoring fee and all other expenses actually incurred by the Tenant to cover routine operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (e) annual Base Rent payments; (f) deposits to reserves accounts required to be established under the Loan Documents or the Partnership Agreement; (g) the approved bond

issuer fees, fiscal agent fees and annual asset management fees indicated in the Annual Operating Budget and approved by the City; (h) any extraordinary expenses as approved in advance by the City; and (i) Supportive Services. Partnership Fees are not Project Expenses.

**“Project Income”** means all income and receipts in any form received by the Tenant from the operation of the Premises, including, but not limited to, the following: (a) rents, fees, charges, and deposits (other than tenant’s refundable security deposits); (b) Section 8 or other rental subsidy payments received for the Project, supportive services funding (if applicable); (c) price index adjustments and any other rental adjustments to leases or rental agreements; (d) proceeds from vending and laundry room machines; (e) the proceeds of business interruption or similar insurance; (f) any accrued interest disbursed from any reserve account required under this Agreement or the Partnership Agreement for a purpose other than that for which the reserve account was established; (g) reimbursements and other charges paid to Tenant in connection with the Project; and (h) other consideration actually received from the operation of the Project, including non-residential uses of the Land, if applicable. Project Income does not include interest accruing on any portion of the Funding Amount or tenant’s refundable security deposits, loan proceeds, capital contributions and similar advances. Project Income does not include interest accruing on any portion of the MOHCD Loan, if applicable, or refundable security deposits from Residential Occupants.

**“Public Benefit Purposes”** means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)(3) public benefit organizations, or have been identified by a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

**“Qualified Households”** means households whose income does not exceed the maximum permissible annual income level allowed under the MOHCD Declaration of Restrictions, subject to ARTICLE 9 below. For purposes of this Ground Lease, Qualified Households has the same meaning as “Qualified Tenants” in the MOHCD Declaration of Restrictions.

**“Residential Occupant”** means any residential household authorized by the Tenant to occupy a Residential Unit on the Premises, whether or not a Qualified Household.

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

**“Residual Receipts”** means all Project Income in any given Lease Year remaining after payment of Project Expenses and Partnership Fees. The amount of Residual Receipts will be based on figures contained in audited financial statements.

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

**Supportive Services** means services designed to support Qualified Households, including adult education, health, and skill building classes, including, but not limited to, financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition classes, exercise classes, health information/awareness, art classes, parenting classes, on-site food cultivation and preparation classes, and smoking cessation classes

**“TCAC”** means the California Tax Credit Allocation Committee.

**“Tenant”** means 160 Freelon Housing Partners, L.P., a California limited partnership, and its successors and assigns (or a Subsequent Owner, where appropriate).

**“Term”** has the meaning set forth in Section 2.01, as extended pursuant to Section 2.02 or earlier terminated as provided in this Ground Lease.

## **ARTICLE 2 TERM**

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

2.02 Option for Extension. Provided that the Tenant is not in default under the terms of this Ground Lease and the Loan Documents beyond any notice, grace, or cure period either at the time of giving of an Extension Notice under Section 2.03 below, or on the last day of the Term (the **“Initial Termination Date”**), Tenant is granted an option to extend the Term for one twenty-four (24) year period, as provided in this Article. If the Term is extended pursuant to this Section, all references in this Ground Lease to the **“Term”** will mean the Term as extended by such extension period. Upon Tenant’s written exercise of this option under Section 2.03, the Term will automatically be extended for twenty-four (24) years from the Initial Termination Date for a Term not to exceed ninety-nine (99) years, provided that Tenant is not in default under the terms of this Ground Lease and the Loan Documents beyond any notice, grace, or cure period on the Initial Termination Date.

2.03 Notice of Extension. By no later than one hundred eighty (180) days before the Initial Termination Date, the Tenant may notify the City in writing that it is exercising its option to extend the Term under Section 2.02 above (an **“Extension Notice”**).

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

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

## **ARTICLE 3 FINANCIAL ASSURANCE**

In accordance with the dates specified in the Schedule of Performance (Attachment 2), the Tenant will submit to the City for approval evidence satisfactory to the City that the Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Project in accordance with this Ground Lease. City hereby acknowledges that as of the Agreement Date, the Tenant has satisfied this requirement.



## ARTICLE 4 RENT

### 4.01 Annual Rent

4.01(a) Tenant will pay to the City One Million Four Hundred Thirteen Thousand Twenty Six Dollars (\$1,413,026)(the “**Annual Rent**”) per year for each year of the Term of this Ground Lease. Annual Rent consists of Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as otherwise permitted by this Ground Lease) and without necessity of demand, notice, or invoice. Annual Rent will be re-determined on the fifteenth (15th) anniversary of the date of the first payment of Base Rent pursuant to Section 4.02(a) below and every fifteen (15) years thereafter, and will be equal to ten percent (10%) of the appraised fair market value of the Land as determined by an MAI appraiser selected by and at the sole cost of the Tenant. Any such adjustment will be made to the Residual Rent and not to the Base Rent.

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

### 4.02 Base Rent

4.02(a) “**Base Rent**” means, in any given Lease Year, Fifteen Thousand Dollars (\$15,000) per annum; provided, however, that if the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.01, then Base Rent will be increased to the full amount of Annual Rent until such time as the Project achieves compliance with the provisions of Section 9.01. Base Rent will be due and payable in arrears on January 31st of each Lease Year; provided that the first Base Rent payment will not be due until January 31<sup>st</sup> of the calendar year following the First Lease Payment Year. Additionally, if a Subsequent Owner elects under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be adjusted as provided in Section 26.07..

4.02(b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of (a) through (d) in the definition of Project Expenses, above, and the City has received written notice from Tenant regarding its inability to pay Base Rent from Project Income at least sixty (60) days before the Base Rent due date, along with supporting documentation for Tenant’s position that it is unable to pay Base Rent from Project Income, then the unpaid amount will be deferred and all deferred amounts will accrue without interest until paid (“**Base Rent Accrual**”). The Base Rent Accrual will be due and

payable each year from and to the extent Residual Receipts is available. Any Base Rent Accrual will be due and payable on the earlier of (i) sale of the Project and Leasehold Estate (but not a refinancing or foreclosure of the Project and Leasehold Estate); or (ii) termination of this Ground Lease (unless a new lease is entered into with a mortgagee under Section 26.09 below).

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

4.03 Residual Rent. "**Residual Rent**" means, in any given Lease Year, One Million Three Hundred Ninety-Eight Thousand Twenty-Six Dollars (\$1,398,026.00) subject to any periodic adjustments under Section 4.01(a). Residual Rent will be due in arrears on June 30th following each Lease Year. Except as otherwise provided in Section 26.07(a), Residual Rent will be payable only to the extent of Residual Receipts as provided in Section 6.02(g) below and after full repayment of the MOHCD Loan, and any unpaid Residual Rent will not accrue. In the event that in any year Residual Receipts is insufficient to pay the full amount of the Residual Rent, Tenant will certify to the City in writing by June 30th that available Residual Receipts is insufficient to pay Residual Rent and Tenant will provide to City any supporting documentation reasonably requested by the City to allow City to verify the insufficiency.

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

4.05 Reserved.

4.06 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 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.

## **ARTICLE 5 CITY COVENANTS**

The City is duly created, validly existing, and in good standing under the Law, and has full right, power, and authority to enter into and perform its obligations under this Ground Lease. The City covenants and warrants that, during the Term, Tenant and its Residential Occupants will have, hold, and enjoy peaceful, quiet, and undisputed possession of the Land, leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Ground Lease. For the avoidance of doubt, Landlord will not mortgage its fee estate unless there is an express subordination of the fee mortgage to Tenant's Leasehold Estate, provided that such obligation in no way relates to the City's taxing authority or ability to pledge its full faith and credit related to any general obligation bond. If Landlord mortgages its interest in the fee estate during the term of any Lender's loan, Tenant may not subordinate the Ground Lease to the lien of that mortgage.

## **ARTICLE 6 TENANT COVENANTS**

Tenant covenants and agrees for itself and its successors and assigns that:

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

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

6.02(a) Permitted Uses. Except as provided in Sections 26.06 and 26.07 of this Ground Lease, Tenant will devote the Premises to, exclusively and in accordance with, the uses authorized by this Ground Lease, as specified in ARTICLE 9 below, which are the only uses permitted by this Ground Lease. Tenant acknowledges that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

6.02(b) Non-Discrimination. Tenant will not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation, or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, or any part thereof, and Tenant or any person claiming under or through it will not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Residential Occupants, Non-residential Occupants, subtenants or vendees on the Premises, or any part thereof, except to the extent permitted by Law or required by funding source. Tenant

will not discriminate against Residential Occupants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

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

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

6.02(e) Equal Opportunity Marketing and Selection Plan. No later than six (6) months before completion of the Project, Tenant will deliver to MOHCD for MOHCD's review and approval an affirmative plan for initial and ongoing marketing of the Residential Units and a written Residential Occupant selection procedure for initial and ongoing renting of the Residential Units based on MOHCD's then-current form of marketing and tenant selection plan (the “**Marketing and Tenant Selection Plan**”), all in compliance with the restrictions set forth in Section 9.01 and in form and substance acceptable to the City. Any Marketing and Tenant Selection Plan must follow the City's marketing requirements for such plans and comply with all federal and state fair housing laws.

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

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

- i. First to Base Rent Accrual payments, if any;
- ii. Second, to replenish the operating and replacement reserve accounts, if necessary, up to the amount required by Lenders or the Permitted Limited Partner;
- iii. Third, two-thirds (2/3) of remaining Residual Receipts to the City; provided, however, if the construction of the Project includes a deferred developer fee and Tenant is in compliance with the City Loan documents and MOHCD's policies, then fifty percent (50%) of remaining Residual Receipts to the City beginning on the initial Payment Date (as such term is defined in the City Loan documents) until and including the earlier of the year (i) of the fifteenth

(15th) Payment Date, or (ii) in which all deferred developer fees have been paid to Developer. For so long as HCD is a Lender, the City's one-half (1/2) portion of Residual Receipts will be split on a pro rata basis with HCD. The City's portion of Residual Receipts will be applied first to repayment of all City loans according to the terms of the City loan documents, then to annual Residual Rent; and

- iv. Then, any remaining Residual Receipts may be used by Tenant for any purposes permitted under the Partnership Agreement of Tenant, as it may be amended from time to time.

Notwithstanding the foregoing, Tenant and the City agree that the distribution of Residual Receipts may be modified based on the requirements of other Lenders.

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

## **ARTICLE 7 ANNUAL INCOME COMPUTATION, AND CERTIFICATION**

Upon written request by the City, and in compliance with all applicable local, state, and federal laws, Tenant will furnish to the City a list of the persons who are Residential Occupants, the specific unit that each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in Attachment 5, for each Residential Occupant. In addition, each Residential Occupant must be required to provide any other information, documents, or certifications deemed necessary by the City to substantiate the Residential Occupant's income. If any state or federal agency requires an income certification for Residential Occupants containing the above-referenced information, the City will accept such certification in lieu of Attachment 5 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant will provide the same information and certification to the City regarding each Residential Occupant by no later than twenty (20) business days after such Residential Occupant commences occupancy.

## ARTICLE 8 CONDITION OF SITE— “AS IS”

8.01 Tenant acknowledges and agrees that Tenant is familiar with the Land, the Land is being leased and accepted in its “as-is” condition, without any changes or alterations by the City, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Tenant further represents and warrants that Tenant has investigated and inspected, independently or through agents of Tenant's choosing, the condition of the Land and the suitability of the Land for Tenant's intended use. Tenant acknowledges and agrees that neither the City nor any of its agents have made, and the City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Land, the physical or environmental condition of the Land, or the present or future suitability of the Land for Tenant's use, or any other matter whatsoever relating to the Land, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Land is being leased in an “AS IS” condition with respect to all matters.

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

8.03 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances. Tenant is advised that the Land may contain tetrachloroethene (PCE), benzene, chloroform, TPH-g, as further described in that Phase I Environmental Site Assessment prepared by Rambol Americas Engineering Solutions dated February 4, 2025.

## ARTICLE 9 PERMITTED AND PROHIBITED USES

9.01 Permitted Uses and Occupancy Restrictions. The permitted uses of the Project (in each instance, a “**Permitted Use**” and collectively, “**Permitted Uses**”) are limited to the construction and operation of 84 units of affordable rental housing for low-income persons plus 1 manager’s unit, including 22 LOSP units reserved for formerly homeless households and 5 Plus Housing Program units (collectively, the “**Residential Units**”) and common areas. Upon the completion of construction of the Project, one hundred percent (100%) of the Residential Units, with the exception of the manager’s unit, in the Project will be occupied by or available for rental by Residential Occupants certified as Qualified Households, as set forth in MOHCD’s Declaration of Restrictions and any amendments thereto mutually agreed upon by the parties. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease and by Lenders for so long as such restrictions are required by the applicable Lender. In the event the LOSP subsidy is terminated, discounted, or reduced at no fault of Tenant with respect to the Project, then the applicable set aside under the LOSP may be altered, but only to the extent necessary for the Project to remain financially feasible, as determined by in City’s reasonable discretion, and subject to the requirements under the MOHCD Declaration of Restrictions.

9.02 Prohibited Uses. The following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a “**Prohibited Use**” and collectively, “**Prohibited Uses**”), are inconsistent with this Ground Lease, are strictly prohibited and are considered Prohibited Uses:

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

9.02(b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

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

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

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

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

9.02(g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except as necessary for construction of the Improvements;

9.02(h) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except as necessary for construction of the Improvements; or

9.02(i) the washing of any vehicles or equipment;

9.02(j) bars, retail liquor sales, marijuana sales, or any other uses the cater exclusively to adults; and

## **ARTICLE 10 SUBDIVISION; CONSTRUCTION OF IMPROVEMENTS**

10.01 Schedule of Performance. Tenant will undertake and complete all physical construction of the Improvements, as approved by the City, in accordance with the Schedule of Performance attached hereto as Attachment 2.

10.02 Reserved.

10.03 General Requirements and Rights of the 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 10, the City hereby acknowledges that for purposes of this Ground Lease, the Final Construction Documents for the Project have been approved as of the Agreement Date.

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

10.04(a) Compliance with Ground Lease. The City’s approval with respect to the Construction Documents is limited to determination of their compliance with this 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.

10.04(b) 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 the City is entering into this Ground Lease in its capacity as a property owner with a proprietary interest in the Land 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 the City officials, departments, boards, or commissions having jurisdiction over the Premises. By entering into this Ground Lease, the City is in no way modifying or limiting Tenant’s obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

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

10.05(a) Compliance with City Approved Documents. The construction of the Improvements must be in compliance with the City-approved Construction Documents.

10.05(b) Compliance with Local, State and Federal Laws. The construction of the Improvements must be in strict compliance with all applicable Laws. Tenant understands and agrees that Tenant’s use of the Premises and the 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 the 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 Premises or the City's interest therein must first be approved by the 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 the City will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain, or failure by Tenant, its agents, or invitees to comply with, the terms and conditions of any regulatory approval.

10.06 Approval of Construction Documents by the City. Tenant will submit and the City will approve or disapprove the Construction Documents referred to in this Ground Lease within the times established in the Schedule of Performance attached hereto as Attachment 2, 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 attached hereto as Attachment 2. Failure by the City either to approve or disapprove within the times established in the Schedule of Performance attached hereto as Attachment 2 will entitle Tenant to a day-for-day extension of time for completion of any activities delayed as a direct result of the City's failure to timely approve or disapprove the Construction Documents. The City hereby acknowledges that, as Landlord under this Ground Lease, as of the Agreement Date, the City has approved the Construction Documents for the Project.

10.07 Disapproval of Construction Documents by the 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 the City) no later than the date specified therefor in the Schedule of Performance attached hereto as Attachment 2.

10.08 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.

10.09 Performance and Payment Bonds. Before commencement of construction of the Improvements, Tenant will deliver to the 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 the City as co-obligees.

10.10 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. Tenant will provide adequate and complete backup documentation

for analysis of the appropriateness of any requested change to the Construction Documents (each, a "Change Order") to the City. This backup documentation shall include confirmation that the Change Order has been reviewed, vetted or negotiated, and accepted by (with modifications where appropriate) the Tenant and architect/engineer prior to submission to the City. Questions, comments or requests for additional information will be provided by the City within five (5) business days of receipt of Change Order. City will promptly review and accept or deny the Change Order within ten (10) business days of a complete submission by Tenant. In the event the City requests further information, the City will have no less than five (5) business days from receipt of such information to accept or deny the Change Order. In the event the City fails to accept, deny or issue request for further information related to the Change Order within the later of 10 business days from submission of the Change Order or 5 business days of receipt of additional information, the Change Order will be deemed accepted. If the City denies the Change Order, City will specify the reasons for the denial in writing. Tenant will submit on a monthly or more frequent basis or as requested by MOHCD, a contingency balance report (in Excel format or equivalent) which documents all Change Orders as approved, pending, or under review.

10.11 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 on the Land, and that such construction will be completed no later than the dates specified in the Schedule of Performance attached hereto as Attachment 2, subject to force majeure, unless such dates are extended by the City.

10.12 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, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, will be extended for the period of the 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 the construction of the Improvements in the manner and at the times specified in this Ground Lease.

10.13 Reports. Beginning when the construction of the Improvements commences and continuing until completion of the construction of the Improvements, 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.

10.14 Access to Site. As of the Effective Date and until the City issues a final certificate of occupancy, Tenant will permit access to the Project to the City whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever the City believes that emergency access is required. Tenant shall have a right to have an employee, agent, or other representative of Tenant accompany the Landlord representative at all times while the Landlord representative is present on the Site. The Landlord and its representatives will exercise due care in entering upon and/or inspecting the Site, and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Site or Improvements, or any disruption to the work of construction or operation of the Improvements. The Landlord and its representatives will abide by any reasonable safety and security measures Tenant imposes. After the City's issuance of a final certificate of occupancy, access to the Premises will be governed by ARTICLE 24, below.

10.15 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.

10.16 Completion of Improvements by New Developer. In the event a Lender forecloses, obtains a deed in lieu of foreclosure, or a Subsequent Owner otherwise realizes on 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 attached hereto as Attachment 2 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) the City and the New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to ARTICLE 10 of this Ground Lease as the parties mutually determine to be reasonably necessary based on the financial and construction conditions then existing.

## **ARTICLE 11 RESERVED.**

## **ARTICLE 12 CHANGES TO THE IMPROVEMENTS**

12.01 Post-Completion Changes. The City has a particular interest in the Project and in the nature and extent of the permitted changes to the Premises. Accordingly, it imposes the following control on the Premises: during the term of this Ground Lease, neither Tenant, nor any

voluntary or involuntary successor or assign, may make or permit any Change (as defined in Section 12.02) in the Premises, unless and until the express prior written consent for any change has been requested in writing from the City and received, and, if received, on such terms and conditions as the City may reasonably require. The City will not unreasonably withhold or delay its response to such a request.

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

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

## **ARTICLE 13 TITLE TO IMPROVEMENTS**

The City acknowledges that fee title to the Improvements will be vested in Tenant for the Term of this Ground Lease. It is the intent of the Parties that this Ground Lease and the Memorandum of Ground Lease will create a constructive notice of severance of the Improvements from the Land without the necessity of a deed from Lessor to Lessee. The City and Tenant agree that fee title to the Improvements will remain vested in Tenant during the Term, subject to Section 14.01 below; provided, however, that, subject to the rights of any Lenders and as further consideration for the City entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements will vest in the City without further action of any party, without any obligation by the City to pay any compensation to Tenant, and without the necessity of a deed from Tenant to the City. Without limiting the effectiveness of the previous sentence, upon the City’s written request, on expiration or sooner termination of this Ground Lease, Tenant will execute and deliver to the City an acknowledged and good and sufficient grant deed conveying to the City Tenant’s fee interest in the Improvements. Tenant will have the exclusive right to deduct, claim, retain and enjoy any and all rental income appreciation, gain, depreciation, amortization, and tax credits for federal and State tax purposes relating thereto, substitution therefor, fixtures therein and other property relating thereto.

## **ARTICLE 14 ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE**

14.01 Assignment, Sublease, or Other Conveyance by Tenant. Tenant will not cause or permit any voluntary transfer, assignment, or encumbrance of its Leasehold Estate or its interest in the Premises or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Premises, other than: (a) leases, subleases, or occupancy agreements to

Residential Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by the City in its reasonable discretion, (c) transfers from Tenant to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Tenant or an affiliated nonprofit public benefit corporation is the sole general partner, member or manager of that entity; (d) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Tenant to an investor under the tax credit syndication of the Project and transfers of any limited partner interest in Tenant to affiliates of the Permitted Limited Partner in accordance with the terms of the Partnership Agreement; (f) the grant or exercise of an option agreement or right of first refusal agreement between Tenant and Tenant'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; (g) transfer to Lender(s) or affiliates of Lender(s) through foreclosure or deed in lieu of foreclosure as provided in this Ground Lease; 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 Partnership Agreement. Any other transfer, assignment, encumbrance, or lease without the City's prior written consent will be voidable and, at the City's election, constitute a default under this Agreement. The City's consent to any specific assignment, encumbrance, lease, or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Ground Lease. Tenant will provide any background or supporting documentation that the City may require in assessing Tenant's request for approval. For clarity, SFHDC is deemed an affiliate of Tenant.

14.02 Assignment, Sublease, or Other Conveyance by the City. The parties acknowledge that any sale, assignment, transfer, or conveyance of all or any part of the City's interest in the Land, the Improvements, or this Ground Lease, is subject to this Ground Lease. The City will require that any purchaser, assignee, or transferee expressly assume all of the obligations of the City under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease will not be affected by any such sale, and Tenant will attorn to the purchaser or assignee.

## **ARTICLE 15 TAXES**

Subject to any exemption, Tenant will pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges on the Premises that become effective after the Effective Date of this Ground Lease, including all real and personal property taxes, real property transfer taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to, any transfer of the leasehold interest in the Premises pursuant to this Lease) whether under Laws in effect at the time this Lease is entered into or that become later effective, and all taxes levied or assessed on the possession, use, or occupancy of the Land.

Tenant will not permit any taxes, assessments, or other similar charges to become a defaulted lien on the Premises; provided, however, that in the event any tax, assessment, or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, or similar charge, through any proceeding Tenant considers reasonably necessary or appropriate, and Tenant may defer the payment so long as the validity or amount is contested by Tenant in good faith and without expense to the City. If Tenant contests a tax, assessment, or other similar charge, then Tenant will protect, defend, and indemnify the City against all Claims resulting from the contest, and if Tenant is unsuccessful in the contest, Tenant will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. The City will furnish any information Tenant may reasonably request in connection with a contest, so long as that information is in the City's possession or control or is otherwise available to the public. The City consents to and will reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes, or assessments, or other similar charges levied on the Premises, or on Tenant's interest therein. Tenant will have no obligation under this Section before the Effective Date, including, but not limited to, any taxes, assessments, or other similar charges levied against the Land that are incurred before the Effective Date.

## **ARTICLE 16 UTILITIES**

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

## **ARTICLE 17 MAINTENANCE AND OPERATION**

17.01 Maintenance. Tenant, at all times during the Term, will maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the City, including the exterior, interior, substructure, and foundation of the Improvements and all fixtures, equipment, and landscaping from time to time located on the Premises or any part of them. The City will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Land or any buildings or improvements now or later located on the Land. Tenant will, at its sole expense, maintain any sidewalk and sidewalk area adjacent to the Premises in a good and safe condition in accordance with San Francisco Public Works Code Section 706 or any successor ordinance concerning the sidewalk maintenance within the City and County of San Francisco. Tenant will be considered an "owner" under Public

Works Code Section 706 regarding the maintenance of any sidewalk and sidewalk area adjacent to the Premises. Tenant waives all rights to make repairs at the City's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or later in effect.

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

17.03 Capital Needs Assessment. Every five (5) years beginning on the fifth anniversary date of the issuance of the final certificate of occupancy, Tenant will deliver to MOHCD a 20-year capital needs assessment or analysis of the Premises and replacement reserve requirements as set forth in MOHCD's Policy For Capital Needs Assessments dated November 5, 2013, as it may be amended from time to time. In accordance with the CNA Policy, Tenant must deliver to MOHCD an updated CNA every five (5) years after the Completion Date for approval.

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

17.05 City's Right to Repair. If Tenant fails to maintain or to promptly repair any damage as required by this Ground Lease, the City may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse the City for all costs of the repair.

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

## ARTICLE 18 LIENS

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

## ARTICLE 19 GENERAL REMEDIES

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

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

19.03 Breach by Tenant.

19.03(a) Default by Tenant

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

(i) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.01;

(ii) Tenant voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease or otherwise approved by the City;



(iii) From and after the Effective Date, Tenant, or its successor in interest, fails to pay real estate taxes or assessments or other similar charges on the Premises or any part thereof before delinquency, or places on the Land any encumbrance or lien unauthorized by this Ground Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments or other similar charges not have been paid, or the encumbrance or lien removed or discharged within the time period provided in ARTICLE 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in ARTICLE 15 and ARTICLE 18;

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

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

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

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

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

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

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

(iii) The right to have a receiver appointed for Tenant upon application by the City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to the City under this Ground Lease;

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

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

Notwithstanding the foregoing, during the 15-year tax credit "compliance period" (as defined in Section 42 of the Internal Revenue Code, as amended) for the Project, the City

may only terminate this Ground Lease for a default by Tenant under Section 19.03(a)(vi) above that remains uncured after expiration of the applicable cure period.

**19.04 Rights of Permitted Limited Partner.**

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

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

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

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

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

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

## ARTICLE 20 DAMAGE AND DESTRUCTION

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

20.02 Uninsured Casualty. If (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost to complete the restoration is not covered by insurance required to be carried under this Ground Lease; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender, other than the City, terminate this Ground Lease upon ninety (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant will notify the City promptly and not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval will not be unreasonably withheld or delayed. If Tenant terminates this Ground Lease under this Section 20.02, then all insurance proceeds and damages payable by reason of the casualty will be divided among City, Tenant, and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured or underinsured casualty, then Tenant will promptly commence and diligently complete the restoration of the Premises as nearly as possible to their condition before the damage or destruction in accordance with the provisions of Section 20.01 and will, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds to do so.

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

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

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

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

20.03(d) The remainder to Tenant.

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

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

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

21.01 Damage to Person or Property—General Indemnification. City will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Premises, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Premises, unless arising from the active gross negligence or willful misconduct of the City or any of its commissioners, officers, agents, or employees. Tenant will defend, hold harmless, and indemnify the City including, but not limited to, its boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising from the Premises, this Ground Lease, Tenant’s tenancy, its or their use of the Premises, including adjoining sidewalks and streets, and any of its or their operations or activities thereon or connected thereto; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed

or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Ground Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and the City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within any indemnity provision set forth in this Ground Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant's obligations under this Article will survive the termination or expiration of this Ground Lease.

21.02 Hazardous Substances—Indemnification.

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

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

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

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

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

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

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

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

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Ground Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

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

21.06 Survival. The provisions of ARTICLE 21 will survive the expiration or earlier termination of this Ground Lease as related to losses accruing during the period that Tenant is in possession of the Premises and subsequent losses related to Tenant's possession of the Premises. No Lender who acquires title to the Tenant's interest in the Ground Lease will have any

obligation or liability beyond its interest as Tenant under the Ground Lease and liability under the indemnification provisions of this Ground Lease will only apply to such Lender for any covered issues that arise during the time such Lender holds title to the Tenant's interest in the Ground Lease.

## **ARTICLE 22 INSURANCE**

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

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

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

(i) Insurance Services Office Commercial General Liability coverage (form CG 00 01—"Occurrence") or other form approved by the City's Risk Manager.

(ii) Insurance Services Office Automobile Liability coverage, code 1 (form CA 00 01—"Any Auto") or other form approved by the City's Risk Manager.

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

(iv) Professional Liability Insurance: Tenant will require that all architects, engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors, and omissions. Tenant will provide the City with copies of consultants' insurance certificates showing that coverage.

(v) Insurance Services Office Property Insurance coverage (form CP 10 30 60 95—"Causes of Loss—Special Form") or other form approved by the City's Risk Manager.

(vi) Crime Policy or Fidelity Bond covering the Tenant's officers and employees against dishonesty with respect to the use of City funds.

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

(i) General Liability: Commercial General Liability insurance with no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for blanket contractual liability (including tort liability and of another party and Tenant's liability of injury or death to persons and damage to property set forth in



Section 21.01 above); personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on, alteration or improvement to the Land with risk of explosion, collapse, or underground hazards.

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

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

(iv) Professional Liability: Professional Liability insurance of no less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) annual aggregate limit covering all negligent acts, errors, and omissions of Tenant's architects, engineers, and surveyors. If the Professional Liability Insurance provided by the architects, engineers, or surveyors is "claims made" coverage, Tenant must assure that these minimum limits are maintained for no less than three (3) years beyond completion of the construction or remodeling.

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

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

(vii) Property Insurance:

(1) Before construction:

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

b. During the course of construction:

i. Builder's risk insurance, special form coverage, excluding earthquake, 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 construction:

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

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

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

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

(i) General Liability and Automobile Liability Coverage: The "City and County of San Francisco and their respective commissioners, members, officers, agents, and employees" are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of the Tenant related to the Project; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project;

and automobiles owned, leased, hired, or borrowed by the Tenant for the operations related to the Project. The coverage may not contain any special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents, or employees.

(ii) Workers' Compensation and Property Insurance: The insured will agree to waive all rights of subrogation against the "City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees" for any losses in connection with this Project.

(iii) Claims-made Coverage: If any of the required insurance is provided under a claims-made form, Tenant will maintain such coverage continuously throughout the term of this Ground Lease and, without lapse, for a period of three years beyond the expiration of this Ground Lease, to the effect that, if occurrences during the contract term give rise to claims made after expiration of the Ground Lease, then those claims will be covered by the claims-made policies.

(iv) All Coverage. Each insurance policy required by this Article must:

(1) Be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to City, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice will be given.

(2) Contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(3) For any claims related to this Ground Lease, the Tenant's insurance coverage will be primary insurance with respect to the City and its commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the City or its commissioners, members, officers, agents, or employees will be in excess of the Tenant's insurance and will not contribute with it.

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

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

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

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

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

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

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

## **ARTICLE 23 COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS**

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

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

Tenant understands that the construction of the Improvements on the Land and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning Administrator and the Department of Building Inspection. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Tenant will not seek any regulatory approval without first obtaining MOHCD's approval, which approval may not be unreasonably withheld or delayed.

Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if the City is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of the City whether on or off of the Premises, unless in each instance MOHCD has approved the conditions previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

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

## **ARTICLE 24 ENTRY**

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

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

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

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

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

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

24.02 In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises, remove or alter any portion of the

Premises, and alter or remove any of Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

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

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

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

## **ARTICLE 25 MORTGAGE FINANCING**

25.01 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the City in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages or required by Lenders, the Permitted Limited Partner including, but not limited to, use agreements and regulatory agreements) are permitted to be placed on the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Project under this Ground Lease and in connection with the operation of the Project; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. The City, acting solely in its capacity as landlord under this Ground Lease and not in its capacity as a Project Lender, acknowledges and accepts Bank of America, N.A., Citibank, N.A., and HCD as Lenders, and consents to the Leasehold Mortgages associated with Lenders' construction and permanent loans to Tenant for the Project.

25.02 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust, or other security interest authorized by Section 25.01 ("**Holder**" or "**Lender**"), including the successors or assigns of 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 Ground Lease may be construed to obligate the Holder. However, if the Holder undertakes to complete or guarantee the completion of the construction of the Improvements, except as provided in Section 26.06(b), nothing in this Ground Lease will be deemed or construed to

permit or authorize the Holder or its successors or assigns to devote the Premises or any portion thereof to any uses, or to construct any Improvements on the Land, other than those authorized under Section 9.01 and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion under Section 10.16. Except as provided in Section 26.06(b), to the extent any Holder or its successors in interest wish to change such uses or construct different improvements, Holder or its successors in interest must obtain the advance written consent of the City.

25.03 Failure of Holder to Complete Construction. In any case where six (6) months after assumption of obligations under Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City will have all the rights against the Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 10.16 of this Ground Lease.

25.04 Default by Tenant and the City's Rights.

25.04(a) Right of City to Cure a Default or Breach by Tenant under a Leasehold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of the default or breach, the City may, at its option, cure the breach or default during the one hundred ten (110) days after the date that the Lender files a notice of default. If the City undertakes to cure the default or breach, then the City will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City. The City will also be entitled to a lien on the Leasehold Estate to the extent Tenant does not reimburse the costs and expenses. City's lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by this Ground Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods under the terms of the applicable loan documents, the City will also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to all Lenders' and Permitted Limited Partner's written consents, and which consent may be conditioned, among other things, on the assumption by the other entity of all obligations of the Tenant under the Leasehold Mortgage.

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

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

## ARTICLE 26 PROTECTION OF LENDER

26.01 Notification to the City. Promptly on the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this ARTICLE 26, Tenant will cause each Lender to give written notice to the City of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute City's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The City acknowledges that Bank of America, N.A. is the initial First Mortgage Lender and is deemed to have given such written notice as First Mortgage Lender and Attachment 3 is not required.

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

26.03 Lender's Rights When Tenant Defaults. If any event of default under this Ground Lease occurs and is continuing, and is not cured within the applicable cure period, the City will not terminate this Ground Lease or exercise any other remedy unless it first gives written notice of the event of default to Lender; and

26.03(a) If the event of default is a failure to pay a monetary obligation of Tenant (other than indemnification obligations of Tenant ("Indemnification Obligations")), Lender will have sixty (60) days from the date of written notice from the City to Lender to cure the default; or

26.03(b) If the event of default is not a failure to pay a monetary obligation of Tenant, Lender will have sixty (60) days of receipt of the written notice, to either (a) remedy such default; or (b) obtain title to the Leasehold Estate in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default will be remedied or deemed remedied in accordance with Section 26.04 below. If, due to the nature of the default, the default is not capable of cure within such sixty-day cure period, then Lender may request from the City an extended period, together with the reasons for its request for extension and City will not unreasonably withhold its approval of such request.

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



in no event shall any Lender be required, as a condition to preventing the termination of this Ground Lease, or obtaining a new ground lease hereunder, to (A) cure any default by Tenant under this Ground Lease, or (B) cure any default by Tenant in the payment of any amounts payable by Tenant under any indemnification provisions of this Ground Lease, and upon completion of a foreclosure (or deed in lieu thereof), all monetary defaults shall automatically be deemed cured and waived and all non-monetary defaults shall be cured by a Subsequent Owner not affiliated with the Lender.

26.04 Default That Cannot be Remedied by Lender. Any event of default under this Ground Lease that in the nature thereof cannot be remedied by Lender will be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (a) within sixty (60) days after receiving notice from the City setting forth the nature of such event of default, Lender has acquired Tenant's Leasehold Estate or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Lender is diligently prosecuting any such proceedings to completion, (c) Lender has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than Indemnification Obligations) in accordance with Section 26.03, and (d) after gaining possession of the Improvements, Lender diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Ground Lease. Notwithstanding anything to the contrary contained elsewhere herein, in no event will any Lender have the obligation, or be required, as a condition to preventing the termination of this Ground Lease, as a condition to obtaining a new lease or otherwise, to cure any breach by Tenant of its obligation under Article 26.04 of this Ground Lease, to reimburse Landlord for all costs, expenses, advances and disbursements made or incurred by Landlord in connection with its cure of any breach or default under any Leasehold Mortgage, provided that Lender has complied with the requirements under this Section 26.04, and all such breaches shall automatically be deemed cured upon a foreclosure under any Leasehold Mortgage (or acceptance of a deed in lieu thereof), provided that Lender diligently proceeds to perform all obligations under this Ground Lease.

26.05 Court Action Preventing Foreclosure. If Lender is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, then the City will enter into a new ground lease with the Lender on the same terms set forth in this Ground Lease. For purpose of this Article, if there is more than one Lender, the City will offer the new lease to each Lender in the order of priority until accepted.

26.06 Lender's Rights to Record, Foreclose, and Assign. With respect to any Leasehold Mortgage:

26.06(a) the Lender may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from City, (provided, however, no such approval will be required in the event of a foreclosure of a

leasehold mortgage or deed in lieu of foreclosure) which approval will not be unreasonably withheld, and if the Subsequent Owner has elected to maintain the use restrictions of ARTICLE 9, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code so that the Premises receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then available). Furthermore, Lender may acquire title to the Leasehold Estate in any lawful way, and if the Lender becomes the assignee, then Lender may sell and assign the Leasehold Estate subject to City approval (which may not be unreasonably withheld) and to the City's rights under Section 25.04.

26.06(b) each Subsequent Owner will take the Leasehold Estate subject to all of the provisions of this Ground Lease, and will, so long as and only so long as it is the owner of the Leasehold Estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, that, subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance including, but not limited to, the MOHCD Declaration of Restrictions, the Subsequent Owner may operate and maintain LOSP Residential Units without any limitations on the rents charged or the income of the occupants under such LOSP agreement if the applicable operating rental subsidy is no longer available;

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

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

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

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

26.07(b) If the Subsequent Owner exercises its rights under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent will be increased to the new fair market rent

under this Section 26.07(b) and the provisions of Section 6.02(g) will be suspended; provided, however, that the City will be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to Residential Occupants on a dollar for dollar basis, with respect to such aggregate units occupied by Qualified Households as the City and the Subsequent Owner may agree. The fair market rental value will be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. But, after the neutral third-party process, the Lender, in its sole discretion, may rescind its written notification of intent to not comply with Section 9.01 of this Ground Lease.

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

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

26.09(a) subject to Section 19.03(b), the City will not voluntarily cancel or surrender this Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or amend this Ground Lease to materially increase the obligations of the Tenant or the rights of the City under this Ground Lease, or amend any provisions of Articles 25 and 26 or any other provision of this Ground Lease that directly affects a Lender's interests, without the prior written consent of the Lender (which may not be unreasonably withheld or delayed);

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

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

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

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

26.11 City Bankruptcy.

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

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

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

(i) Tenant will be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the Leasehold Estate;

(ii) if Tenant does not so object, each Lender will have the right to so object on its own behalf or on behalf of the Tenant; and

(iii) in connection with any such sale, Tenant will not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it has received and paid to each Lender the outstanding balance under its respective loan.

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

26.12 Amendment. From the Effective Date through the 15-year tax credit compliance period, neither ARTICLE 19, nor ARTICLE 20, nor Sections 26.02, 26.03, or 26.06 may be amended without the written consent of Permitted Limited Partner.

26.13 Liability. If a Lender or its designee becomes a tenant under this Ground Lease or under a new lease obtained pursuant to this article, such Lender or designee will only be personally liable for the obligations of Tenant only to the extent they arise during the period of time that such Lender or designee is a tenant hereunder and its sole liability hereunder will be its interest under this Ground Lease.

## ARTICLE 27 CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Ground Lease, there is any condemnation of all or any part of the Premises or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this ARTICLE 27, subject to the rights of any Lender. Accordingly, Tenant waives any right to terminate this Ground Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated

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

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

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

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

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

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

27.07(a) First, to pay the balance due on any outstanding Leasehold Mortgages (first to the Leasehold Mortgage with the first priority until paid in full and then in the order of relative priority thereafter) and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals, and lease residuals, to the extent provided therein; and

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

27.07(c) Third, to the Landlord.

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

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

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

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

## **ARTICLE 28 ESTOPPEL CERTIFICATE**

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

agreement, covenant, or condition on the part of Tenant or the City to be performed or observed under this Ground Lease, and whether any notice has been given to Tenant or the City of any default that has not been cured and, if so, specifying the uncured default. Tenant will use commercially reasonable efforts (by inserting a provision similar to this one into the leases of its Non-residential Occupants) to cause the Non-residential Occupants to execute and deliver to the City a certificate as described above with respect to its sublease within thirty (30) days after request.

## **ARTICLE 29 SURRENDER AND QUITCLAIM**

### **29.01 Surrender.**

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

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

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

29.02 Quitclaim. On the expiration or earlier termination of this Ground Lease, the Improvements will automatically, and without further act or conveyance on the part of Tenant or the City, become the property of the City, free and clear of all liens and without payment therefore by the City, as provided in ARTICLE 13. On expiration or sooner termination of this Ground Lease, Tenant must surrender the Premises to the City and, at the City's request, will execute, acknowledge, and deliver to the City a good and sufficient quitclaim deed with respect to any interest of Tenant in the Premises.

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

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

## **ARTICLE 30 EQUAL OPPORTUNITY**

In the selection of all contractors and professional consultants for the Project, Tenant will comply with the applicable requirements of the Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance under Administrative Code Chapter 14B ("LBE Ordinance") and will incorporate such requirements in contracts with any Contractors and Subcontractors.

## **ARTICLE 31 CITY PREFERENCE PROGRAMS**

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

## **ARTICLE 32 RESERVED**

## **ARTICLE 33 CONFLICT OF INTEREST**

No commissioner, official, or employee of the City may have any personal or financial interest, direct or indirect, in this Ground Lease, and any such commissioner, official, or employee may not participate in any decision relating to this Ground Lease that affects his or her



personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

#### **ARTICLE 34 NO PERSONAL LIABILITY**

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

#### **ARTICLE 35 ENERGY CONSERVATION**

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

#### **ARTICLE 36 WAIVER**

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

#### **ARTICLE 37 TENANT RECORDS**

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

#### **ARTICLE 38 NOTICES AND CONSENTS**

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

if to Tenant at: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: The Related Companies of California, LLC  
18201 Von Karman Ave, Suite 900  
Irvine, CA 92612  
Attn: Asset Management

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, Suite 5880  
Los Angeles, CA 90071  
Attn: Nicole Deddens, Esq.

if to Permitted Limited Partner at:

Bank of America, N.A.  
100 Federal Street, 4th Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

Banc of America, CDC Special Holding Company, Inc.  
100 Federal Street, 4th Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

With a copy to:  
Buchalter, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017  
Attn: Michael Williamson (B0965-0841)

if to the City at: San Francisco Mayor's Office of Housing and Community  
Development  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Attn.: Director

or to such other address with respect to either party as that party may from time to time designates by notice to the other given under the provisions of this ARTICLE 38. Any notice

given under this ARTICLE 38 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email.

#### **ARTICLE 39 HEADINGS**

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

#### **ARTICLE 40 SUCCESSORS AND ASSIGNS**

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

#### **ARTICLE 41 TIME**

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

#### **ARTICLE 42 PARTIAL INVALIDITY**

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

#### **ARTICLE 43 APPLICABLE LAW; NO THIRD PARTY BENEFICIARY**

This Ground Lease is governed by and construed under the laws of the State of California. This Ground Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

#### **ARTICLE 44 RESERVED**

#### **ARTICLE 45 EXECUTION IN COUNTERPARTS**

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

## **ARTICLE 46 BROKERS**

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

## **ARTICLE 47 RECORDATION OF MEMORANDUM OF GROUND LEASE**

This Ground Lease may not be recorded, but a memorandum of this Ground Lease will be recorded in the form attached hereto as Attachment 4 ("**Memorandum of Ground Lease**"). The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent purchasers and mortgagees.

## **ARTICLE 48 SURVIVAL**

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

## **ARTICLE 49 TRANSFER OF PARTNERSHIP INTERESTS IN TENANT**

## **ARTICLE 50 CITY PROVISIONS**

### **50.01 Non-Discrimination.**

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

50.01(b) Subleases and Other Subcontracts. Tenant must include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to any subtenant or other subcontractor in substantially the form of Section 50.01(a) above. In addition, Tenant must incorporate by reference in all subleases and other subcontracts the

provisions of San Francisco Labor and Employment Code Article 131, Section 131.2(a), (c)-(k), and Section 132.3 and must require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.01(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits (collectively "**Core Benefits**"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity under state or local Law authorizing such registration, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131, Section 131.2(b)..

50.01(d) Condition to Lease. As a condition to this Ground Lease, Tenant will execute the City's Declaration: Nondiscrimination in Contracts and Benefits form with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division ("**CMD**").

50.01(e) Incorporation of Labor and Employment Code Provisions by Reference. The provisions of San Francisco Labor and Employment Code Article 131 and Article 132 relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Ground Lease as though fully set forth herein. Tenant must comply fully with and be bound by all of the provisions that apply to this Ground Lease under these Articles of the Labor and Employment Code, including, but not limited to, the remedies provided in such Articles. Without limiting the foregoing, Tenant understands that under Article 131, Section 131.2(h) of the San Francisco Labor and Employment Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Ground Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

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

50.03 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, certifies that it knows of no facts that would constitute a violation of those provisions and agrees that if Tenant becomes aware of any such

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

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

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

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

**50.07 Pesticide Ordinance.** Tenant must comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**"), which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (c) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Ground Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant must

comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing in this Ground Lease will prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

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

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

50.10 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (the "**HCAO**"), as set forth in San Francisco Labor and Employment Code Article 121 ("**Article 121**"), including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Article 121 are incorporated in this Ground Lease by reference and made a part of this Ground Lease as though fully set forth. The text of the HCAO is available on the web at [www.sfgov.org/oca/lwlh.htm](http://www.sfgov.org/oca/lwlh.htm). Capitalized terms used in this Section and not defined in this Ground Lease have the meanings assigned to that terms in Article 121. Notwithstanding this requirement, City recognizes that the residential housing component of the Improvements is not subject to the HCAO.

50.10(a) For each Covered Employee, Tenant must provide the appropriate health benefit set forth in Section 121.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

50.10(b) If Tenant is a small business as defined in Section 121.3(d) of the HCAO, Tenant will have no obligation to comply with Section 50.10(a) above.

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

commence efforts to cure within the 30-day period, or thereafter fails diligently to pursue the cure to completion, then the City will have the right to pursue the remedies set forth in Section 121.5(f)(1-5) of the HCAO. Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

50.10(f) Tenant must keep itself informed of the current requirements of the HCAO as they may change during the Term.

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

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

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

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

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



50.12 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant will comply with the applicable provisions of such code sections as those sections may apply to the Premises.

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

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

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

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

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

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

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

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

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

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

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

50.18 Food Service Waste Reduction. Tenant will comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Ground Lease as though fully set forth herein. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and will instead use suitable Biodegradable/ Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Ground Lease was made. Those amounts will not be considered a penalty, but rather agreed upon monetary damages sustained by the City because of Tenant's failure to comply with this provision.

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

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

50.20 Criminal History in Hiring and Employment Decisions.

50.20(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of of Article 142 of the San Francisco Labor and Employment Code (Criminal History in Hiring and Employment Decisions; “**Article 142**”), which are hereby incorporated as

may be amended from time to time, regarding applicants and employees of Tenant who would be or are performing work at the Site.

50.20(b) Tenant will incorporate by reference the provisions of Article 142 in all subleases of a portion or all of the Site, if any, and will require all subtenants to comply with its provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.20(c) Tenant and subtenants (if any) may not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Article 142) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Article 142) not leading to a Conviction (as defined in Article 142), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

50.20(e) Tenant and subtenants (if any) will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Site, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

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

50.20(g) Tenant and subtenants (if any) understand and agree that upon any failure to comply with the requirements of Article 142, the City will have the right to pursue any rights or remedies available under Article 142 or this Ground Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, termination, or suspension in whole or in part of this Ground Lease.

50.20(h) If Tenant has any questions about the applicability of Article 142, 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 Article 142.8.

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

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

50.22 Consideration of Salary History. Tenant will comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Agreement or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant will not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

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

#### 50.24 Possessory Interest Reporting.

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

50.24(b) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Ground Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Ground Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Ground Lease to the County Assessor will be a default under this Ground Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

50.25 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant 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 50.25 will be deemed a material breach of this Ground Lease. Without limiting Landlord’s other rights and remedies under this Ground Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

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

### **ARTICLE 51 COMPLETE AGREEMENT**

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

### **ARTICLE 52 AMENDMENTS**

Neither this Ground Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach

will affect or alter this Ground Lease, but each and every term, covenant, and condition of this Ground Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Ground Lease, including, without limitation, amendments to or modifications to the exhibits to this Ground Lease, will be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the City's Director of Property, or his or her designee; provided, however, material amendments, or modifications to this Ground Lease (a) changing the legal description of the Land, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Land from the use authorized under this Ground Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Ground Lease will additionally require the approval of the City's Board of Supervisors.

#### **ARTICLE 53 ATTACHMENTS**

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

1. Legal Description of Land
2. Schedule of Performance
3. City Consent of Leasehold Mortgage
4. Reserved
5. Memorandum of Ground Lease
6. Form of Income Certification Form

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

[signatures follow]

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

**TENANT:**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer



**CITY AS LANDLORD:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

By: \_\_\_\_\_  
Daniel Adams  
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Jessica Alfaro-Cassella  
Deputy City Attorney

## **ATTACHMENT 1**

### **LEGAL DESCRIPTION OF THE LAND**

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

A portion of the lands described in that certain Quitclaim Deed recorded April 30, 2020 in Document No. 2020-K927581 of Official Records, and as shown as Parcel A on the Record of Survey 12420 filed January 10, 2025 in Book JK of Survey Maps, at Pages 174-176, San Francisco County records, more particularly described as follows:

Commencing at a point on the Southeasterly line of Bryant Street (82.50 feet wide) distant thereon 275 feet Southwesterly from the Southwesterly line of 4th Street (82.50 feet wide), said point of commencement being the most northerly corner of the lands described in said Quitclaim Deed (2020-K927581); thence Southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the lands described in said Quitclaim Deed, 195.12 feet to the true point of beginning, said true point of beginning being on the southeasterly line of Welsh Street (35.00 feet wide); thence continuing southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the Lands described in said Quitclaim Deed, 160.21 feet to the northwesterly line of Freelon Street (35.00 feet wide); thence at a right angle southwesterly along said line of Freelon Street 81.71 feet; thence at a right angle northwesterly 160.21 feet; thence at a right angle northeasterly 81.71 feet to the true point of beginning.

Being a portion of 100 Vara Block 376

APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777

Street Address:

160 Freelon Street, San Francisco, CA 94107

## **ATTACHMENT 2**

### **SCHEDULE OF PERFORMANCE**

- a. Commence demolition, rehabilitation or construction by a date no later than August 31, 2025.
- b. Complete construction by a date no later than December 31, 2027].
- c. Achieve occupancy of ninety-five percent (95%) of the Units by December 31, 2028.

**ATTACHMENT 3**

**CITY CONSENT OF LEASEHOLD MORTGAGE**

Date:

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

RE: 160 Freelon Street, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Under Section 25.01 of the Ground Lease, dated [\_\_\_\_], between the City and County of San Francisco ("City") and 160 Freelon Housing Partners L.P., a California limited partnership, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender:

Principal Amount:

Interest:

Term:

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

Sincerely,

160 Freelon Housing Partners L.P., a California limited partnership

By: Related/160 Freelon Development Co., LLC, a California limited liability company, its  
Administrative General Partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC, a California limited liability company, its Managing General  
Partner

By: San Francisco Housing Development Corporation, a California nonprofit public benefit corporation, its sole member and manager

By: \_\_\_\_\_  
David Sobel  
Chief Executive Officer

enc.

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By signing this letter, the City consents to the leasehold mortgage, under the terms and conditions of Section 25.01 of the Ground Lease, dated [\_\_\_\_\_, 2025].

Mayor's Office of Housing and Community Development

\_\_\_\_\_  
Daniel Adams, Director

## ATTACHMENT 4

### MEMORANDUM OF GROUND LEASE

Free Recording Requested under  
Government Code Section 27383

When recorded, mail to:

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

### MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of [\_\_\_\_\_, 2025], by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Real Estate Division and the Mayor's Office of Housing and Community Development, and 160 Freelon Housing Partners, L.P., a California limited partnership, as tenant ("**Tenant**"), with respect to that certain Ground Lease (the "Lease") dated [\_\_\_\_\_, 2025], between the City and Tenant.

Under 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 will commence on the date set forth above and will end on the date that is seventy-five (75) years from the date set forth above, subject to a (twenty-four (24) year option to extend, unless terminated earlier or extended pursuant to the terms of the Lease.

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

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

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

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

Notwithstanding any statement on the face of this Memorandum or on any attachment to the Memorandum of the amount of documentary transfer tax due in connection with the Lease, City's signature on this Memorandum does not constitute the City Assessor Recorder's agreement that the real property transfer tax due is that amount.

[signatures follow]

Executed as of [\_\_\_\_], 2025 in San Francisco, California.

**TENANT:**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

[ALL SIGNATURES MUST BE NOTARIZED.]



**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

By: \_\_\_\_\_  
Daniel Adams  
Director, Mayor's Office of Housing and Community Development

[ALL SIGNATURES MUST BE NOTARIZED.]

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Jessica Alfaro-Cassella  
Deputy City Attorney

Exhibit A

Legal Description

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

A portion of the lands described in that certain Quitclaim Deed recorded April 30, 2020 in Document No. 2020-K927581 of Official Records, and as shown as Parcel A on the Record of Survey 12420 filed January 10, 2025 in Book JK of Survey Maps, at Pages 174-176, San Francisco County records, more particularly described as follows:

Commencing at a point on the Southeasterly line of Bryant Street (82.50 feet wide) distant thereon 275 feet Southwesterly from the Southwesterly line of 4th Street (82.50 feet wide), said point of commencement being the most northerly corner of the lands described in said Quitclaim Deed (2020-K927581); thence Southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the lands described in said Quitclaim Deed, 195.12 feet to the true point of beginning, said true point of beginning being on the southeasterly line of Welsh Street (35.00 feet wide); thence continuing southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the Lands described in said Quitclaim Deed, 160.21 feet to the northwesterly line of Freelon Street (35.00 feet wide); thence at a right angle southwesterly along said line of Freelon Street 81.71 feet; thence at a right angle northwesterly 160.21 feet; thence at a right angle northeasterly 81.71 feet to the true point of beginning.

Being a portion of 100 Vara Block 376

APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777

Street Address:

160 Freelon Street, San Francisco, CA 94107

- 1
- 2
- 3
- 4

**ATTACHMENT 5**

**FORM OF TENANT INCOME CERTIFICATION**

[Attached.]

## AMENDED AND RESTATED SECURED PROMISSORY NOTE

(Affordable Housing Fund: Inclusionary Affordable Housing Program, Affordable Housing Fund: Jobs-Housing Linkage, Low And Moderate Income Housing Asset Fund, Affordable Housing Fund: Jobs-Housing Linkage Permanent Supportive Housing, Eastern Neighborhoods Urban Mixed Use, Eastern Neighborhoods Alternative, Downtown Neighborhoods Preservation Fund)

Principal Amount: \$22,577,900

San Francisco, CA

Date: [\_\_\_\_\_, 2025]

FOR VALUE RECEIVED, the undersigned, **160 FREELON HOUSING PARTNERS, L.P.** a California limited partnership (“Maker”), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, “**Holder**”), the principal sum of Twenty-Two Million Five Hundred Seventy-Seven Thousand Nine Hundred and No/100 Dollars (\$22,577,900.00) (the “**Funding Amount**”), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, together with interest thereon, as provided in this Note.

1. Agreement. This Amended and Restated Secured Promissory Note (“**Note**”) amends, restates, and replaces in its entirety that certain Secured Promissory Note between Maker and Holder dated as of August 29, 2022 (“**Original Note**”). This Note is given under the terms of an Amended and Restated Loan Agreement by and between Maker and Holder (the “**Agreement**”) dated as of the date set forth above, which Agreement is incorporated herein by reference. Maker's obligations under this Note and the Agreement are secured by that certain Leasehold Deed Of Trust, Assignment Of Rents, Security Agreement And Fixture Filing dated as of the date of this Note, made by Maker for the benefit of Holder. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control. Upon execution of this Note, the Original Note will be cancelled and returned to Maker.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of [zero percent (0%)] per annum, simple interest, from the date of disbursement of funds through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used. As of the date of this Note, the outstanding interest is \$[\_\_\_\_\_].

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the City Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Document.

4. Repayment of Funding Amount.

4.1 Subject to Section 13.4 of the Agreement, Maker will make annual payments of principal and interest (each, a “**Payment**”) in an amount equal to the Residual Receipts, if any, attributable to the prior calendar year, beginning on the first June 30th after the end of the calendar year of the Completion Date, and continuing each June 30th thereafter up to and including the Maturity Date, as defined below (each, a “**Payment Date**”). All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the date that is the later of (a) the Fifty-Seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder’s Office of San Francisco County or (b) the Fifty-Fifth anniversary of the Conversion Date (the “**Maturity Date**”). Any Payment Date, including any Excess Proceeds Payment Date and the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

4.2 Subject to Section 13.4 of the Agreement, Maker will make payments of principal and interest (each, an “Excess Proceeds Payment”) in an amount equal to the Excess Proceeds, if any, on the date that is thirty (30) days after the later of the date on which Maker receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Maker receives Excess Proceeds from its limited partner or other financing sources (the “**Excess Proceeds Payment Date**”). All Excess Proceeds Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The Director of MOHCD may elect to waive all or a portion of repayment of Excess Proceeds upon receipt from Maker of adequate documentation supporting the need for such waiver in order to make the Project financially feasible.

5. Security. Maker's obligations under this Note are secured by the Deed of Trust.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.5 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note will be permitted without Holder's prior written consent.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

- (a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or
- (b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Project.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the City Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

7.3 Subject to this Section, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or nonjudicial foreclosure of the Deed of Trust, and Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, provided, however, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan Funds and Rents (as defined in the Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

Notwithstanding the foregoing, the Limited Partner (as defined in the Agreement) will have the right, but not the obligation, to cure any Event of Default prior to Holder exercising any of its applicable remedies, and Holder will accept or reject such cure on the same terms as if rendered by Maker.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

**[signature follows]**

**“MAKER”**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer



Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:  
City and County of San Francisco  
Mayor's Office of Housing  
and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Loan Administrator  
APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777  
Address: 160 Freelon Street, San Francisco, CA 94107

-----Space Above This Line for Recorder's Use-----

**DECLARATION OF RESTRICTIONS AND  
AFFORDABLE HOUSING COVENANTS**  
160 Freelon Street, San Francisco, CA 94107

**THIS DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING COVENANTS** (this "Declaration") is made as of [\_\_\_\_\_, 2025], by **160 FREELON HOUSING PARTNERS, L.P.**, a California limited partnership ("Borrower"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (the "City").

**RECITALS**

A. The City is making a loan (the "Loan") to Borrower of Affordable Housing Fund: Inclusionary Affordable Housing Program, Affordable Housing Fund: Jobs-Housing Linkage, Low And Moderate Income Housing Asset Funds, Affordable Housing Fund: Jobs-Housing Linkage Permanent Supportive Housing, Eastern Neighborhoods Urban Mixed Use, Eastern Neighborhoods Alternative, and Downtown Neighborhoods Preservation Fund to finance costs associated with the development of the leasehold interest in the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property") as low-income affordable housing (the "Project"). The Loan is evidenced by, among other documents, an Amended and Restated Loan Agreement between the City and Borrower dated as of the date of this Declaration, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability covenants and other use and occupancy restrictions set forth in the Agreement (collectively, the "Regulatory Obligations"), commencing on the date the Deed of Trust is recorded in the Official Records of San Francisco County, and continuing for

the Life of the Project (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

### AGREEMENT

Now, therefore, in consideration of the City providing the Loan in accordance with the City Documents, Borrower agrees as follows:

1. Borrower will comply with the Regulatory Obligations and this Declaration through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

1.1 With the exception of one Unit reserved for the manager of the Project, Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	No. Of Units	Maximum Income Level
<b>PSH LOSP UNITS - SUBSIDIZED</b>		
1BR – LOSP	11	50% of Median Income
2BR – LOSP	6	50% of Median Income
3BR – LOSP	5	50% of Median Income
<b>PLUS UNITS - UNSUBSIDIZED</b>		
1BR – PLUS Housing	3	50% of Median Income
2BR – PLUS Housing	2	50% of Median Income
<b>GENERAL AFFORDABLE UNITS - UNSUBSIDIZED</b>		
Studio	12	60% of Median Income
1BR	7	60% of Median Income
2BR	2	60% of Median Income
3BR	4	60% of Median Income
Studio	3	70% of Median Income
1BR	3	70% of Median Income
2BR	4	70% of Median Income
3BR	4	70% of Median Income
2BR	8	80% of Median Income
3BR	10	80% of Median Income
2BR	1	Manager's Unit
<b>Total</b>	<b>85</b>	

5 Units must be rented at all times to tenants qualifying under MOHCD's Plus Housing Program. If the Plus Housing Program is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, the Plus Housing

Program units may be made available to Qualified Tenants whose income does not exceed fifty percent (50%) of Median Income.

22 Units must be made available to the chronically homeless or those at risk of homelessness during the period in which the City's Local Operating Subsidy program is in operation and the City provides such subsidy to the Project under the LOSP Agreement.

If the LOSP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that:

(a) Borrower diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(b) One hundred percent (100%) of the Units formerly under the LOSP must at all times be occupied by Qualified Tenants whose income does not exceed sixty percent (60%) of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (i) thirty percent (30%) of [sixty percent (60%)] of Median Income, adjusted for household size, (ii) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

(c) If the Project continues to demonstrate financial infeasibility after the rent alterations above, to the extent financially feasible as determined in City's reasonable discretion, the City will waive the average income restriction of sixty percent (60%) of Median Income for all Residential Units, and increase rents to the extent necessary for Project to remain financially feasible (not past TCAC maximums); provided that one hundred percent (100%) of the Units must at all times be occupied by Qualified Tenants whose adjusted income does not exceed eighty percent (80%) of area median income, as published by TCAC (the "TCAC Median Income"), and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of TCAC Median Income (b) less utility allowance. On an annual basis, Borrower will convert to the TCAC Median Income and maximum rent to the corresponding published MOHCD maximum income level and maximum rent level, respectively, and provide MOHCD with supporting documentation. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of TCAC Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance.

In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. The relief provided by the foregoing will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by CDLAC, CTCAC, or under any other agreement. Borrower covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

[To the extent the Borrower needs to repay the full outstanding loan balance by the Maturity Date, the rent restrictions above may be altered, but only to the extent necessary for the Project

to refinance and repay the full outstanding loan balance by the Maturity Date, as determined in City's reasonable discretion. One hundred percent (100%) of the Units will at all times be occupied by Qualified Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income, and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of eighty percent (80%) of Median Income (b) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. In such event, Borrower will provide the City with a written request no less than one year prior to the Maturity Date, and the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.]

1.2 The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed:

(i) thirty percent (30%) of the applicable maximum income level, adjusted for household size; or

(ii) the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

1.3 For the avoidance of any doubt, notwithstanding any repayment of the Loan or otherwise satisfied or if the Deed of Trust is reconveyed, Borrower will comply with the applicable terms of the Agreement as if fully set forth herein, including, without limitation, Article 6 (Marketing), Article 7 (Affordability and Other Leasing Restrictions), Article 8 (Maintenance and Management of the Project), Article 9 (Governmental Approvals and Requirements), Article 10 (Project Monitoring, Reports, Books and Records), Article 11 (Use of Income From Operations), Article 12 (Required Reserves), Article 16 (Transfers), Article 17 (Insurance and Bonds; Indemnity), Article 18 (Hazardous Substances), and Article 19 (Default).

2. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Declaration and the Agreement. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property and will pass to and be binding upon Borrower's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions in this Declaration, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

3. If Borrower fails to (i) comply with the Regulatory Obligations and this Declaration to the City's satisfaction, in its sole discretion, and (ii) cure such default as set forth in **Section 19.1(c)** of the Agreement, the City will have the right to pursue any available remedy at equity or in law, including as set forth in **Section 19.2** of the Agreement, to enforce this Declaration. During the Compliance Term, the City may rely on the Deed of Trust and/or this Declaration, in the City's discretion, to enforce any of the City's rights under the City Documents. Borrower will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration and Regulatory Obligations, including, without limitation, the City's attorneys' fees and costs.

**[signatures follow]**

Borrower has executed this Declaration as of the date first written above.

**"BORROWER"**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

[ALL SIGNATURES MUST BE NOTARIZED.]

**EXHIBIT A**

(Legal Description of the Property)

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A portion of the lands described in that certain Quitclaim Deed recorded April 30, 2020 in Document No. 2020-K927581 of Official Records, and as shown as Parcel A on the Record of Survey 12420 filed January 10, 2025 in Book JK of Survey Maps, at Pages 174-176, San Francisco County records, more particularly described as follows:

Commencing at a point on the Southeasterly line of Bryant Street (82.50 feet wide) distant thereon 275 feet Southwesterly from the Southwesterly line of 4th Street (82.50 feet wide), said point of commencement being the most northerly corner of the lands described in said Quitclaim Deed (2020-K927581); thence Southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the lands described in said Quitclaim Deed, 195.12 feet to the true point of beginning, said true point of beginning being on the southeasterly line of Welsh Street (35.00 feet wide); thence continuing southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the Lands described in said Quitclaim Deed, 160.21 feet to the northwesterly line of Freelon Street (35.00 feet wide); thence at a right angle southwesterly along said line of Freelon Street 81.71 feet; thence at a right angle northwesterly 160.21 feet; thence at a right angle northeasterly 81.71 feet to the true point of beginning.

Being a portion of 100 Vara Block 376

APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777

Street Address:

160 Freelon Street, San Francisco, CA 94107

Free Recording Requested Pursuant to  
Government Code Section 27383 and 27388.1

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, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: Loan Administrator  
APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777

-----Space Above This Line for Recorder's Use-----

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(Property Address: 160 Freelon Street, San Francisco, CA 94107)

**THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING** ("Deed of Trust") is made as of  
[\_\_\_\_\_, 2025], by **160 FREELON HOUSING PARTNERS, L.P.**, a California  
limited partnership ("Trustor"), whose address is 44 Montgomery Street, Suite 1300, San  
Francisco, California 94104, to **OLD REPUBLIC TITLE COMPANY**, a California  
corporation ("Trustee"), whose address is 555 12th Street, Suite 2000, Oakland, CA 94607,  
San Francisco, California, for the benefit of the **CITY AND COUNTY OF SAN  
FRANCISCO**, a municipal corporation, represented by the Mayor, acting through the  
Mayor's Office of Housing and Community Development ("Beneficiary"). This Deed of Trust  
is executed pursuant to an Amended and Restated Loan Agreement by and between Trustor  
and Beneficiary dated on or about the date of this Deed of Trust, as it may be amended from  
time to time (the "Agreement"), the provisions of which are incorporated herein by reference.  
Definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and  
assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title  
and interest Trustor now has or may have in the future in the following (all or any part of the  
following, or any interest in all or any part of it, as the context requires, the "Property"):

(a) that real property situated in the City and County of San Francisco,  
State of California, described in **Exhibit A** attached hereto and incorporated herein by  
reference (the "Land"), on which Trustor intends to construct a multifamily residential  
building consisting of eighty-four (84) rental units of affordable housing for low-income  
persons, plus one manager's unit, including twenty-two (22) LOSP units reserved for  
formerly homeless households and five (5) units for referrals from the City's Plus Housing  
List, together commonly known as 160 Freelon (collectively, the "Project"); and



(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions, and any guarantees thereof ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

(d) all of Trustor's interest in and under that certain Ground Lease dated as of [\_\_\_\_\_, 2025], by and between Beneficiary, as lessor, and Trustor, as lessee, including any options of any nature whatsoever, and any future interest of Trustor in fee title to the Land; and

(e) except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

(f) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

(g) all Loan funds, whether disbursed or not, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

(h) all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

(i) all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records

relating to the application and allocation of any federal, state or local tax credits or benefits;  
and

(j) all rents, revenues, issues, royalties, proceeds, profits, income, reimbursements, royalties, receipts and similar items, including prepaid rent and security deposits, in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Property ("Rents"), from the Land and the Improvements, subject to: (i) Trustor's right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under **Section 3 below**; and

(k) all intangible personal property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, deposits for utility services, installations, refunds due Trustor, trade names, trademarks, and service marks; and

(l) all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

(a) performance of all present and future obligations of Trustor set forth in the Agreement, specifically compliance with certain restrictions on the use of the Property recited in that certain Declaration of Restrictions executed by Trustor, dated as of the date of and being recorded concurrently with this Deed of Trust, as it may be amended from time to time, and the Amended and Restated Secured Promissory Note dated on or about the date of this Deed of Trust, made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "Note") and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

(b) payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of [Twenty-Two Million Five Hundred Seventy-Seven Thousand Nine Hundred and No/100 Dollars (\$22,577,900.00)], with interest, according to the terms of the Agreement and the Note; and

(c) payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

### 3. Assignment of Rents.

(a) Assignment as Additional Security. Subject to the rights of senior lenders, Trustor hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to the Rents as additional security for the Secured Obligations. Subject to the provisions of subsection 3(d) below, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default exists and is continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

(b) Collection and Application of Rents. Subject to the License granted to Trustor under subsection 3(a) above, Beneficiary has the right, power, and authority to collect any and all Rents. Subject to the License granted to Trustor under subsection 3(a) above, Trustor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

1. Demand, receive, and enforce payment of any and all Rents; or
2. Give receipts, releases, and satisfactions for any and all Rents; or
3. Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under this Deed of Trust. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder.

(c) Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property and Improvements, Beneficiary is not and shall not be deemed to be:

1. A "mortgagee in possession" for any purpose; or
2. Responsible for performing any of the obligations of the lessor under any lease; or
3. Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or
4. Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

(d) Election by Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Beneficiary, at its option, may exercise its s rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

4. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

(c) to provide, maintain and deliver to Beneficiary property and liability insurance as required under the Agreement and apply any insurance proceeds as provided below;

(d) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;

(e) to pay in accordance with the Agreement, but in each case prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto;

(f) should Trustor fail to make any payment or to do any act as herein provided, then, subject to the notice and cure provisions included in this Deed of Trust, but without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any

encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(g) to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

#### 5. Security Agreement and Fixture Filing.

(a) Grant of Security Interest. Without limiting any of the other provisions of this Deed of Trust, to secure the payment, performance and observance of the Secured Obligations, Trustor, as debtor (referred to in this Section 5 as "Debtor"), expressly grants to Beneficiary, as secured party (referred to in this Section 5 as "Secured Party"), a continuing security interest in all the Property (including now and hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. For purposes of this Section 5, "Collateral" means the personal property (tangible or intangible) and fixtures included in the Property.

#### (b) Debtor's Covenants, Representations, and Warranties.

(i) Debtor covenants and agrees with Secured Party that:

(1) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property that is real property under the Uniform Commercial Code), Secured Party may, if an Event of Defaults occurs and is continuing, proceed under the Uniform Commercial Code as to all or any part of the Collateral, and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code.

(2) Without limiting the foregoing, Secured Party shall have the right upon any public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees to allow Secured Party to use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral.

(3) To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention, or sale of the Collateral, except for claims, damages, and demands due to the active gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Trustor agrees that Secured Party need not give more than five (5) days' notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any

warranties that might arise in connection with the sale, lease, license, or other disposition of the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(4) To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.

(ii) Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral as Secured Party may reasonably require.

(iii) Debtor hereby represents and warrants that, except in connection with a senior loan, no financing statement is on file in any public office except as authorized by Secured Party. Debtor will at its own cost and expense, upon demand, furnish to Secured Party such further information and will execute and deliver to Secured Party financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts that Secured Party may at any time or from time to time reasonably require to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject only to liens or encumbrances approved by or benefiting Secured Party. Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, as and where reasonably required by Secured Party.

(iv) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

(c) Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is 87-4417041. Secured Party's name and mailing address are set above.

#### 6. Insurance and Condemnation Proceeds.

(a) Subject to the rights of senior lenders, Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

(b) Any condemnation award or insurance proceeds received by Trustor must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.

(c) If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Note and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.

(d) Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any City Document unless the default has been cured by the application or release of funds.

7. Further Agreements. Trustor further acknowledges and agrees as follows:

(a) Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

(b) Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

(d) Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

(e) For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by

instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers, and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

(f) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(g) Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

8. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods ("Event of Default"):

(a) Trustor's license to collect and retain Rents will terminate automatically.

(b) Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

(c) Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("Notice of Default"), and:



i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

Notwithstanding anything to the contrary contained herein, the Limited Partner (as defined in the Agreement), will have the right, but not the obligation, to cure any Event of Default prior to Beneficiary exercising its foregoing remedies, and Beneficiary will accept or reject such cure on the same terms as if rendered by Trustor.

9. Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement.

*Remainder of Page Intentionally Left Blank; Signatures Appear On Following Page*

**"TRUSTOR":**

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

ALL SIGNATURES MUST BE NOTARIZED

**EXHIBIT A**  
**Legal Description of the Land**

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A portion of the lands described in that certain Quitclaim Deed recorded April 30, 2020 in Document No. 2020-K927581 of Official Records, and as shown as Parcel A on the Record of Survey 12420 filed January 10, 2025 in Book JK of Survey Maps, at Pages 174-176, San Francisco County records, more particularly described as follows:

Commencing at a point on the Southeasterly line of Bryant Street (82.50 feet wide) distant thereon 275 feet Southwesterly from the Southwesterly line of 4th Street (82.50 feet wide), said point of commencement being the most northerly corner of the lands described in said Quitclaim Deed (2020-K927581); thence Southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the lands described in said Quitclaim Deed, 195.12 feet to the true point of beginning, said true point of beginning being on the southeasterly line of Welsh Street (35.00 feet wide); thence continuing southeasterly at a right angle to said line of Bryant Street, along the northeasterly line of the Lands described in said Quitclaim Deed, 160.21 feet to the northwesterly line of Freelon Street (35.00 feet wide); thence at a right angle southwesterly along said line of Freelon Street 81.71 feet; thence at a right angle northwesterly 160.21 feet; thence at a right angle northeasterly 81.71 feet to the true point of beginning.

Being a portion of 100 Vara Block 376

APN: Formerly portion Lot 052; Block 3777 new Lot 176, Block 3777

Street Address:  
160 Freelon Street, San Francisco, CA 94107

EXHIBIT A

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Street Address: 160 Freelon Street, San  
Francisco, CA 94107

APN: 3777-178

Free Recording Requested Pursuant to  
Government Code Section 27383

(Space above this line reserved for Recorder's use only)

**DOOR SWING ENCROACHMENT AND CORNICE ENCROACHMENT  
EASEMENTS AGREEMENT**

THIS DOOR SWING ENCROACHMENT AND CORNICE ENCROACHMENT EASEMENTS AGREEMENT (this "**Agreement**") is executed as of \_\_\_\_\_, 2025 (the "**Execution Date**") by and among 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and 160 FREELON HOUSING PARTNERS, L.P., a California limited partnership ("**Project Sponsor**", together with City, "**Grantee**").

**RECITALS**

A. Grantor owns certain real property located between Freelon Street and Bryant Street and generally between 4th and 5th Street in the City of San Francisco, County of San Francisco, State of California, and more fully described on Schedule 1 attached hereto and made a part hereof ("**Burdened Property**").

B. On February 19, 2025, City acquired from Grantor fee title to that certain real property contiguous to the Burdened Property located at 160 Freelon Street and fully described on Schedule 2 attached hereto and made a part hereof (the "**Benefitted Parcel**") as a land dedication pursuant to San Francisco Planning Code Sections 249.78(e)(2)(B). Concurrently with this Agreement, the City and the Project Sponsor will enter into a long-term ground lease of the Benefitted Parcel (the "**Ground Lease**") for the purpose of constructing approximately 85 units (including one manager's unit) of affordable housing (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to satisfy the requirements of the San Francisco Building Code and the San Francisco Fire Code (collectively, the "**Code**") in effect as of the date hereof, and for the Project Sponsor to obtain the City's Department of Building Inspection ("**DBI**") and Fire Marshal approval for the development and construction of the Project in its regulatory capacity, Grantor agrees to impose certain restrictions on the Burdened Property for the benefit of the Benefitted Parcel subject to the terms and conditions set forth herein.

D. Grantee desires an easement on, over and within a portion of the Burdened Property for the purposes of constructing, maintaining, and operating the improvements located, or to be located, on the Benefitted Parcel.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easements.** Subject to the provisions of this Agreement, Grantor grants in perpetuity to Grantee the following easements (which may collectively be referred to herein as the “**Easements**”):

A. **Encroachment Easement for Door Swing.** A nonexclusive easement over the portion of the Burdened Property shown and legally described on Exhibit A to this Agreement (“**Door Swing Easement Area**”) for the purpose of one or more doors (collectively, the “**Door**”) swinging out from the western façade of the Project (“**Door Swing Easement**”). Once the Door is constructed on the Benefitted Parcel as part of the Project, the Door shall be permitted to swing over and across the Door Swing Easement Area while the Door opens and closes during typical use of the Door in connection with ingress and egress to and from the Project. For so long as this Agreement continues in effect, no new permanent structure or other permanent improvement shall be constructed or maintained within the Door Swing Easement Area that would materially interfere or obstruct typical use of the Door for pedestrian ingress and egress to and from the Project, except as approved by DBI if such approval is required under the provisions of the Code. The Door Swing Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Door Swing Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals. The Door Swing Easement may be used by Grantee or Project Sponsor, and the occupants of the Project and by such owner’s and occupants’ employees, agents, tenants, guests and invitees, in connection with ingress and egress to and from the Project.

B. **Encroachment Easement for Two (2) Building Cornices.** An easement over the portion of the Burdened Property shown and legally described on Exhibit B to this Agreement (collectively, the “**Cornice Easement Area**”, and together with the Door Easement Area, the “**Easement Area**”) for the purpose of the installation, construction, maintenance, repair and replacement of two (2) cornices of the building to be constructed on the Benefitted Parcel as part of the Project (“**Cornice Easement**”). Effective upon completion of construction of the building constructed on the Benefitted Parcel as part of the Project, said building cornices at the top of such building (the “**Cornices**”) shall be permitted to encroach into the Cornice Easement Area and thereafter the Cornice Easement Area shall mean and refer to the air space in which such Cornices exist and not the airspace above and below such Cornices. Prior to the completion of construction of the building constructed on the Benefitted Parcel as part of the Project, the Door Swing Easement Area shall be non-exclusive; following completion of

construction of the building constructed on the Benefitted Parcel as part of the Project and the reduction to the scope of the Cornice Easement Area as described in the previous sentence, the Cornice Easement shall be exclusive. The Cornice Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Cornice Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to the additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Property, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals.

C. **Reservation by Grantor.** Neither the Easements nor any other provision of this Agreement shall prohibit the maintenance, construction and installation of minor encroachments of building systems, light facilities, utility facilities, landscaping, and similar facilities, or prohibit the temporary installation of scaffolding or other equipment to be used for maintenance activities of the Burdened Property in the Door Swing Easement Area, provided such improvements have been approved by DBI if such approval is required by the Code, or any other applicable approvals, and so long as such improvements do not materially interfere or obstruct typical use of any such door for pedestrian ingress and egress to and from the Project.

2. **Non-Exclusive Easements Subject to Prior and Future Easement Grants; Special Restrictions.** The Easement granted herein is non-exclusive and subject to the rights of easements, if any, previously granted by Owner and Owner's predecessors in title over the Easement Area; provided that, following completion of construction of the building constructed on the Benefitted Parcel as part of the Project and the reduction in scope of the Cornice Easement Area as described in Section 1.B above, the Cornice Easement shall be exclusive. In addition, Project Sponsor shall at all times comply with the conditions and restrictions contained in that certain Notice of Special Restrictions recorded on March 28, 2024 as Document No. 2024026197, in the Official Records of the City and County of San Francisco to the extent applicable to the Project.

3. **Indemnity.**

a. **Grantor Indemnification.** Grantor shall indemnify, defend and hold harmless ("**Indemnify**") the Project Sponsor Exculpated Parties (as defined in Section 10(b) below) and the City Exculpated Parties (as defined in Section 10(c) below) and together with the Project Sponsor Exculpated Parties, the "**Grantee Exculpated Parties**"), and each of them, from and against any and all third party liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (including, without limitation, reasonable attorneys' fees and court costs, reasonable consultants and experts and related costs, and the cost of investigating any Claim) (individually and/or, collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (1) any hazardous or unsafe condition of the Door Swing Easement Area, including the presence of hazardous materials within such area, other than any change in the condition of the Easement Area after the Effective Date of this Agreement caused by the Grantee Parties or any of them or resulting from any failure of Grantee to perform its obligations under Section 4 below; (2) any construction or other work undertaken by or on behalf of Grantor in the Easement Area; (3) any gross negligence or willful misconduct of any of Grantor, its partners, members,

shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the “**Grantor Parties**”) in, on or about the Easement Area as finally determined by a court of competent jurisdiction; or (4) any release or discharge, or threatened release or discharge, of any hazardous material caused by the Grantor Parties in, under, on or about the Door Swing Easement Area, except (with respect to clauses (1) through (4) above) such Claims to the extent caused by (i) the willful misconduct or gross negligence of any of (x) Project Sponsor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the “**Project Sponsor Parties**”), or (y) the City, its commissions, departments, agencies and other subdivisions, including, without limitation, DBI (individually and/or collectively, the “**City Parties**” and together with the Project Sponsor Parties, the “**Grantee Parties**”), or (ii) any Claim for which Grantee has an obligation to Indemnify Grantor or the Grantor Exculpated Parties pursuant to Section 3(b) or Section 3(c) below.

Grantor specifically acknowledges and agrees that Grantor has an immediate and independent obligation to defend the City (but not the Project Sponsor) from any Claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Grantor by the City and continues at all times thereafter. As used herein, “hazardous material” means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

b. **Project Sponsor Indemnification.** Project Sponsor shall Indemnify the Grantor Exculpated Parties (as defined below in Section 10(a)) from and against any and all Claims arising out of or in connection with or by reason of the Grantee’s rights under this Agreement or the exercise thereof. Notwithstanding the foregoing to the contrary, Project Sponsor’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties. This paragraph shall not apply to the City and the sole Indemnity obligations of City are set forth in the following paragraph.

c. **City Indemnification.** If at any time (i) the Benefitted Parcel is not subject to the Ground Lease (including any extensions or renewals thereof) or any subsequent ground lease (any such time, a “**No Project Sponsor Period**”) or (ii) City exercises any rights to utilize the Easements as set forth herein (provided, however, use by emergency vehicles or first responders solely pursuant to City’s duties, rights and powers as a municipal corporation is expressly excepted from this indemnity), City hereby expressly agrees to Indemnify Grantor from and against any and all Claims with respect to matters arising during either such period. Notwithstanding the foregoing to the contrary, City’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties.

4. **Maintenance of Easement Area.** Grantee, at its sole cost, shall at all times maintain the Easement Area in a safe, clean condition; provided, Grantee shall not be responsible for the foregoing maintenance if Grantee is prevented from accessing the Easement Area due to Grantor’s maintenance, repair, replacement, and/or construction activities. Notwithstanding the foregoing, in the event the Grantor or the Grantor Parties cause damage to the Easement Area,

then Grantor shall be responsible for the cost and expense to repair any such damage and shall reimburse Grantee for all sums paid by Grantee to repair such damage within thirty (30) days of delivery of an invoice and reasonable documentation evidencing such costs. For the avoidance of doubt, other than during any No Project Sponsor Period, the Project Sponsor shall be solely responsible for the covenant set forth above. During any No Project Sponsor Period, then City shall be solely responsible for the covenant set forth above.

5. **Building Code and Fire Code Approvals.** The City's DBI and the Fire Department are intended beneficiaries of this Agreement with respect to the Cornice Easement and the Door Swing Easement and each department's approvals of the Project's compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit), provided, however, that the City's DBI and Fire Department shall have no liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor shall be responsible for all costs associated with any claims, damages, liabilities or losses which arise from the approvals of the Project by City's DBI and Fire Department based on this Agreement.

6. **No Public Dedication; Enforcement.** Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Agreement be strictly limited to and for the purposes expressed. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the terms of this Agreement. All rights and remedies available to Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

7. **Insurance Requirements.** Prior to its initial use of the Easement Area Grantee shall obtain and shall thereafter maintain during the entire term of this Agreement in full force, at Grantee's sole expense, the following insurance as provided in this Section against claims which may arise out of or result from use of the Easement Area by Grantee or Grantee Parties or failure of Grantee to perform its obligations under this Agreement. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times a Best's rating of "A- X" or better by AM Best & Company, and with coverage and policy limits as Grantor may reasonably require (unless otherwise specified herein):

a. Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence.

b. Commercial auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence.

c. Worker's Compensation insurance as required by the State of California.



d. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

e. Umbrella/Excess Liability coverage written on a follow form basis in excess of the Commercial General Liability, Commercial Auto and Employer's Liability required under this section such that when added to the Commercial General Liability provided pursuant to paragraph (a) above, the Grantee maintains total Commercial General Liability coverage equal to not less than Five Million Dollars (\$5,000,0000) per occurrence.

f. Any other insurance required by applicable federal state, or local laws.

Required limits may be provided by a combination of primary and/or umbrella/excess policies, provided that all other terms and conditions of this Section are complied with. Grantee shall name Grantor, the Grantor Parties and their respective affiliates and agents (including the owner of any individual property) as Additional Insureds under the policies required in clauses (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to Grantee and Grantor prior to cancellation, and (ii) at least ten (10) days written notice to Grantee and Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor and related parties. Grantee's insurance coverage shall be primary insurance with respect to any other insurance or self- insurance programs maintained by Grantor related parties, and such other insurance or self- insurance programs shall be excess and non-contributory. Prior to its initial use of the Easement Area, Grantee shall deliver to Grantor an ACORD certificate evidencing the coverage provided by each policy and provide replacement certificates prior to the expiration of any required coverage (but in any event not less frequently than once per calendar year). Grantee, at its sole cost and expense, shall be responsible for the payment of any deductibles or retentions associated with the insurance set forth in these requirements, without reimbursement from Grantor.

Notwithstanding anything to the contrary above, Grantor acknowledges that the City maintains a program of self-insurance and will self-insure for the risks described above and, accordingly, shall not be obligated to purchase any third-party commercial liability insurance or property insurance under this Agreement.

## 8. **Litigation Expenses.**

a. **General.** If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

b. **Appeal.** Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

c. **Fee Award for City's Attorneys.** For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices.** Any notice or consent required or permitted to be given by this Agreement shall be in writing and shall be deemed to be given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) four (4) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 160 Freelon Street

Project Sponsor: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

Grantor: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
One Bush Street, Suite 500  
San Francisco, California 94104  
Attn: Veronica Klein

With a copy to: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
45 Rockefeller Plaza, 27th Floor  
New York, NY 10011  
Attn: General Counsel  
E-mail: GeneralCounsel@TishmanSpeyer.com

and a copy to: Karavas Kiely Schloss & Whitman LLP  
1800 Century Park East, Suite 200  
Los Angeles, CA 90067  
Attention: Michael J. Kiely, Esq.  
E-mail: mkiely@kkslawyers.com

or to such other address as either party may from time to time specify to the other upon five (5) days prior written notice in the manner specified above.

10. **Exculpation.**

a. **Grantor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantor, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Grantor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Grantor or in respect of any claims against Grantor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Grantor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Grantor Exculpated Party other than Grantor as of the date of such judgment. The limitations of liability contained in this Section 10(a) shall inure to the benefit of the Grantor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Grantor nor the Grantor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

b. **Project Sponsor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantee, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Project Sponsor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Project Sponsor or in respect of any claims against Project Sponsor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Project Sponsor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Project Sponsor Exculpated Party other than Project Sponsor as of the date of such judgment. The limitations of liability contained in this Section 10(b) shall inure to the benefit of the Project Sponsor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Project Sponsor nor the Project Sponsor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

c. **City Exculpated Parties.** Notwithstanding anything appearing to the

contrary in this Agreement, no , no present or future board, commission, department, agency, or other subdivision of the City, including, without limitation, DBI, nor any commissioner, director, officer, employee, heir, successors or assigns of any of the foregoing (collectively, the “**City Exculpated Parties**”), shall be personally liable for any debts or other obligations of City or in respect of any claims against City arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of City. No personal judgment shall be sought or obtained against any City Exculpated Party other than City. The limitations of liability contained in this Section 10(c) shall inure to the benefit of the City Exculpated Parties and their respective heirs, successors and assigns. Notwithstanding any contrary provision herein, neither City nor the City Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. **Entire Agreement.** This Agreement contains the entirety of the terms and conditions relevant to the grant of the Easements and the maintenance and uses of the Easement Area. This Agreement supersedes all prior drafts, negotiations and communications with respect to it.

12. **Amendment.** This Agreement may not be modified, changed, supplemented or terminated, nor may any of the obligations hereunder be waived, except in a written instrument signed by Grantee and Grantor. The Cornice Easement and the Door Swing Easement have been granted in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application for the development and construction of the Project. Any such modification, revocation or termination shall not be effective unless and until the Director of DBI or his/her designee and the San Francisco Fire Marshal and his/her designee, if applicable, consent thereto in writing after receiving written notice thereof from Grantor or Grantee, and such modification, revocation or termination, executed by Grantor and Grantee, the Director of DBI, and the Fire Marshal and his/her designee, if applicable, is recorded in the Official Records of the City. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens to the same extent as this Agreement as if such amendment or modification had been executed concurrently herewith.

13. **Severability.** If any provision of this Agreement conflicts with applicable law or is declared invalid, such provision shall be severed from the document and the remainder shall continue to be given full force and effect.

14. **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under the law of the State of California.

15. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth in their entirety herein.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of any successor in interest as owner or owners of the real property comprising any portion or portions of the real property described in this Agreement. For the avoidance of doubt, the term Project

Sponsor shall refer to the initial Project Sponsor named above, any successor in interest of the initial Project Sponsor named above (or any subsequent Project Sponsor) as the ground lessee under the Ground Lease, or any other holder of a ground lease interest in the Benefitted Parcel, as applicable during the period in which such party holds such leasehold title in the Benefitted Parcel.

17. **Execution in Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

18. **Compliance With Laws.** Grantor, at Grantor's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Door Swing Easement Area, now in force or hereafter adopted, with respect to the use by the public, if applicable, of the Easement Area under the authority of the Easements herein granted. Grantee, at Grantee's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use of the Easement Area under the authority of the Easements herein granted.

19. **Default.** The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. Grantor shall accept performance by or at the instigation of the limited partner of Grantee in fulfillment of Grantee's obligations, for the account of Grantee and with the same force and effect as if performed by Grantee, provided that such performance is rendered within the time periods set forth above.

20. **Burden on Land.** Each of the Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall run with the land and shall be binding upon and inure to the benefit of each having any fee, leasehold or other interest in the real property described herein or any part thereof. The real property described herein is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, limitations, restrictions, reservations, rights, easements, conditions and covenants under this Agreement, all of which are imposed as equitable servitudes upon the real property described herein.

21. **Duration.** The Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by in this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to the terms set forth herein.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement is executed as of the date and year set forth hereinabove.

**GRANTOR:** **598 BRANNAN STREET PHASE 1, L.L.C.,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROJECT SPONSOR:** **160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

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

Name: Ann Silverberg

Title: President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its Managing General Partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: David Sobel

Title: Chief Executive Officer

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: Andrico Q. Penick

Title: Director of Real Property

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

Name: Eric Shaw

Title: Director of the Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

DAVID CHIU

City Attorney

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

Jessica Cassella

Deputy City Attorney

**APPROVED:**

DIRECTOR OF THE DEPARTMENT OF BUILDING INSPECTION

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

Name: \_\_\_\_\_

FIRE MARSHALL

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

Name: \_\_\_\_\_

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

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

Robb Kapla

Deputy City Attorney

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment



**CERTIFICATE OF ACKNOWLEDGMENT**  
**OF NOTARY PUBLIC**

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature {seal}

# **CERTIFICATE OF ACKNOWLEDGMENT** **OF NOTARY PUBLIC**

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized

capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

{seal}

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

**Schedule 1**

**Legal Description of Burdened Property**

**[Attached on following pages]**

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT ONE: 598 BRANNAN STREET

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FIFTH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF FIFTH STREET 355 FEET TO THE SOUTHEASTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 275 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 355 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF BRANNAN STREET 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: 3777-045

TRACT TWO: 649-651 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 480.802 FEET FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-050

TRACT THREE: 645 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 412 FEET AND 6 INCHES FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-051

TRACT FOUR: 639 BRYANT STREET

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF BRYANT STREET 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 275 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET, IF EXTENDED; THENCE AT RIGHT ANGLES NORTHEASTERLY 275 FEET; AND THENCE AT RIGHT ANGLES NORTHWESTERLY 355 FEET TO THE SOUTHEASTERLY LINE OF BRYANT STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOTS NOS. 180 AND 186 IN 100 VARA BLOCK NO. 376.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED APRIL 30, 2020, IN DOCUMENT NO. 2020-K927581, OFFICIAL RECORDS, AND AS SHOWN AS PARCEL A ON RECORD OF SURVEY 12420 FILED JANUARY 10, 2025, IN BOOK JK OF SURVEY MAPS, AT PAGES 174-176, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET (82.50 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE), SAID POINT OF COMMENCEMENT BEING THE MOST NORTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 195.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE CONTINUING SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 160.21 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET 81.71 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 81.71 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

APN 3777-177

**TRACT FIVE:**

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 5TH STREET (82.50 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 550.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHEASTERLY, AT A RIGHT ANGLE TO SAID LINE OF WELSH STREET, 160.25 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET, 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 275.00 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF 5TH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: (NOT CURRENTLY ASSESSED)

**EXCLUDING THEREFROM:**

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.



**Schedule 2**  
**Legal Description of Benefitted Parcel**

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

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: 3777-178

Exhibit A

Legal Description and Depiction of Door Swing Easement Area

S-9445

LEGAL DESCRIPTION

"ENCROACHMENT EASEMENT FOR DOOR SWING"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.21 FEET TO THE MOST SOUTHERLY CORNER OF WELSH STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, PARALLEL WITH SAID LINE OF FREELON STREET, 10.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTHWESTERLY, PARALLEL WITH SAID LINE OF FREELON STREET, 17.40 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 3.83 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 17.40 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 3.83 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 67± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015

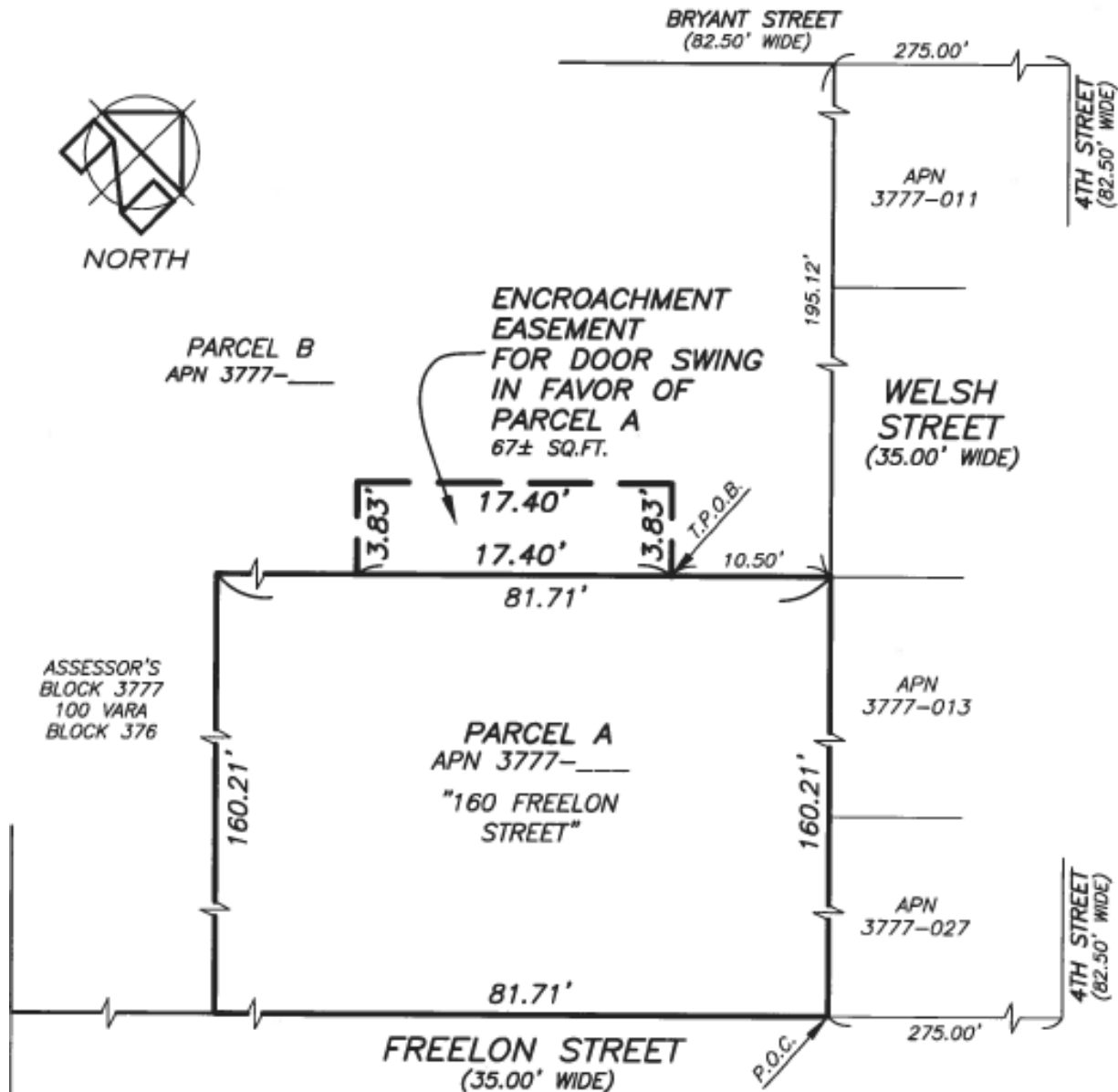


Exhibit B

Legal Description and Depiction of Cornice Easement Area

S-9445

LEGAL DESCRIPTION

"ENCROACHMENT EASEMENT FOR 2 BUILDING CORNICES"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 356.71 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID LINE OF FREELON STREET 2.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 2.00 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 160.21 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 320± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015



RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Street Address: 160 Freelon Street, San Francisco,  
CA 94107

APN: 3777-178

Free Recording Requested Pursuant to  
Government Code Section 27383

(Space above this line reserved for Recorder's use only)

### **JOINT TRENCH EASEMENT AGREEMENT**

THIS JOINT TRENCH EASEMENT AGREEMENT (this "**Agreement**") is executed as of \_\_\_\_\_, 2025 (the "**Execution Date**") by and among 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and 160 FREELON HOUSING PARTNERS, L.P., a California limited partnership ("**Project Sponsor**", together with City, "**Grantee**").

#### **RECITALS**

A. Grantor owns certain real property located between Freelon Street and Bryant Street and generally between 4th and 5th Street in the City of San Francisco, County of San Francisco, State of California, and more fully described on Schedule 1 attached hereto and made a part hereof ("**Burdened Property**").

B. On February 19, 2025, City acquired from Grantor fee title to that certain real property contiguous to the Burdened Property located at 160 Freelon Street and fully described on Schedule 2 attached hereto and made a part hereof (the "**Benefitted Parcel**") as a land dedication pursuant to San Francisco Planning Code Sections 249.78(e)(2)(B). Concurrently with this Agreement, the City and the Project Sponsor will enter into a long-term ground lease of the Benefitted Parcel (the "Ground Lease") for the purpose of constructing approximately 85 units (including one manager's unit) of affordable housing (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to satisfy the requirements of the San Francisco Building Code and the San Francisco Fire Code (collectively, the "**Code**") in effect as of the date hereof, and for the Project Sponsor to obtain the City's Department of Building Inspection ("**DBI**") and Fire Marshal approval for the development and construction of the Project in its regulatory capacity, Grantor agrees to impose certain restrictions on the Burdened Property for the benefit of the Benefitted Parcel subject to the terms and conditions set forth herein.

D. Grantee desires an easement on, over and within a portion of the

Burdened Property for the purposes of constructing, maintaining, and operating the improvements located, or to be located, on the Benefitted Parcel.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement.** Subject to the provisions of this Agreement, Grantor grants in perpetuity to Grantee a nonexclusive easement over the portion of the Burdened Property shown and legally described on Exhibit A to this Agreement (the “**Easement Area**”) for the purpose of construction, maintenance, use, repair, and replacement of a joint trench and related improvements for the Benefitted Parcel’s telecommunications provider and a San Francisco Department of Telecommunications and Postal Services (“**DTPS**”) conduit (collectively, the “**Joint Trench Improvements**”) that will service the building to be constructed on the Benefitted Parcel as part of the Project (the “**Easement**”). Grantee and their contractors and service personnel, (including contractors and service personnel of Grantee’s telecommunications provider and DTPS) shall be permitted to access and use the Easement Area in connection with the installation, maintenance, repair and replacement of the Joint Trench Improvements. For so long as this Agreement continues in effect, no new permanent structure or other permanent improvement shall be constructed or maintained within the Easement Area that would materially interfere with or obstruct access to or use of the Easement for its intended purposes, except as approved by DBI if such approval is required under the provisions of the Code. The Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals. Neither the Easements nor any other provision of this Agreement shall prohibit the maintenance, construction and installation of minor encroachments of building systems, light facilities, utility facilities, landscaping, and similar facilities, or prohibit the temporary installation of scaffolding or other equipment to be used for maintenance activities of the Burdened Property in the Easement Area, provided such improvements have been approved by DBI if such approval is required by the Code, or any other applicable approvals, and so long as such improvements do not materially interfere or obstruct typical use of the Easement Area for the purposes set forth herein

2. **Non-Exclusive Easements Subject to Prior and Future Easement Grants; Special Restrictions.** The Easement granted herein is non-exclusive and subject to the rights of easements, if any, previously granted by Owner and Owner’s predecessors in title. In addition, Project Sponsor shall at all times comply with the conditions and restrictions contained in that certain Notice of Special Restrictions recorded on March 28, 2024 as Document No. 2024026197, in the Official Records of the City and County of San Francisco to the extent applicable to the Project.

3. **Indemnity.**

a. **Grantor Indemnification.** Grantor shall indemnify, defend and hold

harmless (“**Indemnify**”) the Project Sponsor Exculpated Parties (as defined in Section 10(b) below) and the City Exculpated Parties (as defined in Section 10(c) below) and together with the Project Sponsor Exculpated Parties, the “**Grantee Exculpated Parties**”), and each of them, from and against any and all third party liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (including, without limitation, reasonable attorneys’ fees and court costs, reasonable consultants and experts and related costs, and the cost of investigating any Claim) (individually and/or, collectively, “**Claims**”), incurred in connection with or arising in whole or in part from: (1) any hazardous or unsafe condition of the Easement Area, including the presence of hazardous materials within such area, other than any change in the condition of the Easement Area after the Effective Date of this Agreement caused by the Grantee Parties or any of them or resulting from any failure of Grantee to perform its obligations under Section 4 below; (2) any construction or other work undertaken by or on behalf of Grantor in the Easement Area; (3) any gross negligence or willful misconduct of any of Grantor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the “**Grantor Parties**”) in, on or about the Easement Area as finally determined by a court of competent jurisdiction; or (4) any release or discharge, or threatened release or discharge, of any hazardous material caused by the Grantor Parties in, under, on or about the Easement Area, except (with respect to clauses (1) through (4) above) such Claims to the extent caused by (i) the willful misconduct or gross negligence of any of (x) Project Sponsor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the “**Project Sponsor Parties**”), or (y) the City, its commissions, departments, agencies and other subdivisions, including, without limitation, DBI (individually and/or collectively, the “**City Parties**” and together with the Project Sponsor Parties, the “**Grantee Parties**”), or (ii) any Claim for which Grantee has an obligation to Indemnify Grantor or the Grantor Exculpated Parties pursuant to Section 3(b) or Section 3(c) below.

Grantor specifically acknowledges and agrees that Grantor has an immediate and independent obligation to defend the City (but not the Project Sponsor) from any Claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Grantor by the City and continues at all times thereafter. As used herein, “hazardous material” means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

b. **Project Sponsor Indemnification.** Project Sponsor shall Indemnify the Grantor Exculpated Parties (as defined below in Section 10(a)) from and against any and all Claims arising out of or in connection with or by reason of the Grantee’s rights under this Agreement or the exercise thereof. Notwithstanding the foregoing to the contrary, Project Sponsor’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties. This paragraph shall not apply to the City and the sole Indemnity obligations of City are set forth in the following paragraph.

c. **City Indemnification.** If at any time (i) the Benefitted Parcel is not subject to the Ground Lease (including any extensions or renewals thereof) or any subsequent



ground lease (any such time, a “**No Project Sponsor Period**”) or (ii) City exercises any rights to utilize the Easements as set forth herein (provided, however, use by emergency vehicles or first responders solely pursuant to City’s duties, rights and powers as a municipal corporation is expressly excepted from this indemnity), City hereby expressly agrees to Indemnify Grantor from and against any and all Claims with respect to matters arising during either such period. Notwithstanding the foregoing to the contrary, City’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties.

4. **Maintenance of Easement Area.** Grantee, at its sole cost, shall at all times maintain the Easement Area in a safe, clean condition; provided, Grantee shall not be responsible for the foregoing maintenance if Grantee is prevented from accessing the Easement Area due to Grantor’s maintenance, repair, replacement, and/or construction activities. Notwithstanding the foregoing, in the event the Grantor or the Grantor Parties cause damage to the Easement Area, then Grantor shall be responsible for the cost and expense to repair any such damage and shall reimburse Grantee for all sums paid by Grantee to repair such damage within thirty (30) days of delivery of an invoice and reasonable documentation evidencing such costs. For the avoidance of doubt, other than during any No Project Sponsor Period, the Project Sponsor shall be solely responsible for the covenant set forth above. During any No Project Sponsor Period, then City shall be solely responsible for the covenant set forth above.

5. **Building Code and Fire Code Approvals.** The City’s DBI and the Fire Department are intended beneficiaries of this Agreement with respect to the Easement and each department’s approvals of the Project’s compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit), provided, however, that the City’s DBI and Fire Department shall have no liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor shall be responsible for all costs associated with any claims, damages, liabilities or losses which arise from the approvals of the Project by City’s DBI and Fire Department based on this Agreement.

6. **No Public Dedication; Enforcement.** Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Agreement be strictly limited to and for the purposes expressed. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the terms of this Agreement. All rights and remedies available to Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

7. **Insurance Requirements.** Prior to its initial use of the Easement Area Grantee shall obtain and shall thereafter maintain during the entire term of this Agreement in full force, at Grantee’s sole expense, the following insurance as provided in this Section against claims which may arise out of or result from use of the Easement Area by Grantee or Grantee Parties or failure of Grantee to perform its obligations under this Agreement. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times a Best’s rating of “A- X” or better by AM Best & Company, and with coverage and policy limits as Grantor may reasonably require (unless otherwise specified herein):

a. Commercial General Liability insurance written on Insurance Services Office (“ISO”) Commercial General Liability Coverage “occurrence” form CG 00 01 or another Commercial General Liability “occurrence” form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence.

b. Commercial auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence.

c. Worker’s Compensation insurance as required by the State of California.

d. Employer’s liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

e. Umbrella/Excess Liability coverage written on a follow form basis in excess of the Commercial General Liability, Commercial Auto and Employer’s Liability required under this section such that when added to the Commercial General Liability provided pursuant to paragraph (a) above, the Grantee maintains total Commercial General Liability coverage equal to not less than Five Million Dollars (\$5,000,000) per occurrence.

f. Any other insurance required by applicable federal state, or local laws.

Required limits may be provided by a combination of primary and/or umbrella/excess policies, provided that all other terms and conditions of this Section are complied with. Grantee shall name Grantor, the Grantor Parties and their respective affiliates and agents (including the owner of any individual property) as Additional Insureds under the policies required in clauses (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to Grantee and Grantor prior to cancellation, and (ii) at least ten (10) days written notice to Grantee and Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor and related parties. Grantee’s insurance coverage shall be primary insurance with respect to any other insurance or self-insurance programs maintained by Grantor related parties, and such other insurance or self-insurance programs shall be excess and non-contributory. Prior to its initial use of the Easement Area, Grantee shall deliver to Grantor an ACORD certificate evidencing the coverage provided by each policy and provide replacement certificates prior to the expiration of any required coverage (but in any event not less frequently than once per calendar year). Grantee, at its sole cost and expense, shall be responsible for the payment of any deductibles or retentions associated with the insurance set forth in these requirements, without reimbursement from Grantor.

Notwithstanding anything to the contrary above, Grantor acknowledges that the City maintains a program of self-insurance and will self-insure for the risks described above and, accordingly, shall not be obligated to purchase any third-party commercial liability insurance or property insurance under this Agreement.

8. **Litigation Expenses.**

a. **General.** If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

b. **Appeal.** Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

c. **Fee Award for City's Attorneys.** For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices.** Any notice or consent required or permitted to be given by this Agreement shall be in writing and shall be deemed to be given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) four (4) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 160 Freelon Street

Project Sponsor: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

Grantor: 598 Brannan Street Phase 1, L.L.C.

c/o Tishman Speyer  
One Bush Street, Suite 500  
San Francisco, California 94104  
Attn: Veronica Klein

With a copy to: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
45 Rockefeller Plaza, 27th Floor  
New York, NY 10011  
Attn: General Counsel  
E-mail: GeneralCounsel@TishmanSpeyer.com

and a copy to: Karavas Kiely Schloss & Whitman LLP  
1800 Century Park East, Suite 200  
Los Angeles, CA 90067  
Attention: Michael J. Kiely, Esq.  
E-mail: mkiely@kkslawyers.com

or to such other address as either party may from time to time specify to the other upon five (5) days prior written notice in the manner specified above.

10. **Exculpation.**

a. **Grantor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantor, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Grantor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Grantor or in respect of any claims against Grantor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Grantor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Grantor Exculpated Party other than Grantor as of the date of such judgment. The limitations of liability contained in this Section 10(a) shall inure to the benefit of the Grantor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Grantor nor the Grantor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

b. **Project Sponsor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantee, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Project Sponsor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Project Sponsor or in respect of any claims against Project Sponsor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Project Sponsor as of the date any

such Claim is made. No personal judgment shall be sought or obtained against any Project Sponsor Exculpated Party other than Project Sponsor as of the date of such judgment. The limitations of liability contained in this Section 10(b) shall inure to the benefit of the Project Sponsor Exculpated Parties' present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Project Sponsor nor the Project Sponsor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

c. **City Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no , no present or future board, commission, department, agency, or other subdivision of the City, including, without limitation, DBI, nor any commissioner, director, officer, employee, heir, successors or assigns of any of the foregoing (collectively, the "**City Exculpated Parties**"), shall be personally liable for any debts or other obligations of City or in respect of any claims against City arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of City. No personal judgment shall be sought or obtained against any City Exculpated Party other than City. The limitations of liability contained in this Section 10(c) shall inure to the benefit of the City Exculpated Parties and their respective heirs, successors and assigns. Notwithstanding any contrary provision herein, neither City nor the City Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. **Entire Agreement.** This Agreement contains the entirety of the terms and conditions relevant to the grant of the Easements and the maintenance and uses of the Easement Area. This Agreement supersedes all prior drafts, negotiations and communications with respect to it.

12. **Amendment.** This Agreement may not be modified, changed, supplemented or terminated, nor may any of the obligations hereunder be waived, except in a written instrument signed by Grantee and Grantor. The Easement has been granted in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application for the development and construction of the Project. Any such modification, revocation or termination shall not be effective unless and until the Director of DBI or his/her designee and the San Francisco Fire Marshal and his/her designee, if applicable, consent thereto in writing after receiving written notice thereof from Grantor or Grantee, and such modification, revocation or termination, executed by Grantor and Grantee, the Director of DBI, and the Fire Marshal and his/her designee, if applicable, is recorded in the Official Records of the City. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens to the same extent as this Agreement as if such amendment or modification had been executed concurrently herewith.

13. **Severability.** If any provision of this Agreement conflicts with applicable law or is declared invalid, such provision shall be severed from the document and the remainder shall continue to be given full force and effect.

14. **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under the law of the State of California.

15. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth in their entirety herein.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of any successor in interest as owner or owners of the real property comprising any portion or portions of the real property described in this Agreement. For the avoidance of doubt, the term Project Sponsor shall refer to the initial Project Sponsor named above, any successor in interest of the initial Project Sponsor named above (or any subsequent Project Sponsor) as the ground lessee under the Ground Lease, or any other holder of a ground lease interest in the Benefitted Parcel, as applicable during the period in which such party holds such leasehold title in the Benefitted Parcel.

17. **Execution in Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

18. **Compliance With Laws.** Grantee, at Grantee's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use of the Easement Area under the authority of the Easements herein granted.

19. **Default.** The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. Granter shall accept performance by or at the instigation of the limited partner of Grantee in fulfillment of Grantee's obligations, for the account of Grantee and with the same force and effect as if performed by Grantee, provided that such performance is rendered within the time periods set forth above.

20. **Burden on Land.** Each of the Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall run with the land and shall be binding upon and inure to the benefit of each person having any fee, leasehold or other interest the real property described herein or any part thereof. The real property described herein is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, limitations, restrictions, reservations, rights, easements, conditions and covenants under this Agreement, all of which are imposed as equitable servitudes upon the real property described herein.

21. **Duration.** The Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by in this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to the terms set forth herein.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement is executed as of the date and year set forth hereinabove.

**GRANTOR:** **598 BRANNAN STREET PHASE 1, L.L.C.,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROJECT SPONSOR:** **160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

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

Name: Ann Silverberg

Title: President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its Managing General Partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: David Sobel

Title: Chief Executive Officer



**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: Andrico Q. Penick

Title: Director of Real Property

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

Name: Eric Shaw

Title: Director of the Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

DAVID CHIU

City Attorney

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

Jessica Cassella

Deputy City Attorney

**APPROVED:**

Director of the Department of Building Inspection

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

Name: \_\_\_\_\_

Fire Marshall

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

Name: \_\_\_\_\_

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

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

Robb Kapla

Deputy City Attorney

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

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and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

**Schedule 1**

**Legal Description of Burdened Property**

**[Attached on following pages]**

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT ONE: 598 BRANNAN STREET

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FIFTH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF FIFTH STREET 355 FEET TO THE SOUTHEASTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 275 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 355 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF BRANNAN STREET 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: 3777-045

TRACT TWO: 649-651 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 480.802 FEET FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-050

TRACT THREE: 645 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 412 FEET AND 6 INCHES FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-051



TRACT FOUR: 639 BRYANT STREET

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF BRYANT STREET 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 275 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET, IF EXTENDED; THENCE AT RIGHT ANGLES NORTHEASTERLY 275 FEET; AND THENCE AT RIGHT ANGLES NORTHWESTERLY 355 FEET TO THE SOUTHEASTERLY LINE OF BRYANT STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOTS NOS. 180 AND 186 IN 100 VARA BLOCK NO. 376.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED APRIL 30, 2020, IN DOCUMENT NO. 2020-K927581, OFFICIAL RECORDS, AND AS SHOWN AS PARCEL A ON RECORD OF SURVEY 12420 FILED JANUARY 10, 2025, IN BOOK JK OF SURVEY MAPS, AT PAGES 174-176, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET (82.50 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE), SAID POINT OF COMMENCEMENT BEING THE MOST NORTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 195.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE CONTINUING SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 160.21 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET 81.71 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 81.71 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

APN 3777-177

**TRACT FIVE:**

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 5TH STREET (82.50 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 550.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHEASTERLY, AT A RIGHT ANGLE TO SAID LINE OF WELSH STREET, 160.25 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET, 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 275.00 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF 5TH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: (NOT CURRENTLY ASSESSED)

**EXCLUDING THEREFROM:**

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

## **Schedule 2**

### **Legal Description of Benefitted Parcel**

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

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: 3777-178

Exhibit A

Diagram of Easement Area

LEGAL DESCRIPTION

"JOINT TRENCH EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 166.51 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHWESTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, PARALLEL WITH SAID NORTHWESTERLY LINE OF FREELON STREET 29.44 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 6.30 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 10.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 6.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 10.00 FEET; THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 15.71 FEET; THENCE NORTHEASTERLY, PARALLEL WITH SAID NORTHWESTERLY LINE OF FREELON STREET 29.44 FEET TO SAID SOUTHWESTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, ALONG SAID LINE OF WELSH STREET 10.00 FEET TO THE TRUE POINT OF BEGINNING.

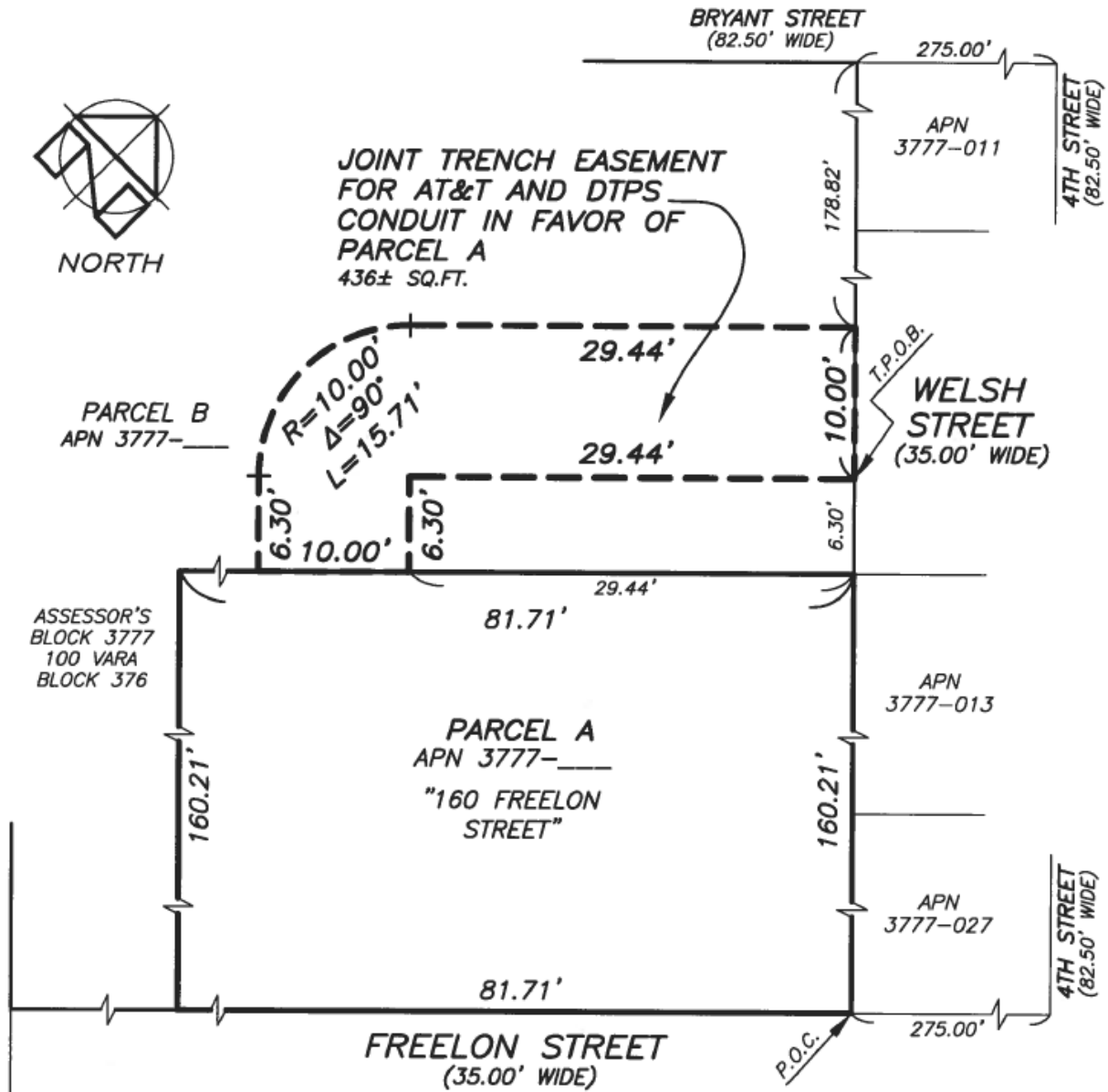
BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 436± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015



#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER

P.O.C. POINT OF COMMENCEMENT

T.P.O.B. TRUE POINT OF BEGINNING

—— PARCEL A PROPERTY LINE

—— PARCEL B PROPERTY LINE

—— LOT LINE/RIGHT OF WAY LINE

- - - EASEMENT LINE

#### NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
3. PARCELS A AND B ARE AS SHOWN ON RECORD OF SURVEY \_\_\_\_\_.

# DRAFT

DATE: 10/15/24

SAN FRANCISCO,  
CALIFORNIA

## JOINT TRENCH EASEMENT

BY JP CHKD. BR DATE 10-\_\_-24 SCALE NONE SHEET 1 OF 1 JOB NO. S-9445

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9445\_ESMT PLATS\_PM WAIVER PARCEL A.dwg

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Street Address: 160 Freelon Street, San Francisco,  
CA 94107

APN: 3777-178

Free Recording Requested Pursuant to  
Government Code Section 27383

(Space above this line reserved for Recorder's use only)

## **LIGHT, AIR, MAINTENANCE AND ACCESS EASEMENTS AGREEMENT**

THIS LIGHT, AIR, MAINTENANCE AND ACCESS EASEMENTS AGREEMENT (this "**Agreement**") is executed as of \_\_\_\_\_, 2025 (the "**Execution Date**") by and among 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and 160 FREELON HOUSING PARTNERS, L.P., a California limited partnership ("**Project Sponsor**", together with City, "**Grantee**").

### **RECITALS**

A. Grantor owns certain real property located between Freelon Street and Bryant Street and generally between 4th and 5th Street in the City of San Francisco, County of San Francisco, State of California, and more fully described on Schedule 1 attached hereto and made a part hereof ("**Burdened Property**").

B. On February 19, 2025, City acquired from Grantor fee title to that certain real property contiguous to the Burdened Property located at 160 Freelon Street and fully described on Schedule 2 attached hereto and made a part hereof (the "**Benefitted Parcel**") as a land dedication pursuant to San Francisco Planning Code Sections 249.78(e)(2)(B). Concurrently with this Agreement, the City and the Project Sponsor will enter into a long-term ground lease of the Benefitted Parcel (the "**Ground Lease**") for the purpose of constructing approximately 85 units (including one manager's unit) of affordable housing (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to be permitted pursuant to current law and governmental regulations, the Project must have windows on the property line and emergency access between the Burdened Property and the Benefitted Parcel. Grantee desires easements on, over and within a portion of the Burdened Property for (1) light and air, and (2) pedestrian passage in connection with the Project's building permit application, and in order to satisfy the requirements of the San Francisco Building Code and the San Francisco Fire Code

(collectively, the “**Code**”) in effect as of the date hereof. For the Project Sponsor to obtain the City’s Department of Building Inspection (“**DBI**”) and Fire Marshal approval for the development and construction of the Project in its regulatory capacity, Grantor agrees to impose certain restrictions on the Burdened Property for the benefit of the Benefitted Parcel subject to the terms and conditions set forth herein.

D. Grantee desires an easement on, over and within a portion of the Burdened Property for the purposes of constructing, maintaining, and operating the improvements located, or to be located, on the Benefitted Parcel.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easements.** Subject to the provisions of this Agreement, Grantor grants in perpetuity to Grantee the following easements (which may collectively be referred to herein as the “**Easements**”):

A. **Light and Air Easement.** A nonexclusive easement for unobstructed light and air access (the “**Light and Air Easement**”) over the portion of the Burdened Property shown and described in Exhibit B to this Agreement (the “**Light and Air Easement Area**”). For so long as this Agreement continues in effect, no new permanent structure or other permanent improvement shall be constructed or maintained within the Light and Air Easement Area, except as approved by DBI if such approval is required under the provisions of the Code. With respect to any future building installation on the Burdened Property and exterior alterations to the portions of the Project facing the Light and Air Easement Area, for purposes of Code compliance, including compliance with Code requirements relating to building setbacks, yards, courts, exit courts, property line protection, building opening protection, parapets, and all other relevant Code provisions, the assumed property line between the Burdened Property and the Benefitted Parcel shall be the boundary of the Light and Air Easement Area shown depicted as the dashed “Easement Line” on Exhibit B to this Agreement.

B. **Access Easement.** A nonexclusive easement over the portion of the Burdened Property shown and described in Exhibit A to this Agreement (the “**Access Easement Area**”, and together with the Light and Air Easement Area, the “**Easement Area**”) for the purpose of general access to and from the building to be constructed on the Benefitted Parcel as part of the Project (“**Access Easement**”). For so long as this Agreement continues in effect, no new permanent structure or other permanent improvements shall be constructed or maintained within the Access Easement Area that would materially interfere or obstruct such use of the Access Easement, except as approved by the DBI if such approval is required under the provisions of the Code. The Access Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Access Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals.

C. **Reservation by Grantor.** Neither the Easements nor any other provision of this Agreement shall prohibit the maintenance, construction and installation of minor encroachments of building systems, light facilities, utility facilities, landscaping, and similar facilities, or prohibit the temporary installation of scaffolding or other equipment to be used for maintenance activities of the Burdened Property in the Access Easement Area, provided such improvements have been approved by DBI if such approval is required by the Code, or any other applicable approvals, and so long as such improvements do not materially interfere or obstruct typical use of the Easement Area for the purposes set forth herein. The restrictions on improvements within the Access Easement Area described in this Section 1 shall not apply to improvements constructed or installed below-grade.

2. **Non-Exclusive Easements Subject to Prior and Future Easement Grants; Special Restrictions.** The Easements granted herein are non-exclusive and subject to the rights of easements, if any, previously granted by Owner and Owner's predecessors in title. In addition, Project Sponsor shall at all times comply with the conditions and restrictions contained in that certain Notice of Special Restrictions recorded on March 28, 2024 as Document No. 2024026197, in the Official Records of the City and County of San Francisco to the extent applicable to the Project.

3. **Indemnity.**

a. **Grantor Indemnification.** Grantor shall indemnify, defend and hold harmless ("**Indemnify**") the Project Sponsor Exculpated Parties (as defined in Section 10(b) below) and the City Exculpated Parties (as defined in Section 10(c) below) and together with the Project Sponsor Exculpated Parties, the "**Grantee Exculpated Parties**"), and each of them, from and against any and all third party liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (including, without limitation, reasonable attorneys' fees and court costs, reasonable consultants and experts and related costs, and the cost of investigating any Claim) (individually and/or, collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (1) any hazardous or unsafe condition of the Easement Area, including the presence of hazardous materials within such area, other than any change in the condition of the Easement Area after the Effective Date of this Agreement caused by the Grantee Parties or any of them or resulting from any failure of Grantee to perform its obligations under Section 4 below; (2) any construction or other work undertaken by or on behalf of Grantor in the Easement Area; (3) any gross negligence or willful misconduct of any of Grantor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the "**Grantor Parties**") in, on or about the Easement Area as finally determined by a court of competent jurisdiction; or (4) any release or discharge, or threatened release or discharge, of any hazardous material caused by the Grantor Parties in, under, on or about the Easement Area, except (with respect to clauses (1) through (4) above) such Claims to the extent caused by (i) the willful misconduct or gross negligence of any of (x) Project Sponsor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the "**Project Sponsor Parties**"), or (y) the City, its commissions, departments, agencies and other subdivisions, including, without limitation, DBI (individually and/or collectively, the "**City Parties**" and together with the Project Sponsor Parties, the "**Grantee Parties**"), or (ii) any Claim for which Grantee has an obligation to Indemnify Grantor or the Grantor Exculpated Parties pursuant to Section 3(b) or Section 3(c) below.



Grantor specifically acknowledges and agrees that Grantor has an immediate and independent obligation to defend the City (but not the Project Sponsor) from any Claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Grantor by the City and continues at all times thereafter. As used herein, “hazardous material” means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

b. **Project Sponsor Indemnification.** Project Sponsor shall Indemnify the Grantor Exculpated Parties (as defined below in Section 10(a)) from and against any and all Claims arising out of or in connection with or by reason of the Grantee’s rights under this Agreement or the exercise thereof. Notwithstanding the foregoing to the contrary, Project Sponsor’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties. This paragraph shall not apply to the City and the sole Indemnity obligations of City are set forth in the following paragraph.

c. **City Indemnification.** If at any time (i) the Benefitted Parcel is not subject to the Ground Lease (including any extensions or renewals thereof) or any subsequent ground lease (any such time, a “**No Project Sponsor Period**”) or (ii) City exercises any rights to utilize the Easements as set forth herein (provided, however, use by emergency vehicles or first responders solely pursuant to City’s duties, rights and powers as a municipal corporation is expressly excepted from this indemnity), City hereby expressly agrees to Indemnify Grantor from and against any and all Claims with respect to matters arising during either such period. Notwithstanding the foregoing to the contrary, City’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties.

4. **Maintenance of Easement Area.** Grantee, at its sole cost, shall at all times maintain the Easement Area in a safe, clean condition; provided, Grantee shall not be responsible for the foregoing maintenance if Grantee is prevented from accessing the Easement Area due to Grantor’s maintenance, repair, replacement, and/or construction activities. Notwithstanding the foregoing, in the event the Grantor or the Grantor Parties cause damage to the Easement Area, then Grantor shall be responsible for the cost and expense to repair any such damage and shall reimburse Grantee for all sums paid by Grantee to repair such damage within thirty (30) days of delivery of an invoice and reasonable documentation evidencing such costs. For the avoidance of doubt, other than during any No Project Sponsor Period, the Project Sponsor shall be solely responsible for the covenant set forth above. During any No Project Sponsor Period, then City shall be solely responsible for the covenant set forth above.

5. **Building Code and Fire Code Approvals.** The City’s DBI and the Fire Department are intended beneficiaries of this Agreement with respect to the Light and Air Easement and the Access Easement and each department’s approvals of the Project’s compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit), provided, however, that the City’s DBI and Fire Department shall have no liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor shall

responsible for all costs associated with any claims, damages, liabilities or losses which arise from the approvals of the Project by City's DBI and Fire Department based on this Agreement.

6. **No Public Dedication; Enforcement.** Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Agreement be strictly limited to and for the purposes expressed. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the terms of this Agreement. All rights and remedies available to Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

7. **Insurance Requirements.** Prior to its initial use of the Easement Area Grantee shall obtain and shall thereafter maintain during the entire term of this Agreement in full force, at Grantee's sole expense, the following insurance as provided in this Section against claims which may arise out of or result from use of the Easement Area by Grantee or Grantee Parties or failure of Grantee to perform its obligations under this Agreement. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times a Best's rating of "A- X" or better by AM Best & Company, and with coverage and policy limits as Grantor may reasonably require (unless otherwise specified herein):

a. Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence.

b. Commercial auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence.

c. Worker's Compensation insurance as required by the State of California.

d. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

e. Umbrella/Excess Liability coverage written on a follow form basis in excess of the Commercial General Liability, Commercial Auto and Employer's Liability required under this section such that when added to the Commercial General Liability provided pursuant to paragraph (a) above, the Grantee maintains total Commercial General Liability coverage equal to not less than Five Million Dollars (\$5,000,000) per occurrence.

f. Any other insurance required by applicable federal state, or local laws.

Required limits may be provided by a combination of primary and/or umbrella/excess policies, provided that all other terms and conditions of this Section are complied with. Grantee shall name Grantor, the Grantor Parties and their respective affiliates and agents (including the

owner of any individual property) as Additional Insureds under the policies required in clauses (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to Grantee and Grantor prior to cancellation, and (ii) at least ten (10) days written notice to Grantee and Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor and related parties. Grantee's insurance coverage shall be primary insurance with respect to any other insurance or self- insurance programs maintained by Grantor related parties, and such other insurance or self- insurance programs shall be excess and non-contributory. Prior to its initial use of the Easement Area, Grantee shall deliver to Grantor an ACORD certificate evidencing the coverage provided by each policy and provide replacement certificates prior to the expiration of any required coverage (but in any event not less frequently than once per calendar year). Grantee, at its sole cost and expense, shall be responsible for the payment of any deductibles or retentions associated with the insurance set forth in these requirements, without reimbursement from Grantor.

Notwithstanding anything to the contrary above, Grantor acknowledges that the City maintains a program of self-insurance and will self-insure for the risks described above and, accordingly, shall not be obligated to purchase any third-party commercial liability insurance or property insurance under this Agreement.

8. **Litigation Expenses.**

a. **General.** If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

b. **Appeal.** Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

c. **Fee Award for City's Attorneys.** For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices.** Any notice or consent required or permitted to be given by this Agreement shall be in writing and shall be deemed to be given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) four (4) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 160 Freelon Street

Project Sponsor: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

Grantor: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
One Bush Street, Suite 500  
San Francisco, California 94104  
Attn: Veronica Klein

With a copy to: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
45 Rockefeller Plaza, 27th Floor  
New York, NY 10011  
Attn: General Counsel  
E-mail: GeneralCounsel@TishmanSpeyer.com

and a copy to: Karavas Kiely Schloss & Whitman LLP  
1800 Century Park East, Suite 200  
Los Angeles, CA 90067  
Attention: Michael J. Kiely, Esq.  
E-mail: mkiely@kkslawyers.com

or to such other address as either party may from time to time specify to the other upon five (5) days prior written notice in the manner specified above.

10. **Exculpation.**

a. **Grantor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantor, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Grantor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Grantor or in respect of any

claims against Grantor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Grantor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Grantor Exculpated Party other than Grantor as of the date of such judgment. The limitations of liability contained in this Section 10(a) shall inure to the benefit of the Grantor Exculpated Parties' present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Grantor nor the Grantor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

b. **Project Sponsor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantee, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the "**Project Sponsor Exculpated Parties**"), shall be personally liable for any debts or other obligations of Project Sponsor or in respect of any claims against Project Sponsor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Project Sponsor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Project Sponsor Exculpated Party other than Project Sponsor as of the date of such judgment. The limitations of liability contained in this Section 10(b) shall inure to the benefit of the Project Sponsor Exculpated Parties' present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Project Sponsor nor the Project Sponsor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

c. **City Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no , no present or future board, commission, department, agency, or other subdivision of the City, including, without limitation, DBI, nor any commissioner, director, officer, employee, heir, successors or assigns of any of the foregoing (collectively, the "**City Exculpated Parties**"), shall be personally liable for any debts or other obligations of City or in respect of any claims against City arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of City. No personal judgment shall be sought or obtained against any City Exculpated Party other than City. The limitations of liability contained in this Section 10(c) shall inure to the benefit of the City Exculpated Parties and their respective heirs, successors and assigns. Notwithstanding any contrary provision herein, neither City nor the City Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. **Entire Agreement.** This Agreement contains the entirety of the terms and

conditions relevant to the grant of the Easements and the maintenance and uses of the Easement Area. This Agreement supersedes all prior drafts, negotiations and communications with respect to it.

12. **Amendment.** This Agreement may not be modified, changed, supplemented or terminated, nor may any of the obligations hereunder be waived, except in a written instrument signed by Grantee and Grantor. The Light and Air Easement and Access Easement have been granted in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application for the development and construction of the Project. Any such modification, revocation or termination shall not be effective unless and until the Director of DBI or his/her designee and the San Francisco Fire Marshal and his/her designee, if applicable, consent thereto in writing after receiving written notice thereof from Grantor or Grantee, and such modification, revocation or termination, executed by Grantor and Grantee, the Director of DBI, and the Fire Marshal and his/her designee, if applicable, is recorded in the Official Records of the City. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens to the same extent as this Agreement as if such amendment or modification had been executed concurrently herewith.

13. **Severability.** If any provision of this Agreement conflicts with applicable law or is declared invalid, such provision shall be severed from the document and the remainder shall continue to be given full force and effect.

14. **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under the law of the State of California,

15. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth in their entirety herein.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of any successor in interest as owner or owners of the real property comprising any portion or portions of the real property described in this Agreement. For the avoidance of doubt, the term Project Sponsor shall refer to the initial Project Sponsor named above, any successor in interest of the initial Project Sponsor named above (or any subsequent Project Sponsor) as the ground lessee under the Ground Lease, or any other holder of a ground lease interest in the Benefitted Parcel, as applicable during the period in which such party holds such leasehold title in the Benefitted Parcel.

17. **Execution in Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

18. **Compliance With Laws.** Grantor, at Grantor's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Access Easement Area, now in force or hereafter adopted, with respect to the use by the public, if applicable, of the Easement Area under the authority of the Easements herein granted. Grantee, at Grantee's expense, shall comply with

all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use of the Easement Area under the authority of the Easements herein granted.

19. **Default.** The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. Granter shall accept performance by or at the instigation of the limited partner of Grantee in fulfillment of Grantee's obligations, for the account of Grantee and with the same force and effect as if performed by Grantee, provided that such performance is rendered within the time periods set forth above.

20. **Burden on Land.** Each of the Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall run with the land and shall be binding upon and inure to the benefit of each person having any fee, leasehold or other interest the real property described herein or any part thereof. The real property described herein is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, limitations, restrictions, reservations, rights, easements, conditions and covenants under this Agreement, all of which are imposed as equitable servitudes upon the real property described herein.

21. **Duration.** The Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by in this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to the terms set forth herein.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement is executed as of the date and year set forth hereinabove.

**GRANTOR:** **598 BRANNAN STREET PHASE 1, L.L.C.,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROJECT SPONSOR:** **160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

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

Name: Ann Silverberg

Title: President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its Managing General Partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: David Sobel

Title: Chief Executive Officer



**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: Andrico Q. Penick

Title: Director of Real Property

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

Name: Eric Shaw

Title: Director of the Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

DAVID CHIU

City Attorney

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

Jessica Cassella

Deputy City Attorney

**APPROVED:**

Director of the Department of Building Inspection

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

Name: \_\_\_\_\_

Fire Marshall

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

Name: \_\_\_\_\_

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

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

Robb Kapla

Deputy City Attorney

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgement

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
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personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgement

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgement

**Schedule 1**

**Legal Description of Burdened Property**

**[Attached at following pages]**

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT ONE: 598 BRANNAN STREET

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FIFTH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF FIFTH STREET 355 FEET TO THE SOUTHEASTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 275 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 355 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF BRANNAN STREET 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: 3777-045

TRACT TWO: 649-651 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 480.802 FEET FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-050

TRACT THREE: 645 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 412 FEET AND 6 INCHES FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-051



TRACT FOUR: 639 BRYANT STREET

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF BRYANT STREET 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 275 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET, IF EXTENDED; THENCE AT RIGHT ANGLES NORTHEASTERLY 275 FEET; AND THENCE AT RIGHT ANGLES NORTHWESTERLY 355 FEET TO THE SOUTHEASTERLY LINE OF BRYANT STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOTS NOS. 180 AND 186 IN 100 VARA BLOCK NO. 376.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED APRIL 30, 2020, IN DOCUMENT NO. 2020-K927581, OFFICIAL RECORDS, AND AS SHOWN AS PARCEL A ON RECORD OF SURVEY 12420 FILED JANUARY 10, 2025, IN BOOK JK OF SURVEY MAPS, AT PAGES 174-176, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET (82.50 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE), SAID POINT OF COMMENCEMENT BEING THE MOST NORTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 195.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE CONTINUING SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 160.21 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET 81.71 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 81.71 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

APN 3777-177

**TRACT FIVE:**

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 5TH STREET (82.50 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 550.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHEASTERLY, AT A RIGHT ANGLE TO SAID LINE OF WELSH STREET, 160.25 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET, 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 275.00 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF 5TH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: (NOT CURRENTLY ASSESSED)

**EXCLUDING THEREFROM:**

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

## **Schedule 2**

### **Legal Description of Benefitted Parcel**

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

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: 3777-178

Exhibit A

Diagram of Access Easement Area

LEGAL DESCRIPTION

"ACCESS EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 356.71 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID LINE OF FREELON STREET 5.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 167.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 86.71 FEET TO THE SOUTHWESTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF WELSH STREET, 7.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID WELSH STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, PARALLEL WITH SAID NORTHWESTERLY LINE OF FREELON STREET, 81.71 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 160.21 FEET TO THE POINT OF BEGINNING.

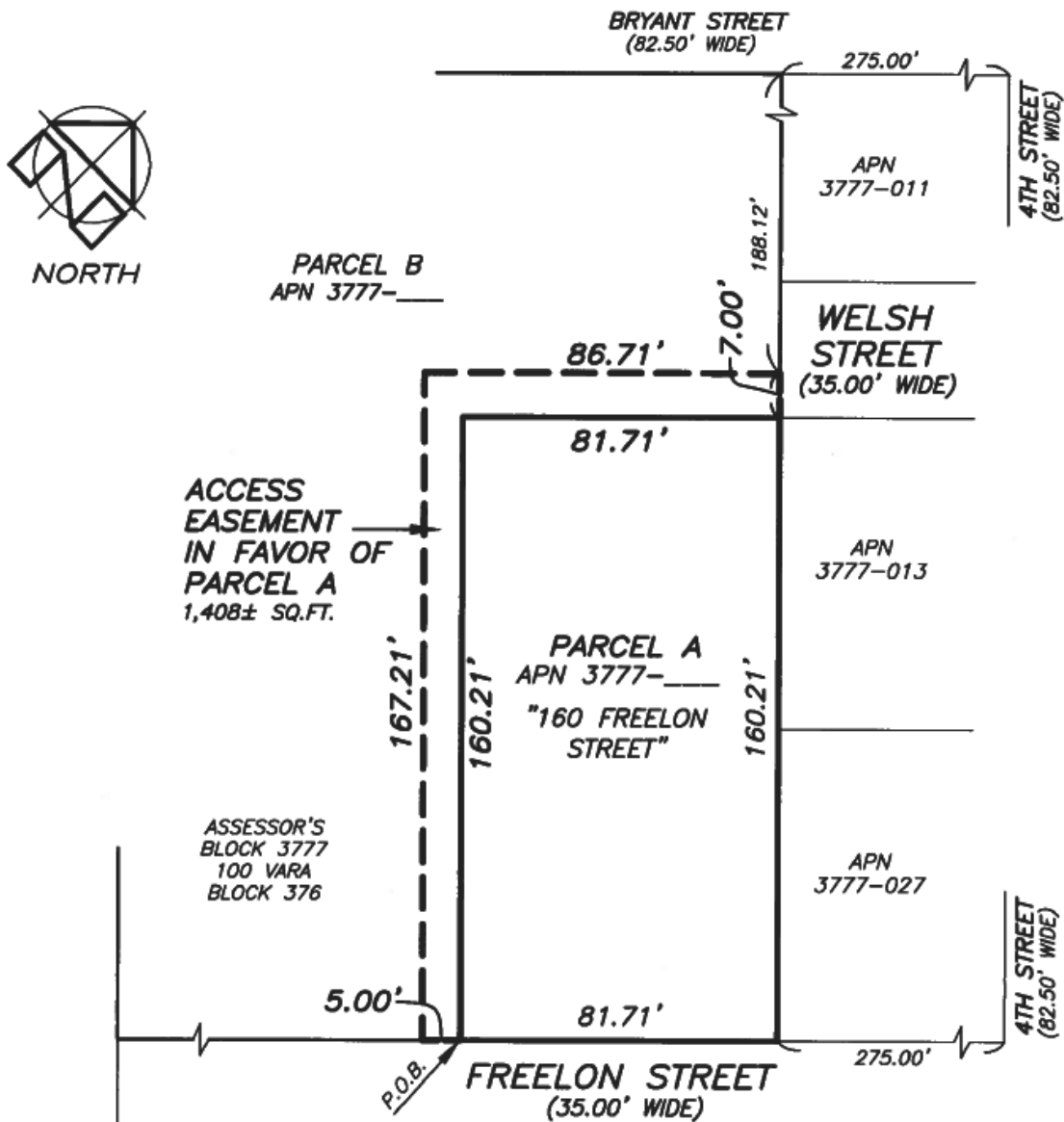
BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 1,408± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015



#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER  
P.O.B. POINT OF BEGINNING  
— PARCEL A PROPERTY LINE  
— PARCEL B PROPERTY LINE  
— LOT LINE/RIGHT OF WAY LINE  
- - - EASEMENT LINE

#### NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
3. PARCELS A AND B ARE AS SHOWN ON RECORD OF SURVEY \_\_\_\_\_.

# DRAFT

DATE: 10/15/24

## ACCESS EASEMENT

SAN FRANCISCO,  
CALIFORNIA

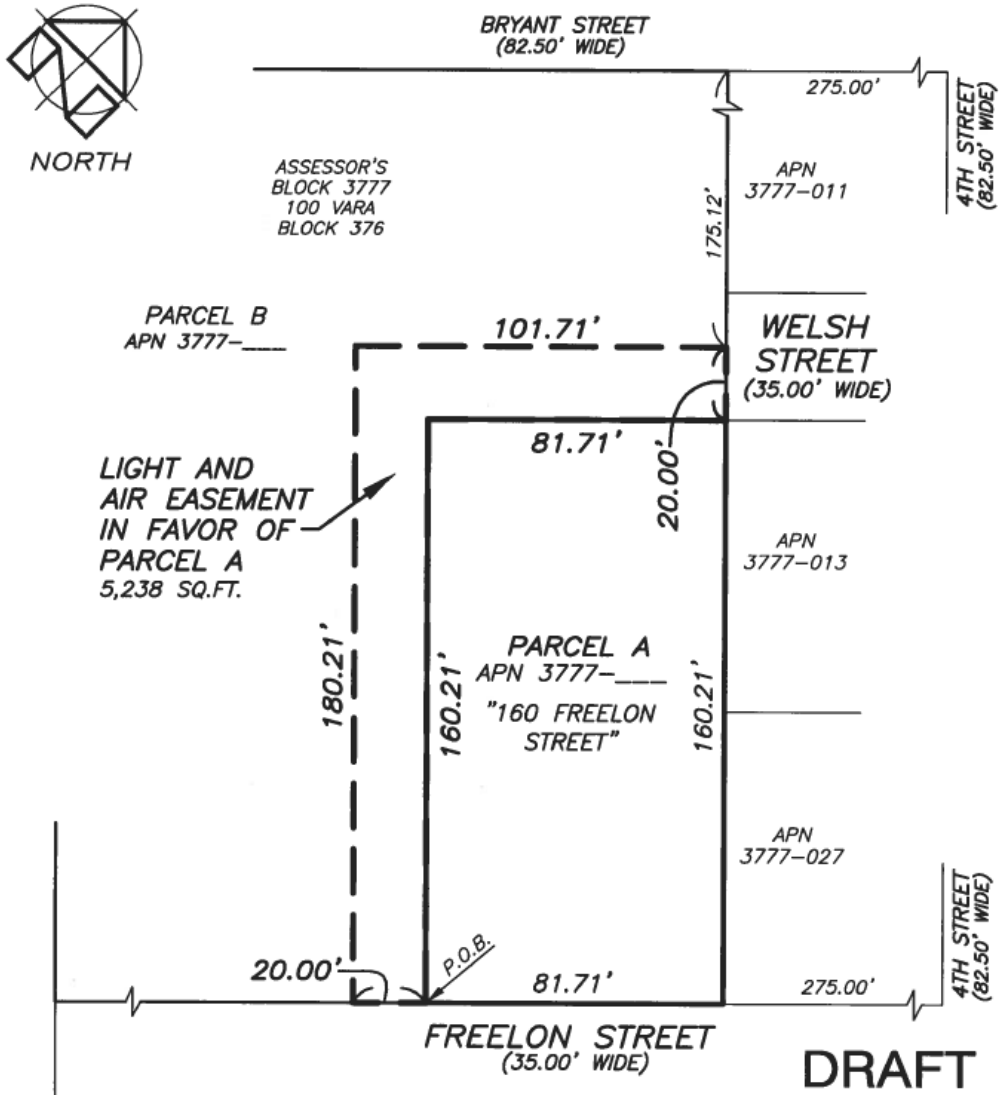
BY JP CHKD. BR DATE 9-24 SCALE NONE SHEET 1 OF 1 JOB NO. S-9445

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9445\_ESMT PLATS\_PM WAIVER PARCEL A.dwg

## Exhibit B

### Diagram of Air and Light Easement Area



#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER  
P.O.B. POINT OF BEGINNING  
—— PARCEL A PROPERTY LINE  
—— PARCEL B PROPERTY LINE  
—— LOT LINE/RIGHT OF WAY LINE  
- - - EASEMENT LINE

#### NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
3. PARCELS A AND B ARE AS SHOWN ON RECORD OF SURVEY \_\_\_\_\_.

**DRAFT**

10/15/24

#### LIGHT AND AIR EASEMENT

SAN FRANCISCO,  
CALIFORNIA

BY JP CHKD. BR DATE \_\_\_\_\_ SCALE 1"=40' SHEET 1 OF 1 JOB NO. S-9445

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9445\_NO-BUILD ESMTS.dwg

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Street Address: 160 Freelon Street, San Francisco,  
CA 94107

APN: 3777-178

Free Recording Requested Pursuant to  
Government Code Section 27383

(Space above this line reserved for Recorder's use only)

### **PUBLIC ACCESS AND TRASH PICKUP EASEMENTS AGREEMENT**

THIS PUBLIC ACCESS AND TRASH PICKUP EASEMENTS AGREEMENT (this "**Agreement**") is executed as of \_\_\_\_\_, 2025 (the "**Execution Date**") by and among 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and 160 FREELON HOUSING PARTNERS, L.P., a California limited partnership ("**Project Sponsor**", together with City, "**Grantee**").

#### **RECITALS**

A. Grantor owns certain real property located between Freelon Street and Bryant Street and generally between 4th and 5th Street in the City of San Francisco, County of San Francisco, State of California, and more fully described on Schedule 1 attached hereto and made a part hereof ("**Burdened Property**").

B. On February 19, 2025, City acquired from Grantor fee title to that certain real property contiguous to the Burdened Property located at 160 Freelon Street and fully described on Schedule 2 attached hereto and made a part hereof (the "**Benefitted Parcel**") as a land dedication pursuant to San Francisco Planning Code Sections 249.78(e)(2)(B). Concurrently with this Agreement, the City and the Project Sponsor will enter into a long-term ground lease of the Benefitted Parcel (the "**Ground Lease**") for the purpose of constructing approximately 85 units (including one manager's unit) of affordable housing (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to satisfy the requirements of the San Francisco Building Code and the San Francisco Fire Code (collectively, the "**Code**") in effect as of the date hereof, and for the Project Sponsor to obtain the City's Department of Building Inspection ("**DBI**") and Fire Marshal approval for the development and construction of the Project in its regulatory capacity, Grantor agrees to impose certain restrictions on the Burdened Property for the benefit of the Benefitted Parcel subject to the terms and conditions set forth herein.

D. Grantee desires an easement on, over and within a portion of the

Burdened Property for the purposes of constructing, maintaining, and operating the improvements located, or to be located, on the Benefitted Parcel.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easements.** Subject to the provisions of this Agreement, Grantor grants in perpetuity to Grantee the following easements (which may collectively be referred to herein as the “**Easements**”):

A. **Public Access Easement.** A nonexclusive easement over the portion of the Burdened Property shown and described in Exhibit A to this Agreement (the “**Public Access Easement Area**”) for the purpose of pedestrian access by Grantee, its tenants and their respective invitees, and contractors (“**Public Access Easement**”). For so long as this Agreement continues in effect, no new permanent structure or other permanent improvements shall be constructed or maintained within the Public Access Easement Area that would materially interfere or obstruct such use of the Public Access Easement, except as approved by the DBI if such approval is required under the provisions of the Code. The Public Access Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Public Access Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals. The restrictions on improvements within the Public Access Easement Area described in this Section 1.A shall not apply to improvements constructed or installed below-grade.

B. **Trash Pick Up Easement.** A nonexclusive easement over the portion of the Burdened Property shown and described in Exhibit B to this Agreement (the “**Trash Pick Up Easement Area**”, and together with the Public Access Easement Area, the “**Easement Area**”) for the purpose of public access to and from the trash room to be constructed on the Benefitted Parcel (the “**Trash Room**”) as part of the Project (“**Trash Pick Up Easement**”). For so long as this Agreement continues in effect, no new permanent structure or other permanent improvements shall be constructed or maintained within the Trash Pick Up Easement Area that would materially interfere or obstruct such use of the Trash Pick Up Easement, except as approved by the DBI if such approval is required under the provisions of the Code. The Trash Pick Up Easement shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Trash Pick Up Easement Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals.. The restrictions on improvements within the Trash Pick Up



Easement Area described in this Section 1.B shall not apply to improvements constructed or installed below-grade.

C. **Reservation by Grantor.** Neither the Easements nor any other provision of this Agreement shall prohibit the maintenance, construction and installation of minor encroachments of building systems, light facilities, utility facilities, landscaping, and similar facilities, or prohibit the temporary installation of scaffolding or other equipment to be used for maintenance activities of the Burdened Property in the Easement Area, provided such improvements have been approved by DBI if such approval is required by the Code, or any other applicable approvals, and so long as such improvements do not materially interfere or obstruct typical use of the Easement Area for the purposes set forth herein.

2. **Non-Exclusive Easements Subject to Prior and Future Easement Grants; Special Restrictions.** The Easements granted herein are non-exclusive and subject to the rights of easements, if any, previously granted by Owner and Owner's predecessors in title. In addition, Project Sponsor shall at all times comply with the conditions and restrictions contained in that certain Notice of Special Restrictions recorded on March 28, 2024 as Document No. 2024026197, in the Official Records of the City and County of San Francisco to the extent applicable to the Project.

3. **Indemnity.**

a. **Grantor Indemnification.** Grantor shall indemnify, defend and hold harmless ("Indemnify") the Project Sponsor Exculpated Parties (as defined in Section 10(b) below) and the City Exculpated Parties (as defined in Section 10(c) below) and together with the Project Sponsor Exculpated Parties, the "**Grantee Exculpated Parties**"), and each of them, from and against any and all third party liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (including, without limitation, reasonable attorneys' fees and court costs, reasonable consultants and experts and related costs, and the cost of investigating any Claim) (individually and/or, collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (1) any hazardous or unsafe condition of the Easement Area, including the presence of hazardous materials within such area, other than any change in the condition of the Easement Area after the Effective Date of this Agreement caused by the Grantee Parties or any of them or resulting from any failure of Grantee to perform its obligations under Section 4 below; (2) any construction or other work undertaken by or on behalf of Grantor in the Easement Area; (3) any gross negligence or willful misconduct of any of Grantor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the "**Grantor Parties**") in, on or about the Easement Area as finally determined by a court of competent jurisdiction; or (4) any release or discharge, or threatened release or discharge, of any hazardous material caused by the Grantor Parties in, under, on or about the Easement Area, except (with respect to clauses (1) through (4) above) such Claims to the extent caused by (i) the willful misconduct or gross negligence of any of (x) Project Sponsor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the "**Project Sponsor Parties**"), or (y) the City, its commissions, departments, agencies and other subdivisions, including, without limitation, DBI (individually and/or collectively, the "**City Parties**" and together with the Project Sponsor Parties, the "**Grantee Parties**"), or (ii) any Claim for which Grantee has an obligation to Indemnify Grantor or the Grantor Exculpated Parties pursuant to Section 3(b) or Section 3(c)

below.

Grantor specifically acknowledges and agrees that Grantor has an immediate and independent obligation to defend the City (but not the Project Sponsor) from any Claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Grantor by the City and continues at all times thereafter. As used herein, “hazardous material” means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

b. **Project Sponsor Indemnification.** Project Sponsor shall Indemnify the Grantor Exculpated Parties (as defined below in Section 10(a)) from and against any and all Claims arising out of or in connection with or by reason of the Grantee’s rights under this Agreement or the exercise thereof. Notwithstanding the foregoing to the contrary, Project Sponsor’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties. This paragraph shall not apply to the City and the sole Indemnity obligations of City are set forth in the following paragraph.

c. **City Indemnification.** If at any time (i) the Benefitted Parcel is not subject to the Ground Lease (including any extensions or renewals thereof) or any subsequent ground lease (any such time, a “**No Project Sponsor Period**”) or (ii) City exercises any rights to utilize the Easements as set forth herein (provided, however, use by emergency vehicles or first responders solely pursuant to City’s duties, rights and powers as a municipal corporation is expressly excepted from this indemnity), City hereby expressly agrees to Indemnify Grantor from and against any and all Claims with respect to matters arising during either such period. Notwithstanding the foregoing to the contrary, City’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties.

4. **Maintenance of Easement Area.** Grantee, at its sole cost, shall at all times maintain the Easement Area in a safe, clean condition; provided, Grantee shall not be responsible for the foregoing maintenance if Grantee is prevented from accessing the Easement Area due to Grantor’s maintenance, repair, replacement, and/or construction activities. Notwithstanding the foregoing, in the event the Grantor or the Grantor Parties cause damage to the Easement Area, then Grantor shall be responsible for the cost and expense to repair any such damage and shall reimburse Grantee for all sums paid by Grantee to repair such damage within thirty (30) days of delivery of an invoice and reasonable documentation evidencing such costs. For the avoidance of doubt, other than during any No Project Sponsor Period, the Project Sponsor shall be solely responsible for the covenant set forth above. During any No Project Sponsor Period, then City shall be solely responsible for the covenant set forth above.

5. **Building Code and Fire Code Approvals.** The City’s DBI and the Fire Department are intended beneficiaries of this Agreement with respect to the Public Access Easement and the Trash Pick Up Easement and each department’s approvals of the Project’s compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit),

provided, however, that the City's DBI and Fire Department shall have no liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor shall be responsible for all costs associated with any Claims that arise from the approvals of the Project by City's DBI and Fire Department based on this Agreement.

6. **No Public Dedication; Enforcement.** Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Agreement be strictly limited to and for the purposes expressed. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the terms of this Agreement. All rights and remedies available to Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

7. **Insurance Requirements.** Prior to its initial use of the Easement Area Grantee shall obtain and shall thereafter maintain during the entire term of this Agreement in full force, at Grantee's sole expense, the following insurance as provided in this Section against claims which may arise out of or result from use of the Easement Area by Grantee or Grantee Parties or failure of Grantee to perform its obligations under this Agreement. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times a Best's rating of "A- X" or better by AM Best & Company, and with coverage and policy limits as Grantor may reasonably require (unless otherwise specified herein):

a. Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence.

b. Commercial auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence.

c. Worker's Compensation insurance as required by the State of California.

d. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

e. Umbrella/Excess Liability coverage written on a follow form basis in excess of the Commercial General Liability, Commercial Auto and Employer's Liability required under this section such that when added to the Commercial General Liability provided pursuant to paragraph (a) above, the Grantee maintains total Commercial General Liability coverage equal to not less than Five Million Dollars (\$5,000,000) per occurrence.

f. Any other insurance required by applicable federal state, or local laws.

Required limits may be provided by a combination of primary and/or umbrella/excess policies, provided that all other terms and conditions of this Section are complied with. Grantee shall name Grantor, the Grantor Parties and their respective affiliates and agents (including the owner of any individual property) as Additional Insureds under the policies required in clauses (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to Grantee and Grantor prior to cancellation, and (ii) at least ten (10) days written notice to Grantee and Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor and related parties. Grantee's insurance coverage shall be primary insurance with respect to any other insurance or self-insurance programs maintained by Grantor related parties, and such other insurance or self-insurance programs shall be excess and non-contributory. Prior to its initial use of the Easement Area, Grantee shall deliver to Grantor an ACORD certificate evidencing the coverage provided by each policy and provide replacement certificates prior to the expiration of any required coverage (but in any event not less frequently than once per calendar year). Grantee, at its sole cost and expense, shall be responsible for the payment of any deductibles or retentions associated with the insurance set forth in these requirements, without reimbursement from Grantor.

Notwithstanding anything to the contrary above, Grantor acknowledges that the City maintains a program of self-insurance and will self-insure for the risks described above and, accordingly, shall not be obligated to purchase any third-party commercial liability insurance or property insurance under this Agreement.

8. **Litigation Expenses.**

a. **General.** If any party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

b. **Appeal.** Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

c. **Fee Award for City's Attorneys.** For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices.** Any notice or consent required or permitted to be given by this Agreement

shall be in writing and shall be deemed to be given upon (i) hand delivery, against receipt, (ii) one (1) working day after being deposited with a reliable overnight courier service, or (ii) four (4) working days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 160 Freelon Street

Project Sponsor: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

Grantor: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
One Bush Street, Suite 500  
San Francisco, California 94104  
Attn: Veronica Klein

With a copy to: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
45 Rockefeller Plaza, 27th Floor  
New York, NY 10011  
Attn: General Counsel  
E-mail: GeneralCounsel@TishmanSpeyer.com

and a copy to: Karavas Kiely Schloss & Whitman LLP  
1800 Century Park East, Suite 200  
Los Angeles, CA 90067  
Attention: Michael J. Kiely, Esq.  
E-mail: mkiely@kkslawyers.com

or to such other address as either party may from time to time specify to the other upon five (5) days prior written notice in the manner specified above.

10. **Exculpation.**

a. **Grantor Exculpated Parties.** Notwithstanding anything appearing to the

contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantor, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Grantor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Grantor or in respect of any claims against Grantor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Grantor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Grantor Exculpated Party other than Grantor as of the date of such judgment. The limitations of liability contained in this Section 10(a) shall inure to the benefit of the Grantor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Grantor nor the Grantor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

b. **Project Sponsor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantee, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Project Sponsor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Project Sponsor or in respect of any claims against Project Sponsor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Project Sponsor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Project Sponsor Exculpated Party other than Project Sponsor as of the date of such judgment. The limitations of liability contained in this Section 10(b) shall inure to the benefit of the Project Sponsor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Project Sponsor nor the Project Sponsor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

c. **City Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no , no present or future board, commission, department, agency, or other subdivision of the City, including, without limitation, DBI, nor any commissioner, director, officer, employee, heir, successors or assigns of any of the foregoing (collectively, the “**City Exculpated Parties**”), shall be personally liable for any debts or other obligations of City or in respect of any claims against City arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of City. No personal judgment shall be sought or obtained against any City Exculpated Party other than City. The limitations of liability contained in this Section 10(c) shall inure to the benefit of the City Exculpated Parties and their respective heirs, successors and assigns. Notwithstanding any contrary provision herein, neither City nor the City Exculpated Parties shall be liable under any

circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. **Entire Agreement.** This Agreement contains the entirety of the terms and conditions relevant to the grant of the Easements and the maintenance and uses of the Easement Area. This Agreement supersedes all prior drafts, negotiations and communications with respect to it.

12. **Amendment.** This Agreement may not be modified, changed, supplemented or terminated, nor may any of the obligations hereunder be waived, except in a written instrument signed by Grantee and Grantor. The Public Access Easement and the Trash Pick Up Easement have been granted in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application for the development and construction of the Project. Any such modification, revocation or termination shall not be effective unless and until the Director of DBI or his/her designee and the San Francisco Fire Marshal and his/her designee, if applicable, consent thereto in writing after receiving written notice thereof from Grantor or Grantee, and such modification, revocation or termination, executed by Grantor and Grantee, the Director of DBI, and the Fire Marshal and his/her designee, if applicable, is recorded in the Official Records of the City. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens to the same extent as this Agreement as if such amendment or modification had been executed concurrently herewith.

13. **Severability.** If any provision of this Agreement conflicts with applicable law or is declared invalid, such provision shall be severed from the document and the remainder shall continue to be given full force and effect.

14. **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under the law of the State of California.

15. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth in their entirety herein.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of any successor, in interest as owner or owners of the real property comprising any portion or portions of the real property described in this Agreement. For the avoidance of doubt, the term Project Sponsor shall refer to the initial Project Sponsor named above, any successor in interest of the initial Project Sponsor named above (or any subsequent Project Sponsor) as the ground lessee under the Ground Lease, or any other holder of a ground lease interest in the Benefitted Parcel, as applicable during the period in which such party holds such leasehold title in the Benefitted Parcel.

17. **Execution in Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

18. **Compliance With Laws.** Grantor, at Grantor's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use by the public, if applicable, of the Easement Area under the authority of the Easements herein granted. Grantee, at Grantee's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use of the Easement Area under the authority of the Easements herein granted.

19. **Default.** The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. Granter shall accept performance by or at the instigation of the limited partner of Grantee in fulfillment of Grantee's obligations, for the account of Grantee and with the same force and effect as if performed by Grantee, provided that such performance is rendered within the time periods set forth above.

20. **Burden on Land.** Each of the Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall run with the land and shall be binding upon and inure to the benefit of each person having any fee, leasehold or other interest the real property described herein or any part thereof. The real property described herein is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, limitations, restrictions, reservations, rights, easements, conditions and covenants under this Agreement, all of which are imposed as equitable servitudes upon the real property described herein.

21. **Duration.** The Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to the terms set forth herein.

[Signature pages follow]



IN WITNESS WHEREOF, this Agreement is executed as of the date and year set forth hereinabove.

**GRANTOR:** **598 BRANNAN STREET PHASE 1, L.L.C.,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROJECT SPONSOR:** **160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

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

Name: Ann Silverberg

Title: President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its Managing General Partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: David Sobel

Title: Chief Executive Officer

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: Andrico Q. Penick

Title: Director of Real Property

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

Name: Eric Shaw

Title: Director of the Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

DAVID CHIU

City Attorney

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

Jessica Cassella

Deputy City Attorney

**APPROVED:**

**Director of the Department of Building Inspection**

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

Name: \_\_\_\_\_

**Fire Marshal**

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

Name: \_\_\_\_\_

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

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

Robb Kapla

Deputy City Attorney

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgement

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On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
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satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
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capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
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and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

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personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgement

**Schedule 1**

**Legal Description of Burdened Property**

**[Attached on following pages]**



ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT ONE: 598 BRANNAN STREET

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FIFTH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF FIFTH STREET 355 FEET TO THE SOUTHEASTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 275 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 355 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF BRANNAN STREET 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: 3777-045

TRACT TWO: 649-651 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 480.802 FEET FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-050

TRACT THREE: 645 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 412 FEET AND 6 INCHES FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-051

TRACT FOUR: 639 BRYANT STREET

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF BRYANT STREET 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 275 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET, IF EXTENDED; THENCE AT RIGHT ANGLES NORTHEASTERLY 275 FEET; AND THENCE AT RIGHT ANGLES NORTHWESTERLY 355 FEET TO THE SOUTHEASTERLY LINE OF BRYANT STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOTS NOS. 180 AND 186 IN 100 VARA BLOCK NO. 376.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED APRIL 30, 2020, IN DOCUMENT NO. 2020-K927581, OFFICIAL RECORDS, AND AS SHOWN AS PARCEL A ON RECORD OF SURVEY 12420 FILED JANUARY 10, 2025, IN BOOK JK OF SURVEY MAPS, AT PAGES 174-176, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET (82.50 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE), SAID POINT OF COMMENCEMENT BEING THE MOST NORTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 195.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE CONTINUING SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 160.21 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET 81.71 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 81.71 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

APN 3777-177

**TRACT FIVE:**

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 5TH STREET (82.50 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 550.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHEASTERLY, AT A RIGHT ANGLE TO SAID LINE OF WELSH STREET, 160.25 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET, 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 275.00 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF 5TH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: (NOT CURRENTLY ASSESSED)

**EXCLUDING THEREFROM:**

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

## **Schedule 2**

### **Legal Description of Benefitted Parcel**

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

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: 3777-178

Exhibit A

Diagram of Public Access Easement Area

LEGAL DESCRIPTION

"ACCESS EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 356.71 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID LINE OF FREELON STREET 5.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 167.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 86.71 FEET TO THE SOUTHWESTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF WELSH STREET, 7.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID WELSH STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, PARALLEL WITH SAID NORTHWESTERLY LINE OF FREELON STREET, 81.71 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 160.21 FEET TO THE POINT OF BEGINNING.

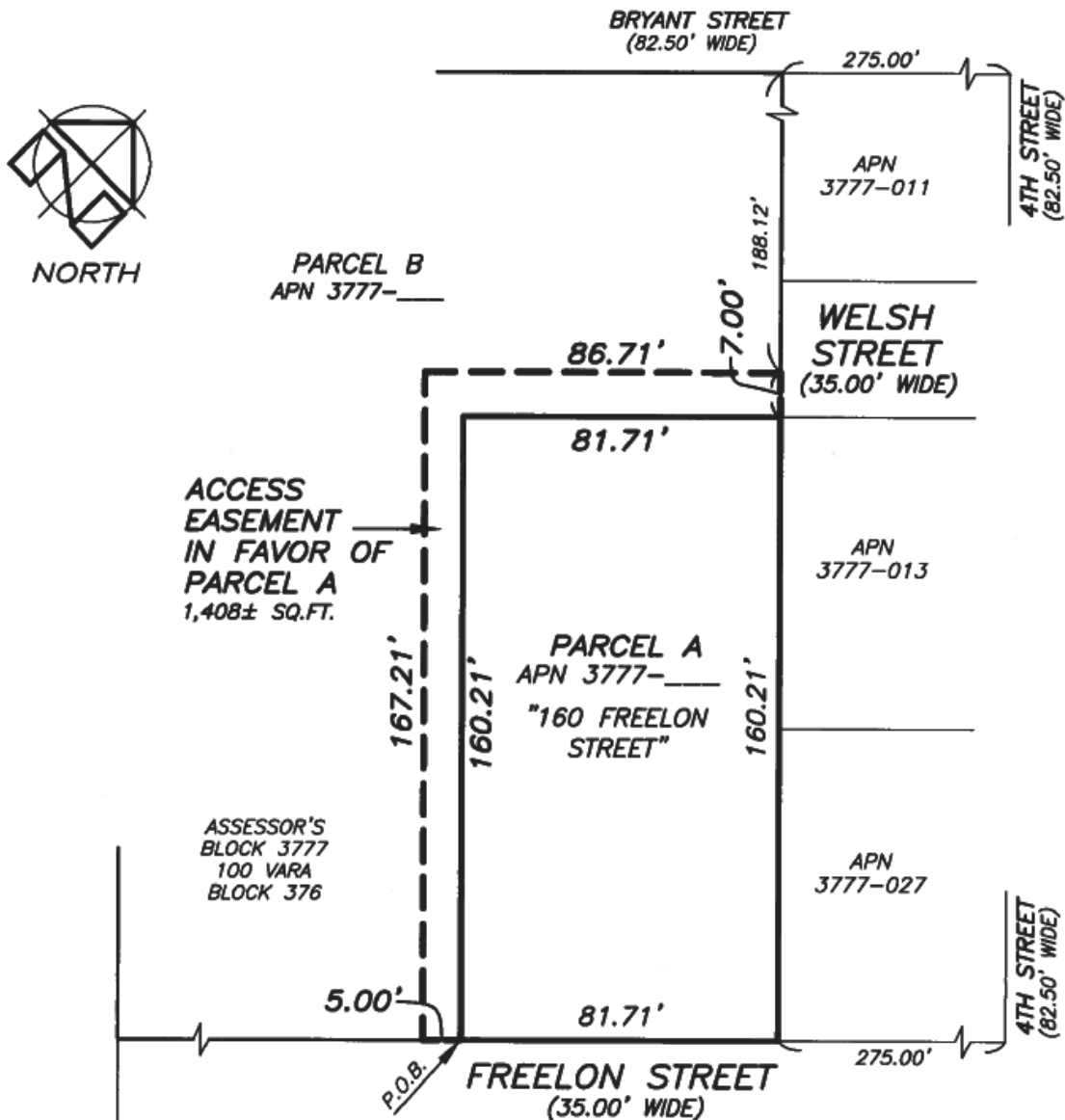
BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 1,408± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015



#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER  
P.O.B. POINT OF BEGINNING  
—— PARCEL A PROPERTY LINE  
—— PARCEL B PROPERTY LINE  
—— LOT LINE/RIGHT OF WAY LINE  
- - - EASEMENT LINE

#### NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
3. PARCELS A AND B ARE AS SHOWN ON RECORD OF SURVEY \_\_\_\_\_.

# DRAFT

DATE: 10/15/24

SAN FRANCISCO,  
CALIFORNIA

## ACCESS EASEMENT

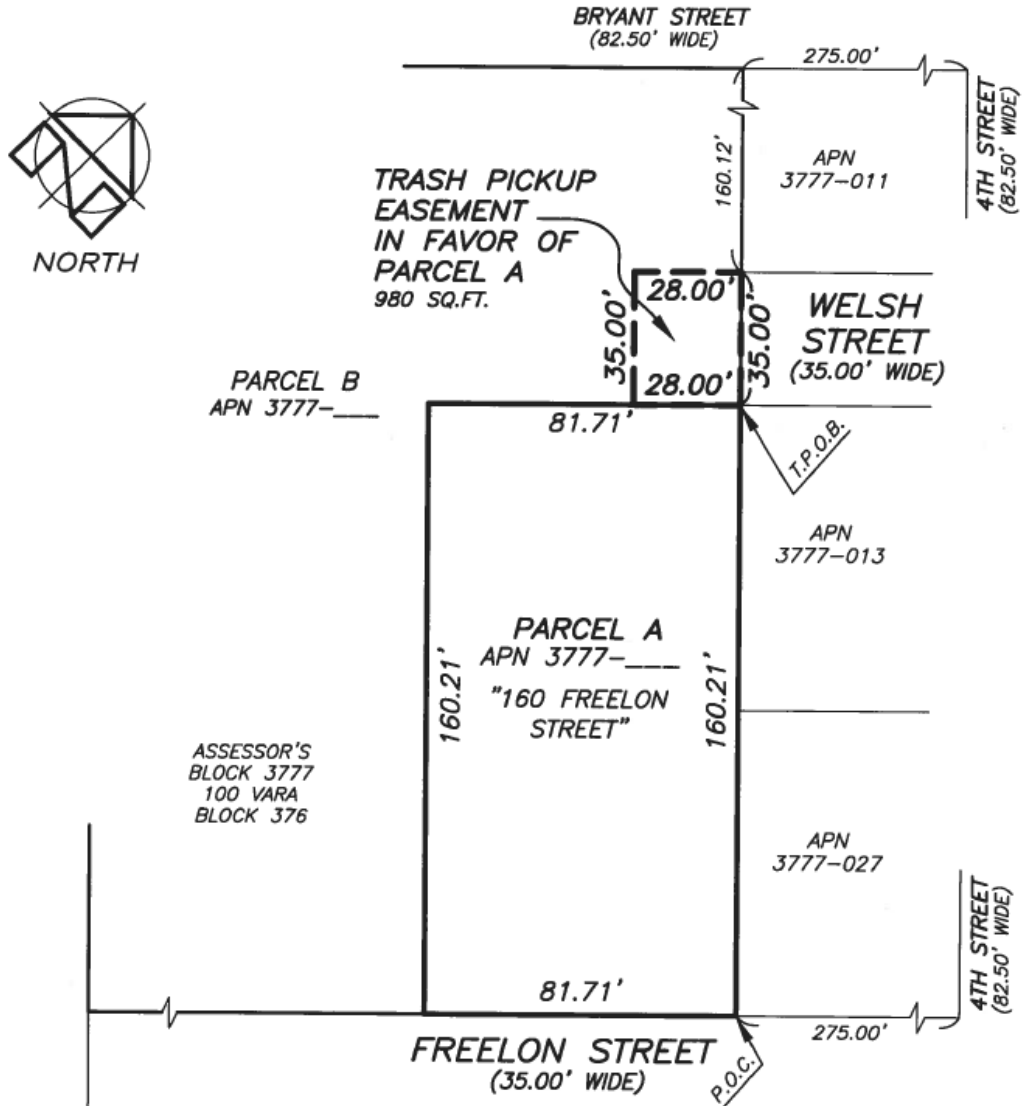
BY JP CHKD. BR DATE 9-\_\_\_-24 SCALE NONE SHEET 1 OF 1 JOB NO. S-9445

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9445\_ESMT PLATS\_PM WAIVER PARCEL A.dwg

## Exhibit B

### Diagram of Trash Pickup Easement Area



#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER  
P.O.C. POINT OF COMMENCEMENT  
T.P.O.B. TRUE POINT OF BEGINNING  
— PARCEL A PROPERTY LINE  
— PARCEL B PROPERTY LINE  
— LOT LINE/RIGHT OF WAY LINE  
- - - EASEMENT LINE

#### NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
3. PARCELS A AND B ARE AS SHOWN ON  
RECORD OF SURVEY \_\_\_\_\_.

# DRAFT

DATE: 10/15/24

SAN FRANCISCO,  
CALIFORNIA

### TRASH PICKUP EASEMENT

BY JP CHKD. BR DATE 10-\_\_-24 SCALE NONE SHEET 1 OF 1 JOB NO. S-9445

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500



RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Street Address: 160 Freelon Street, San Francisco,  
CA 94107

APN: 3777-178

Free Recording Requested Pursuant to  
Government Code Section 27383

(Space above this line reserved for Recorder's use only)

**TEMPORARY AND PERMANENT EMERGENCY VEHICLE ACCESS  
EASEMENT AGREEMENT**

THIS TEMPORARY AND PERMANENT EMERGENCY VEHICLE ACCESS EASEMENT AGREEMENT (this "**Agreement**") is executed as of \_\_\_\_\_, 2025 (the "**Execution Date**") by and among 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and 160 FREELON HOUSING PARTNERS, L.P., a California limited partnership ("**Project Sponsor**", together with City, "**Grantee**").

**RECITALS**

A. Grantor owns certain real property located between Freelon Street and Bryant Street and generally between 4th and 5th Street in the City of San Francisco, County of San Francisco, State of California, and more fully described on Schedule 1 attached hereto and made a part hereof ("**Burdened Property**").

B. On February 19, 2025, City acquired from Grantor fee title to that certain real property contiguous to the Burdened Property located at 160 Freelon Street and fully described on Schedule 2 attached hereto and made a part hereof (the "**Benefitted Parcel**") as a land dedication pursuant to San Francisco Planning Code Sections 249.78(e)(2)(B). Concurrently with this Agreement, the City and the Project Sponsor will enter into a long-term ground lease of the Benefitted Parcel (the "Ground Lease") for the purpose of constructing approximately 85 units (including one manager's unit) of affordable housing (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to satisfy the requirements of the San Francisco Building Code and the San Francisco Fire Code (collectively, the "**Code**") in effect as of the date hereof, and for the Project Sponsor to obtain the City's Department of Building Inspection ("**DBI**") and Fire Marshal approval for the development and construction of the Project in its regulatory capacity, Grantor agrees to impose certain restrictions on the Burdened Property for the benefit of the Benefitted Parcel subject to the terms and conditions set forth herein.



D. Grantee desires an easement on, over and within a portion of the Burdened Property for the purposes of constructing, maintaining, and operating the improvements located, or to be located, on the Benefitted Parcel.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easements.** Subject to the provisions of this Agreement, Grantor grants in perpetuity to Grantee the following easements (which may collectively be referred to herein as the “**Easements**”):

A. **Temporary Emergency Vehicle Access Easement.** A nonexclusive easement over the portion of the Burdened Property shown and legally described on Exhibit A to this Agreement (the “**Temporary EVAE Area**”) for the purpose of emergency vehicle access by emergency vehicles (the “**Temporary Emergency Vehicle Access**”) during construction (the “**Temporary EVAE**”). As used herein, the term “emergency vehicle” means any of the following, whether owned and operated by the City or any department thereof (including the fire department) or by a non-public party: ambulances; paramedic vehicles; police cars and trucks; fire trucks; chemical rescue units; and/or heavy rescue vehicles. For so long as the building on the Benefitted Parcel is being constructed as part of the Project, the Temporary EVAE Area shall remain open and unobstructed for typical access to the Benefitted Parcel required by emergency vehicles and the Code, and no new permanent structure or other permanent improvement shall be constructed or maintained within the Temporary EVAE Area that would materially interfere or obstruct typical access to the Temporary EVAE Area, except as approved by DBI if such approval is required under the provisions of the Code. The Temporary EVAE shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Temporary EVAE Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Parcel, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals.

B. **Post-Construction Emergency Vehicle Access Easement.** A nonexclusive easement over the portion of the Burdened Property shown and legally described on Exhibit B attached to this Agreement (the “**Post-Construction EVAE Area**”, and together with the Temporary EVAE Area, the “**Easement Area**”), for the purpose of emergency vehicle access by emergency vehicles (the “**Post-Construction EVAE**”). The Post-Construction EVAE Area shall remain open and unobstructed for typical access to the Benefitted Parcel required by emergency vehicles and the Code, and no new permanent structure or other permanent improvement shall be constructed or maintained within the Post-Construction EVAE Area that would materially interfere or obstruct such use of the Post-Construction EVAE, except as approved by DBI if such approval is required under the provisions of the Code. Notwithstanding any of the foregoing, the Post-Construction EVAE shall not become effective unless and until the building to be constructed on the Benefitted Parcel as part of the Project is completed and a

Certificate of Final Occupancy is issued and DBI and the Fire Marshall have approved termination of the Temporary EVAE, at which point the Temporary EVAE shall be automatically terminated and the Post-Construction EVAE shall automatically become effective. The Post-Construction EVAE shall include the right of pedestrian access for Grantee to enter the Burdened Property in the vicinity of the Post-Construction EVAE Area to the extent reasonably necessary to perform its obligations under Section 4 below; provided that any such work for the benefit of the Benefitted Parcel to be performed from the Burdened Property shall be subject to the additional reasonable requirements imposed by Grantor upon Grantee from time to time to ensure safety and minimize interference with the use of the Burdened Property, provided that such work has been approved by DBI if such approval is required under the provisions of the Code, or any other applicable approvals.

C. **Reservation by Grantor.** Neither the Easements nor any other provision of this Agreement shall prohibit the maintenance, construction and installation of minor encroachments of building systems, light facilities, utility facilities, landscaping, and similar facilities, or prohibit the temporary installation of scaffolding or other equipment to be used for maintenance activities of the Burdened Property in the Easement Area, provided such improvements have been approved by DBI if such approval is required by the Code, or any other applicable approvals, and so long as such improvements do not materially interfere or obstruct typical use of the Easement Area for the purposes set forth herein.

2. **Non-Exclusive Easements Subject to Prior and Future Easement Grants; Special Restrictions.** The Easements granted herein are non-exclusive and subject to the rights of easements, if any, previously granted by Owner and Owner's predecessors in title. In addition, Project Sponsor shall at all times comply with the conditions and restrictions contained in that certain Notice of Special Restrictions recorded on March 28, 2024 as Document No. 2024026197, in the Official Records of the City and County of San Francisco to the extent applicable to the Project.

3. **Indemnity.**

a. **Grantor Indemnification.** Grantor shall indemnify, defend and hold harmless ("**Indemnify**") the Project Sponsor Exculpated Parties (as defined in Section 10(b) below) and the City Exculpated Parties (as defined in Section 10(c) below) and together with the Project Sponsor Exculpated Parties, the "**Grantee Exculpated Parties**"), and each of them, from and against any and all third party liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (including, without limitation, reasonable attorneys' fees and court costs, reasonable consultants and experts and related costs, and the cost of investigating any Claim) (individually and/or, collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (1) any hazardous or unsafe condition of the Easement Area, including the presence of hazardous materials within such area, other than any change in the condition of the Easement Area after the Effective Date of this Agreement caused by the Grantee Parties or any of them or resulting from any failure of Grantee to perform its obligations under Section 4 below; (2) any construction or other work undertaken by or on behalf of Grantor in the Easement Area; (3) any gross negligence or willful misconduct of any of Grantor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the "**Grantor Parties**") in, on or about the Easement Area as finally determined by a court of competent jurisdiction; or (4) any release or discharge, or threatened release or

discharge, of any hazardous material caused by the Grantor Parties in, under, on or about the Easement Area, except (with respect to clauses (1) through (4) above) such Claims to the extent caused by (i) the willful misconduct or gross negligence of any of (x) Project Sponsor, its partners, members, shareholders, contractors, and their respective employees, directors, and agents (individually and/or collectively, the “**Project Sponsor Parties**”), or (y) the City, its commissions, departments, agencies and other subdivisions, including, without limitation, DBI (individually and/or collectively, the “**City Parties**” and together with the Project Sponsor Parties, the “**Grantee Parties**”), or (ii) any Claim for which Grantee has an obligation to Indemnify Grantor or the Grantor Excused Parties pursuant to Section 3(b) or Section 3(c) below.

Grantor specifically acknowledges and agrees that Grantor has an immediate and independent obligation to defend the City (but not the Project Sponsor) from any Claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Grantor by the City and continues at all times thereafter. As used herein, “hazardous material” means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

b. **Project Sponsor Indemnification.** Project Sponsor shall Indemnify the Grantor Excused Parties (as defined below in Section 10(a)) from and against any and all Claims arising out of or in connection with or by reason of the Grantee’s rights under this Agreement or the exercise thereof. Notwithstanding the foregoing to the contrary, Project Sponsor’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties. This paragraph shall not apply to the City and the sole Indemnity obligations of City are set forth in the following paragraph.

c. **City Indemnification.** If at any time (i) the Benefitted Parcel is not subject to the Ground Lease (including any extensions or renewals thereof) or any subsequent ground lease (any such time, a “**No Project Sponsor Period**”) or (ii) City exercises any rights to utilize the Easements as set forth herein (provided, however, use by emergency vehicles or first responders solely pursuant to City’s duties, rights and powers as a municipal corporation is expressly excepted from this indemnity), City hereby expressly agrees to Indemnify Grantor from and against any and all Claims with respect to matters arising during either such period. Notwithstanding the foregoing to the contrary, City’s indemnification obligations pursuant to this paragraph shall not apply to any Claims to the extent caused by the gross negligence or willful misconduct of any of the Grantor Parties.

4. **Maintenance of Easement Area.** Grantee, at its sole cost, shall at all times maintain the Easement Area in a safe, clean condition; provided, Grantee shall not be responsible for the foregoing maintenance if Grantee is prevented from accessing the Easement Area due to Grantor’s maintenance, repair, replacement, and/or construction activities. Notwithstanding the foregoing, in the event the Grantor or the Grantor Parties cause damage to the Easement Area, then Grantor shall be responsible for the cost and expense to repair any such damage and shall reimburse Grantee for all sums paid by Grantee to repair such damage within thirty (30) days of delivery of an invoice and reasonable documentation evidencing such costs. For the avoidance of doubt, other than during any No Project Sponsor Period, the Project Sponsor shall be solely

responsible for the covenant set forth above. During any No Project Sponsor Period, then City shall be solely responsible for the covenant set forth above.

5. **Building Code and Fire Code Approvals.** The City's DBI and the Fire Department are intended beneficiaries of this Agreement with respect to the Temporary EVAE and Post-Construction EVAE and each department's approvals of the Project's compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit), provided, however, that the City's DBI and Fire Department shall have no liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor shall be responsible for all costs associated with any claims, damages, liabilities or losses which arise from the approvals of the Project by City's DBI and Fire Department based on this Agreement.

6. **No Public Dedication; Enforcement.** Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Agreement be strictly limited to and for the purposes expressed. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the terms of this Agreement. All rights and remedies available to Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

7. **Insurance Requirements.** Prior to its initial use of the Easement Area Grantee shall obtain and shall thereafter maintain during the entire term of this Agreement in full force, at Grantee's sole expense, the following insurance as provided in this Section against claims which may arise out of or result from use of the Easement Area by Grantee or Grantee Parties or failure of Grantee to perform its obligations under this Agreement. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times a Best's rating of "A- X" or better by AM Best & Company, and with coverage and policy limits as Grantor may reasonably require (unless otherwise specified herein):

a. Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence.

b. Commercial auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence.

c. Worker's Compensation insurance as required by the State of California.

d. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

e. Umbrella/Excess Liability coverage written on a follow form basis in excess of the Commercial General Liability, Commercial Auto and Employer's Liability required under this section such that when added to the Commercial General Liability provided pursuant to paragraph (a) above, the Grantee maintains total Commercial General Liability coverage equal to not less than Five Million Dollars (\$5,000,0000) per occurrence.

f. Any other insurance required by applicable federal state, or local laws.

Required limits may be provided by a combination of primary and/or umbrella/excess policies, provided that all other terms and conditions of this Section are complied with. Grantee shall name Grantor, the Grantor Parties and their respective affiliates and agents (including the owner of any individual property) as Additional Insureds under the policies required in clauses (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to Grantee and Grantor prior to cancellation, and (ii) at least ten (10) days written notice to Grantee and Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor and related parties. Grantee's insurance coverage shall be primary insurance with respect to any other insurance or self- insurance programs maintained by Grantor related parties, and such other insurance or self- insurance programs shall be excess and non-contributory. Prior to its initial use of the Easement Area, Grantee shall deliver to Grantor an ACORD certificate evidencing the coverage provided by each policy and provide replacement certificates prior to the expiration of any required coverage (but in any event not less frequently than once per calendar year). Grantee, at its sole cost and expense, shall be responsible for the payment of any deductibles or retentions associated with the insurance set forth in these requirements, without reimbursement from Grantor.

Notwithstanding anything to the contrary above, Grantor acknowledges that the City maintains a program of self-insurance and will self-insure for the risks described above and, accordingly, shall not be obligated to purchase any third-party commercial liability insurance or property insurance under this Agreement.

#### 8. **Litigation Expenses.**

a. **General.** If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 8 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

b. **Appeal.** Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

c. **Fee Award for City's Attorneys.** For purposes of this Agreement,

reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

9. **Notices.** Any notice or consent required or permitted to be given by this Agreement shall be in writing and shall be deemed to be given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (ii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 160 Freelon Street

Project Sponsor: 160 Freelon Housing Partners, L.P.  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg

With a copy to: San Francisco Housing Development Corporation  
4439 3<sup>rd</sup> Street  
San Francisco, CA 94124  
Attn: Chief Executive Officer

Grantor: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
One Bush Street, Suite 500  
San Francisco, California 94104  
Attn: Veronica Klein

With a copy to: 598 Brannan Street Phase 1, L.L.C.  
c/o Tishman Speyer  
45 Rockefeller Plaza, 27th Floor  
New York, NY 10011  
Attn: General Counsel  
E-mail: GeneralCounsel@TishmanSpeyer.com

and a copy to: Karavas Kiely Schloss & Whiteman LLP  
1800 Century Park East, Suite 200  
Los Angeles, CA 90067  
Attention: Michael J. Kiely, Esq.  
E-mail: mkiely@kkslawyers.com

or to such other address as either party may from time to time specify to the other upon five (5) days prior written notice in the manner specified above.

10. **Exculpation.**

a. **Grantor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantor, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Grantor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Grantor or in respect of any claims against Grantor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Grantor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Grantor Exculpated Party other than Grantor as of the date of such judgment. The limitations of liability contained in this Section 10(a) shall inure to the benefit of the Grantor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Grantor nor the Grantor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

b. **Project Sponsor Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no present or future direct or indirect partner, member or shareholder of Grantee, or any officer, director, agent, member, manager, personal representative, trustee, beneficiary, employee, heirs, successors and assigns of any such direct or indirect partner, member or shareholder (collectively, the “**Project Sponsor Exculpated Parties**”), shall be personally liable for any debts or other obligations of Project Sponsor or in respect of any claims against Project Sponsor arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of Project Sponsor as of the date any such Claim is made. No personal judgment shall be sought or obtained against any Project Sponsor Exculpated Party other than Project Sponsor as of the date of such judgment. The limitations of liability contained in this Section 10(b) shall inure to the benefit of the Project Sponsor Exculpated Parties’ present and future members, partners, shareholders, beneficiaries, officers, directors, trustees, agents and employees, and their respective members, partners, shareholders, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Project Sponsor nor the Project Sponsor Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

c. **City Exculpated Parties.** Notwithstanding anything appearing to the contrary in this Agreement, no , no present or future board, commission, department, agency, or other subdivision of the City, including, without limitation, DBI, nor any commissioner, director, officer, employee, heir, successors or assigns of any of the foregoing (collectively, the “**City Exculpated Parties**”), shall be personally liable for any debts or other obligations of City or in respect of any claims against City arising under this Agreement and any such debts, obligations or claims shall be satisfied solely out of the assets of City. No personal judgment shall be sought or obtained against any City Exculpated Party other than City. The limitations of liability contained

in this Section 10(c) shall inure to the benefit of the City Exculpated Parties and their respective heirs, successors and assigns. Notwithstanding any contrary provision herein, neither City nor the City Exculpated Parties shall be liable under any circumstances for consequential damages, including, without limitation, loss of profits, rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. **Entire Agreement.** This Agreement contains the entirety of the terms and conditions relevant to the grant of the Easements and the maintenance and uses of the Easement Area. This Agreement supersedes all prior drafts, negotiations and communications with respect to it.

12. **Amendment.** This Agreement may not be modified, changed, supplemented or terminated, nor may any of the obligations hereunder be waived, except in a written instrument signed by Grantee and Grantor. The Temporary EVAE and Post-Construction EVAE have been granted in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application for the development and construction of the Project. Any such modification, revocation or termination shall not be effective unless and until the Director of DBI or his/her designee and the San Francisco Fire Marshal and his/her designee, if applicable, consent thereto in writing after receiving written notice thereof from Grantor or Grantee, and such modification, revocation or termination, executed by Grantor and Grantee, the Director of DBI, and the Fire Marshal and his/her designee, if applicable, is recorded in the Official Records of the City. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens to the same extent as this Agreement as if such amendment or modification had been executed concurrently herewith.

13. **Severability.** If any provision of this Agreement conflicts with applicable law or is declared invalid, such provision shall be severed from the document and the remainder shall continue to be given full force and effect.

14. **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under the law of the State of California.

15. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth in their entirety herein.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of any successor in interest as owner or owners of the real property comprising any portion or portions of the real property described in this Agreement. For the avoidance of doubt, the term Project Sponsor shall refer to the initial Project Sponsor named above, any successor in interest of the initial Project Sponsor named above (or any subsequent Project Sponsor) as the ground lessee under the Ground Lease, or any other holder of a ground lease interest in the Benefitted Parcel, as applicable during the period in which such party holds such leasehold title in the Benefitted Parcel.



17. **Execution in Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

18. **Compliance With Laws.** Grantee, at Grantee's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use of the Easement Area under the authority of the Easements herein granted.

19. **Default.** The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. Grantor shall accept performance by or at the instigation of the limited partner of Grantee in fulfillment of Grantee's obligations, for the account of Grantee and with the same force and effect as if performed by Grantee, provided that such performance is rendered within the time periods set forth above.

20. **Burden on Land.** Each of the Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by this Agreement shall run with the land and shall be binding upon and inure to the benefit of each person having any fee, leasehold or other interest in the real property described herein or any part thereof. The real property described herein is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, limitations, restrictions, reservations, rights, easements, conditions and covenants under this Agreement, all of which are imposed as equitable servitudes upon the real property described herein.

21. **Duration.** The Easements, limitations, restrictions, reservations, rights, conditions, and covenants created by in this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to the terms set forth herein.

IN WITNESS WHEREOF, this Agreement is executed as of the date and year set forth hereinabove.

**GRANTOR:** **598 BRANNAN STREET PHASE 1, L.L.C.,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PROJECT SPONSOR:** **160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Name: Ann Silverberg  
Title: President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its Managing General Partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Name: David Sobel  
Title: Chief Executive Officer

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: Andrico Q. Penick

Title: Director of Real Property

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

Name: Eric Shaw

Title: Director of the Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

**DAVID CHIU**

City Attorney

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

Jessica Cassella

Deputy City Attorney

**APPROVED:**

Director of the Department of Building Inspection

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

Name: \_\_\_\_\_

Fire Marshall

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

Name: \_\_\_\_\_

**APPROVED AS TO FORM:**

**DAVID CHIU, City Attorney**

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

Robb Kapla

Deputy City Attorney

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

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

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

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satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
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capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

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## Acknowledgment

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satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

## Acknowledgment

**CERTIFICATE OF ACKNOWLEDGMENT**  
**OF NOTARY PUBLIC**

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature {seal}

**CERTIFICATE OF ACKNOWLEDGMENT**  
**OF NOTARY PUBLIC**

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature {seal}



**Schedule 1**

**Legal Description of Burdened Property**

**[Attached on following pages]**

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT ONE: 598 BRANNAN STREET

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FIFTH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF FIFTH STREET 355 FEET TO THE SOUTHEASTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 275 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 355 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF BRANNAN STREET 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: 3777-045

TRACT TWO: 649-651 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 480.802 FEET FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 69.198 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-050

TRACT THREE: 645 BRYANT STREET

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON SOUTHWESTERLY 412 FEET AND 6 INCHES FROM THE SOUTHWESTERLY LINE OF FOURTH STREET; RUNNING THENCE ALONG SAID LINE OF BRYANT STREET SOUTHWESTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 275 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 68.302 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 275 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 376.

APN: 3777-051

TRACT FOUR: 639 BRYANT STREET

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF BRYANT STREET 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 275 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 137 FEET 6 INCHES; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET, IF EXTENDED; THENCE AT RIGHT ANGLES NORTHEASTERLY 275 FEET; AND THENCE AT RIGHT ANGLES NORTHWESTERLY 355 FEET TO THE SOUTHEASTERLY LINE OF BRYANT STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOTS NOS. 180 AND 186 IN 100 VARA BLOCK NO. 376.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED APRIL 30, 2020, IN DOCUMENT NO. 2020-K927581, OFFICIAL RECORDS, AND AS SHOWN AS PARCEL A ON RECORD OF SURVEY 12420 FILED JANUARY 10, 2025, IN BOOK JK OF SURVEY MAPS, AT PAGES 174-176, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET (82.50 FEET WIDE), DISTANT THEREON 275.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE), SAID POINT OF COMMENCEMENT BEING THE MOST NORTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 195.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE CONTINUING SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF BRYANT STREET, ALONG THE NORTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, 160.21 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET 81.71 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 81.71 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

APN 3777-177

**TRACT FIVE:**

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF WELSH STREET (35.00 FEET WIDE), DISTANT THEREON 275.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 5TH STREET (82.50 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID LINE OF WELSH STREET 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 550.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHEASTERLY, AT A RIGHT ANGLE TO SAID LINE OF WELSH STREET, 160.25 FEET TO THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF FREELON STREET, 0.71 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 275.00 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF 5TH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 160.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376.

APN: (NOT CURRENTLY ASSESSED)

**EXCLUDING THEREFROM:**

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

## **Schedule 2**

### **Legal Description of Benefitted Parcel**

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

PARCEL A AS SET FORTH ON RECORD OF SURVEY 12420, RECORDED ON JANUARY 10, 2025, AS DOCUMENT NO. 20250011710, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: 3777-178

Exhibit A

Diagram of Temporary Emergency Access Easement Area

LEGAL DESCRIPTION

"TEMPORARY EMERGENCY VEHICULAR ACCESS EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 379.16 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID LINE OF FREELON STREET 42.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST WHOSE RADIUS POINT IS ON A DEFLECTION ANGLE OF  $48^{\circ}12'17''$  TO THE RIGHT 28.00 FEET; THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF  $48^{\circ}12'17''$ , AN ARC LENGTH OF 23.56 FEET; THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF FREELON STREET 115.33 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 52.00 FEET; THENCE NORTHERLY AND NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'00''$ , AN ARC LENGTH OF 81.68 FEET; THENCE NORTHEASTERLY, PARALLEL WITH SAID NORTHWESTERLY LINE OF FREELON STREET 85.50 FEET TO THE SOUTHWESTERLY LINE OF WELSH STREET (35.00 FEET WIDE); THENCE AT A RIGHT ANGLE SOUTHEASTERLY, ALONG SAID LINE OF WELSH STREET 20.00 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 85.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 28.00 FEET; THENCE SOUTHWESTERLY AND SOUTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'00''$ , AN ARC LENGTH OF 43.98 FEET; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID NORTHWESTERLY LINE OF FREELON STREET, 119.33 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 28.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF  $48^{\circ}12'17''$ , AN ARC LENGTH OF 23.56 FEET TO THE POINT OF BEGINNING.

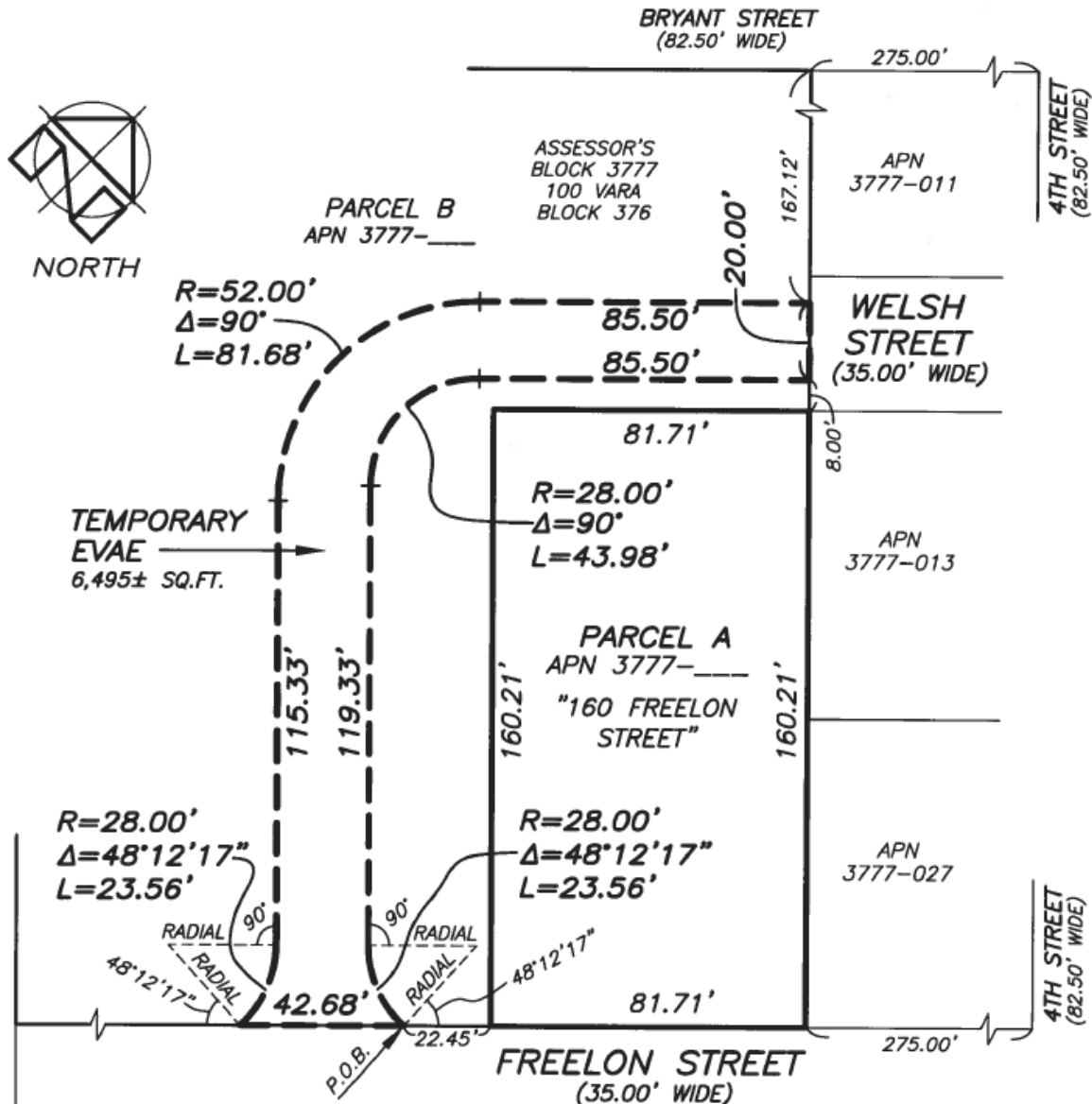
BEING A PORTION OF 100 VARA BLOCK 376

CONTAINING 6,495± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015



# **TEMPORARY EMERGENCY VEHICULAR ACCESS EASEMENT**

**DRAFT**

DATE: 10/15/24

SAN FRANCISCO,  
CALIFORNIA

BY JP CHKD. BR DATE 10-24 SCALE NONE SHEET 1 OF 1 JOB NO. S-9445

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9445\_ESMT PLATS\_PM WAIVER PARCEL A.dwg

Exhibit B

Diagram of Permanent Emergency Access Easement Area

LEGAL DESCRIPTION

"ENCROACHMENT EASEMENT FOR 2 BUILDING CORNICES"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF FREELON STREET (35.00 FEET WIDE), DISTANT THEREON 356.71 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 4TH STREET (82.50 FEET WIDE); THENCE SOUTHWESTERLY ALONG SAID LINE OF FREELON STREET 2.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.21 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 2.00 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 160.21 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 376

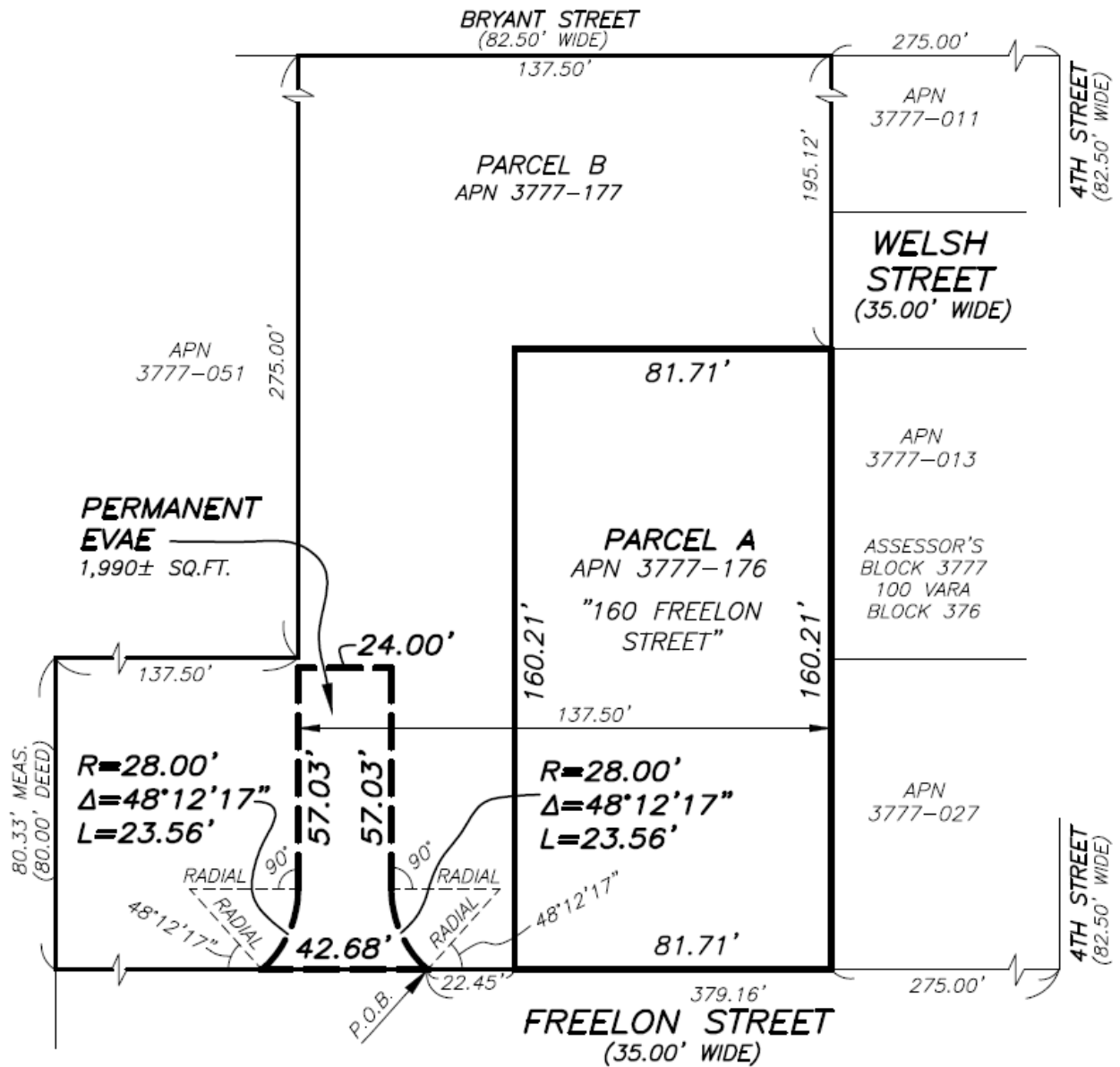
CONTAINING 320± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

\_\_\_\_\_  
OCTOBER 15, 2024

BENJAMIN B. RON, PLS 5015





**PERMANENT EMERGENCY VEHICULAR ACCESS EASEMENT**

SCALE: 1"=40'



160 FREELON  
BUDGET AND FINANCE  
COMMITTEE

May 14, 2025

JENNY COLLINS, PROJECT MANAGER  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

1

### File #250462

Authorization to issue and deliver tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed **\$76M**

2

### File #250461

- 1) Ground Lease for initial term of 75 yrs. plus option to extend and **\$15,000** Annual Base Rent
- 2) Amended and Restated City (MOHCD) Loan Agreement up to **\$22,577,900**
- 3) Beneficial easement agreements with Tishman Speyer

160 FREELON - BUDGET AND FINANCE COMMITTEE AGENDA ITEMS

# PROJECT HISTORY – 160 FREELON

- June 2019: Planning Commission approved mixed-use development at Bryant and Brannan Streets, including 160 Freelon as land to be dedicated to MOHCD for affordable housing.
- November 2020: Related Companies of California (Related) and San Francisco Housing Development Corporation (SFHDC) selected as co-Sponsors to develop affordable project via a Request for Qualifications (RFP).
- February 2023: Planning Department Approval of Project under California AB 2162.
- August 2024: State HCD awards \$29M AHSC Financing for the Affordable Housing and \$12,162,574 in AHSC grant funding for offsite transportation related amenities, and sustainable transportation improvements.
- December 2024: Project awarded bond allocation from CDLAC and tax credits from CTCAC.
- February 2025: City acquires 160 Freelon from Tishman Speyer affiliate via Land Dedication Agreement.







## Affordable Housing

- Nine-story building with 85 affordable units
  - 22 units for families exiting homelessness
  - 5 PLUS units for HIV-positive low-income households
  - 1 resident manager unit
- 50% to 80% MOHCD AMI
- Ground floor includes a residential lobby, resident services offices, and a community room

## FINANCING

City MOHCD Loan	\$22.5M
Tax Credits	\$44.3M
HCD MHP Loan	\$29M
Private Perm Loan	\$2.8M
General Partner Equity and Accrued Interest	\$1.8M
<b>Total Development Cost</b>	<b>\$100.4M</b>

Total City subsidy per unit of \$265,622

Total development cost per unit of \$1,181,341

## TIMELINE

- Housing Construction June 2025
- Unit lottery December 2026
- Project completion March 2027
- Leasing Up Complete October 2027





RELATED CALIFORNIA PROJECT STAFF SPENCER SHEAFF, THU NGUYEN  
SFHDC PROJECT STAFF: MICHAEL MANIGAULT, SARAH GRAHAM  
PROJECT WEBSITE: 160FREELON.ORG

# ***Request For Qualifications***

---

For the development of new affordable rental housing projects on nine separate sites, located in various neighborhoods in the City and County of San Francisco

Issued: November 30, 2020

San Francisco Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Responses due by 4:00 p.m. on January 22, 2021



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## II. INTRODUCTION

The City and County of San Francisco (the “**City**”), acting through the Mayor's Office of Housing and Community Development (“**MOHCD**”), is seeking qualified affordable housing developers (the “**Selected Developers**”) to assist the City in developing permanently affordable rental housing for seniors, families and homeless people (the “**Projects**”) on nine distinct sites located in various San Francisco neighborhoods (the “**Sites**”) through this Request for Qualifications (this “**RFQ**”). The Sites, their characteristics and standards for development for each Project are described in Section IV, “Context” below.

Pursuant to San Francisco Administrative Code Chapter 47, MOHCD has adopted explicit policies in its Certificate of Preference (“**COP**”), Displaced Tenant, and Neighborhood Resident Preference Programs which provide historically displaced and vulnerable populations who reside within the community preference in obtaining access to quality affordable housing. In an effort to redress past and present inequities, MOHCD is developing the Sites with these populations in mind. Successful developers will have direct experience working with COP holders, or populations who share characteristics with the COP population.

Among the goals of this RFQ are to:

- Align each development program with the implementation of city policies on anti-displacement, racially inclusive communities, and creating stable housing for vulnerable populations;
- Ensure that development teams are working within a culturally competent approach through the development process;
- Create opportunities for growth of smaller and Black, Brown, Indigenous and other people of color, (BIPOC)-led organizations in development role or as members of the development team;
- Select partners that are able to work with MOHCD to deploy city resources, tools and expertise to create developments that are responsive to populations disproportionately impacted by systemic racism.

MOHCD is issuing this RFQ for multiple sites to facilitate, economize and streamline the process for the development of affordable housing. Qualified affordable housing developers that respond to this RFQ (“**Respondents**”) may apply for consideration for selection for as many of the sites as they see appropriate. **A separate application packet must be submitted for each site, including all appendices and exhibits.**

For consideration for selection as a Selected Developer, Respondents should meet the following qualifications:

Dependent on the target population of a particular site for which a responsive document is submitted, respondent teams to this RFQ must be comprised of:

- At least one San Francisco-based non-profit development entity whose mission includes the development of affordable housing in low-income communities, with experience developing housing for the identified priority populations (such as Certificate of Preference Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, HIV Positive households and/or formerly homeless households) acting either as sole developer or as a partner in a joint venture, or joint-venture partner, defined as a nonprofit organization (either or both organizations may be incorporated as a non-profit);
- A property owner entity with experience owning housing for low-income communities, including for priority populations (such as COP Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, HIV Positive households and/or formerly homeless households);
- A property management entity with experience managing housing for low-income communities, including for priority populations (such as COP Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, HIV Positive households and/or formerly homeless households);
- At least one services-providing entity with experience providing services appropriate for the intended target population(s) of each site.

MOHCD's expectations for responsive submittals include a thorough discussion of Respondents' background in developing and managing permanently affordable housing for the priority/targeted populations. Responses should include both a background and a vision statement articulating the application of best practices for the successful development of affordable housing and the achievement of desired outcomes and goals.

Respondents should align their development approach with the key findings articulated in MOHCD's Theories of Change as discussed in the **2020-2024 Consolidated Plan** (see:

<https://sfmohcd.org/sites/default/files/Documents/Reports/REVISED%20Full%20Amended%202020-2024%20Consolidated%20Plan%20and%202020-2021%20Action%20Plan%20Sept%202020%20-%20Reduced.pdf>.) MOHCD has

determined that the optimum way to address the City's priority needs is to work towards a set of five interconnected, multidisciplinary objectives that cross program areas and utilize leveraged strategies both internally and across multiple city departments. These five objectives are:

- Objective 1: Families and individuals are stably housed
- Objective 2: Families and individuals are resilient and economically self-sufficient
- Objective 3: Communities have healthy physical, social, and business infrastructure
- Objective 4: Communities at risk of displacement are stabilized
- Objective 5: City works to eliminate the causes of racial disparities

MOHCD has also identified five target populations based on the findings from the Consolidated Plan community engagement process. These are:

- Households experiencing a legacy of exclusion
- Households destabilized by system trauma
- Households with barriers to access to opportunities
- Extremely and very low-income households
- Households at risk of displacement

Expectations for development of all Sites include:

- Maximize the number of priority placements into the Sites (COP holders, etc.)
- Maximize (meet or exceed) the City's requirements for promotion of SBE/LBE organizations with contracts and local hiring with construction labor
- Create opportunities for growth of smaller and Black, Brown, Indigenous and other people of color, (BIPOC)-led organizations in development role
- Development of affordable housing structures containing an appropriate number of units;
- Maximization of the number of units and density within a mid-rise construction type (75' occupied space) and/or limit of per unit City contribution to at or below average of similar, while balancing community input on unit configuration and size - in limited cases a high rise may be acceptable to the City;
- Provision of ground floor commercial spaces that serve the neighborhood (including the residents of the Project), with specific programming determined through a comprehensive community outreach process where ground floor commercial uses are appropriate and feasible;
- Conduct community outreach to engender support for the Project;
- Secure construction and permanent financing that minimizes City resources to the greatest extent possible, e.g. a State of California, Housing & Community Development (HCD) loan and/or the City's No Place Like Home (NPLH) loan for homeless households;
- Commence construction on the Projects as soon as possible, using streamlined ministerial approval processes. For example, SB35 may be used in conjunction with the Affordable Housing Density Program or the State Density Bonus Program.
- Provide on-site services to formerly homeless residents at a cost-effective case management ratio (approximately 1:20) depending upon sub-population – consult with the Department of Homelessness and Supportive Housing (“HSH”) for expected ratio for senior, family, TAY or other special needs populations referred from Coordinated Entry and expecting to utilize a City subsidy for operations or services.
- Provide initial draft marketing plans within 18 months of anticipated Temporary Certificate of Occupancy (“TCO”), outlining the affirmative steps Respondents will take to market each Project to the City's preference program participants including Certificate of Preference (COP) Holders, Displaced Tenants, and

Neighborhood Residents, as well as how the marketing is consistent with the Mayor's Racial Equity statement and promotion of positive outcomes for African American San Franciscans.

- **MOHCD will be requesting demographic** data regarding the Boards of Directors of member organizations of the Development Team's and of the staff of the Respondents that are selected.

**MOHCD is not seeking submissions that include elevations, pro forma statements, or detailed financial feasibility analyses.**

MOHCD intends to transfer the Sites (subject to final approval by the Board of Supervisors) to qualified developers for these purposes through long-term ground leases. Maximum rents will be restricted to an unsubsidized average income of 60% Unadjusted San Francisco Area Median Income ("AMI"), as defined by MOHCD. Some portion of the units must be set aside for extremely-low income (30% AMI) households that are not homeless and will enter the lottery process. At least 5 units per site (10 for Pier 70) must be set aside for referrals from the Plus Housing list, with the rents set at no more than 50% AMI. For more information about MOHCD's Plus Housing program, please see this page on our website: <https://sfmohcd.org/plus-housing>.

Sources of funds for development of these nine sites include, but are not limited to, inclusionary housing fees, jobs housing linkage fees, and 2019 Affordable Housing GO Bonds. Insofar as inclusionary fees are not collected due to deferrals or delays, MOHCD will seek to support completion of the predevelopment phases of the projects.

**MOHCD WILL ONLY ACCEPT ELECTRONIC SUBMISSIONS. Electronic responses delivered to this RFQ must be received by MOHCD no later than 4:00 PM on January 22, 2021. Responses are to be delivered via Drop Box to [mohcdrfq9@sfgov.org](mailto:mohcdrfq9@sfgov.org). Facsimile responses will not be accepted.**

### **III. IMPORTANT DATES AND SUBMISSION PROCESS**

#### **A. IMPORTANT DATES**

RFQ available at MOHCD Website	NOVEMBER 30, 2020
Submit completed RFQ Registration Forms to MOHCD	DECEMBER 18, 2020
Pre-submission conference via Zoom or MS Teams	DECEMBER 18, 2020

Deadline for questions and requests for additional information	JANUARY 4, 2021
Deadline for submitting qualifications	JANUARY 22, 2021
Notification to development teams who met submission requirements	MARCH 1, 2021
Development team interviews, if necessary	MID-MARCH 2021
Announcement of selection of development teams	LATE MARCH 2021 TO EARLY APRIL 2021
Deadline for Objections	APRIL 2021

## **B. PRE-SUBMISSION MEETING**

MOHCD will hold a pre-submission conference via ZOOM or Microsoft Teams on December 18, 2020 at 2:00 p.m. The purpose of the meeting is to ensure that interested developers understand the minimum qualifications requirements and the selection process. Questions raised at the conference may be answered verbally at that time. If any substantive new information is provided in response to questions raised at the pre-submission conference, MOHCD will issue a written addendum to the RFQ (in the form of a Question and Answers document) with this information to all parties that have registered for the RFQ. No questions or requests for interpretation will be accepted after January 4, 2021. Attendance at the pre-submission conference is highly recommended but not mandatory. Please see below regarding **Attachment 2 - RFQ Registration Form**.

## **C. REGISTRATION FOR RFQ REQUIRED**

To receive MOHCD's responses to requests for additional information and to questions about this RFQ, and to submit a qualification package, all interested parties must submit a completed RFQ Registration Form to MOHCD by December 18, 2020. All addenda, responses and instructions for electronic submission will be distributed to all parties who have submitted a registration form in accordance with Section IIB above. MOHCD reserves the sole right to determine the timing and content of the response, if any, to all questions and requests for additional information. Questions and information requests should be submitted to the contact person identified in Section III(B).

## **D. QUESTIONS AND REQUESTS FOR INFORMATION**

All questions and requests for additional information regarding this RFQ must be submitted by e-mail to **mohcdrfq9@sfgov.org**. Questions received after the deadline may not be answered. All addenda, response, and additional information will be

distributed to all parties who have submitted a registration form in accordance with Section III(C).

#### **E. CONTACT PERSON, SUBMISSION DEADLINE AND PLACE**

All communications about this RFQ should be directed to Mara Blitzer at [mohcdrfq9@sfgov.org](mailto:mohcdrfq9@sfgov.org).

Respondents to this RFQ must submit one (1) electronic copy of each of their proposals to MOHCD via **SFSecureShare**, no later than 4:00 PM, January 22, 2021. **Proposals are to be delivered by email at [sfmohcdrfq9@sfgov.org](mailto:sfmohcdrfq9@sfgov.org) by providing a DropBox link. Respondents who submit registration forms will be advised of any information necessary for the electronic submittal process.**

#### **IV. CONTEXT**

##### **A. THE SITES**

Nine sites are contemplated for development in this RFQ. Sites One through Three are intended to be developed as Senior Housing. Sites Four through Seven are intended for development as Family Housing. Sites Eight and Nine are intended for development as supportive housing for homeless people. **Target populations for all sites include persons with special needs as well as those who are eligible for residential priority placements through the City's lottery preference programs.** All sites are expected to qualify for ministerial approvals from the Planning Department through SB35, which may be used in conjunction with the State Density Bonus Program or the Affordable Housing Density Bonus Program. A map showing the location and configuration of the sites is attached as Exhibit 1.

<b>Site Number</b>	<b>Site Name</b>	<b>Site Address</b>	<b>APN</b>	<b>Proposed Use</b>
One	Pacific Avenue	772 Pacific Avenue	0161/015	Senior Housing
Two	Mission Street	967 Mission Street	3725/086	Senior Housing
Three	Market Street	1939 Market Street	3501/006	Senior Housing
Four	South Van Ness	1515 South Van Ness Avenue	6571/008	Family Housing
Five	Bluxome Street	88 Bluxome Street	3786/037	Family Housing
Six	Pier 70 C2A	Unassigned (Parcel C2A)	Various	Family Housing
Seven	Freelon Street	160 Freelon (598 Brannan) St	3777/045	Family Housing
Eight	Boardman Place	71 Boardman Place	3779/084	Supportive Housing
Nine	Harrison Street	725 Harrison Street	3762/117	Supportive Housing



Depending upon the amount of Due Diligence documentation that has been prepared for the various sites and the age of those documents, the selected Developers may need to commission their own studies as part of design and engineering work post selection. Documents available for each site are listed in the description of each site, below. For purposes of this RFQ, it is assumed that following any required mitigation, soil and subsoil conditions on the Sites is sufficient to support development that complies with the maximum allowable height, bulk and density limitations of the Site's applicable zoning requirements.

## **B. SENIOR HOUSING**

Expectations for Senior Housing: The City expects the Selected Developer(s) to do the following:

- Meet the expectations listed in the Introduction for households aged 62 and older;
- Serve formerly homeless seniors, in units subsidized by the City's Local Operating Subsidy Program ("LOSP") and a City services contract. 20% of the total number of units will be LOSP-subsidized units for formerly homeless seniors;
- Set aside at least 5 units for households on the City's Plus Housing List, with rents set no greater than 50% AMI;
- Provide on-site services to formerly homeless residents at a cost-effective case management ratio (1:20);
- Achieve a feasible project within the funding constraints, namely, \$250,000 of MOHCD subsidy per unit.
- Maximize the number of target population placements into the Project (COP holders, etc.).

LOSP will be available to units serving the formerly homeless seniors. The LOSP will be administered through a 15-year contract with MOHCD, to cover the difference between tenant-paid rents for LOSP units and operating expenses attributable to LOSP units. LOSP operating subsidy calculations should account for all typical costs of operations, reserves and fees on a pro-rata basis. LOSP subsidies may not be used to pay hard debt service, other than qualified minimal debt service payments for state financing. Applicants offering LOSP units will need to apply for funding for provision of services to these formerly homeless households through the Department of Homelessness and Supportive Housing. Section 8 project based rental assistance is not anticipated to be available at this time.

### **1. Site One, 772 Pacific Avenue**

#### **a) *Background Information***

772 Pacific Avenue, ("Pacific Avenue") (Block 0161 Lot 015) is located on the northern side of Pacific Avenue between Grant Avenue and Stockton Street in

San Francisco's Chinatown neighborhood. Pacific Avenue is a rectangular-shaped lot of 9,219 square feet and is currently improved with a restaurant within a two-story commercial building of 13,271 square feet constructed in 1919. There is no basement beneath the structure. The building was renovated circa 1971 into the current restaurant from a former garage facility. The building occupies the majority of the parcel with the exception of a paved municipal sidewalk on the south side along Pacific Avenue. Located at an elevation of approximately 85 feet above mean sea level (msl), the property slopes down to the east along the front sidewalk. The City purchased the site in June 2017.

Chinatown is the most densely populated urban area west of Manhattan, with 34,557 residents living in 20 square blocks. 78.79% of the population is Asian, 1.10% of the population is Black and 14.68% of the population is White. The median age is 50 years, the oldest of any neighborhood. San Francisco's median household income stands at \$91,938. In Chinatown, the median household income is \$25,909. Nearly a third of its residents live below the poverty line. Most residents are monolingual speakers of Mandarin or Cantonese; in 2015, only 14% of households in the SROs were headed by a person that spoke English fluently.

As of 2015, two thirds of the residents live in one of Chinatown's 105 single room occupancy hotels (SROs), 96 of which have private owners and nine are owned by nonprofits. There are three former public housing projects in Chinatown, 990 Pacific, Ping Yuen and North Ping Yuen.

The Chinatown area is primarily composed of small-scale buildings. Most existing buildings are quite low and due to the pattern of the lots, many are relatively short in depth. The typical lot size is only 3,500 square feet. The few large buildings in the area intrude into this fine-scaled texture of development. Land uses in Chinatown generally consist of medium density residential, neighborhood commercial, community business, and visitor retail.

While Census Tract 6075-010700, in which the site is located, has not been designated a Disadvantaged Community by CalEnviroScreen, the social and economic characteristics of the area lead to concern about the quality of living conditions for the largely elderly or immigrant populations. The census tract has a CalEnviroScreen of 25.63. The score reflects that 86.37 percent of the area's population lives below two times the federal poverty level, 93.67 percent of the population has less than a high school education, 99.87 percent are linguistically isolated. Seventy-four percent (74.38%) of the area's population is both low income and severely housing burdened, meaning that they pay more than 50% of their income for housing.

Once complete, the Central Subway will link the Third Street light rail service with the South of Market, Union Square and Chinatown neighborhoods. It is anticipated that provision of better transit service and connection to

neighborhoods currently not served by a subway would facilitate a mode shift from vehicles to transit. Additionally, the proposed housing project is consistent with the strategies and furthers the objectives of the Sustainable Chinatown initiative. Read more here: [https://sustainablechinatown.org/wp-content/uploads/Strategies-for-a-Sustainable-Chinatown\\_WEB.pdf](https://sustainablechinatown.org/wp-content/uploads/Strategies-for-a-Sustainable-Chinatown_WEB.pdf).

#### ***b) Zoning/Land use Entitlements***

The Subject Property is zoned CRNC – Chinatown Residential-Neighborhood Commercial and is located within the Chinatown neighborhood. Housing development in new and existing buildings is encouraged above the ground floor. The residential density allowed in the CRNC District is one dwelling unit per 200 square feet of lot area (46 units) or one group housing room per 140 square feet of lot area (66 rooms). The Subject Property is located in the 65-N Height and Bulk District.

The restaurant located on the Subject Property, the New Asia Restaurant, is classified as a Legacy Business and has expressed interest in returning to the site upon development of affordable housing.

A project on Pacific Avenue is eligible for approval using the State Density Bonus Program for 100% Affordable Housing (also known as AB 1763), which provides three additional stories, form-based density, and up to four incentives/concessions. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval.

#### ***c) Soil and Environmental Conditions***

A Phase One Environmental Site Assessment (“ESA”) was conducted on November 21, 2020 by EBI Consulting (“EBI”). The ESA found no evidence of recognized, historical, or controlled environmental conditions. However, EBI made the following recommendations:

- Conduct a Ground Penetrating Radar (“GPR”) survey and Phase II Assessment to evaluate potential presence and impact from gasoline Underground Storage Tank (“UST”) installed in 1953.
- Develop and implement an Asbestos Operations and Maintenance (O&M) Plan. Address limited damaged suspect ACM in accordance with O&M Plan.
- Conduct a limited subsurface investigation to characterize subsurface conditions at this location.

TR&A conducted a Phase II site assessment in March 2017 which confirmed the presence of an abandoned UST.

**d) Available Due Diligence Documents**

- Phase I Environmental Site Assessment, 772 Pacific Avenue, San Francisco, California, EBI Project No. 1116005897, November 21, 2016
- UST Assessment at 772 Pacific Ave., San Francisco, CA. TR&A, Inc. March 15, 2017.

**2. Site Two, 967 Mission Street**

**a) Background Information**

967 Mission Street, ("Mission Street Site") (Block 3725 Lot 086) is located on the southern side of Mission Street midblock between Mary Street and Sixth Street in San Francisco's SOMA neighborhood. It is an 8,777 square foot rectangular parcel with frontage on both Mission and Minna Streets. Currently the site serves as a surface parking lot (approx. 36 parking stalls) with chain link fencing at the back of each sidewalk/at the property line. The City acquired the site in 2019 as a land dedication as part of an agreement between the City and the developer of the 5M project.

The development of SOMA has been largely influenced by its proximity to railroads, the waterfront and freeways. These factors created a neighborhood that historically functioned as a nexus for industry and transport, and was as at one time one of the City's most densely populated residential areas. Historically, it has been home to a primarily working-class, immigrant labor force. These dynamics have their origins in the first decades following the Gold Rush and continued to serve as primary forces shaping the neighborhood well into the 21st century. More than any other neighborhood, SOMA's development has been influenced by the confluence of events of the 20<sup>th</sup> Century, including the Great Earthquake of 1906, the Depression, construction of the Bay Bridge, the demise of heavy industry, and Redevelopment.

SOMA has always played an important role in housing low- and moderate-income San Franciscans in various forms, from the SRO hotels that historically primarily housed single men and residential towers dedicated to housing seniors, to the modest family-oriented housing that has lined the alleys. In more recent decades, a substantial amount of market-rate housing (generally affordable to those with higher incomes) has been created, as well as conversions of older warehouses. These buildings included condominiums, apartment buildings, and live-work lofts. The neighborhood also includes a homeless population, many of whom come to the neighborhood to use the services available here, including a large shelter located at 5th and Bryant Streets. The result is that today SOMA has an incredibly diverse population in terms of race, income, and unit size. This diversity is a critical part of its neighborhood character.

Culturally, SOMA has great importance to the Filipino and LGBTQ communities. The Site is within the “SOMA Pilipinas”, a portion of SOMA officially recognized by the City of San Francisco and the State of California as SF’s Filipino Cultural Heritage District. According to the 2010 U.S. Census, more than 5,000 Filipino-Americans call this area their home. The establishment of Filipino ethnic enclave in the area was the result of a combination of factors that included inexpensive housing, proximity to both the waterfront and service industry jobs downtown, two Catholic parishes, and an established multi-ethnic population.

Other groups such as artists, activists, and sexual minorities, also moved to the South of Market area. The primarily industrial and commercial emphasis attracted nightlife and other entertainment uses with less friction compared to more residential neighborhoods. Although the area eventually became known primarily for its leather subculture, the South of Market area featured a variety of establishments, including bars, bathhouses, and dance clubs, that catered to a cross-section of San Francisco’s diverse LGBTQ community.

Located in Census Tract 6075-017601, the area has been designated by the California Environmental Protection Agency CalEnviroScreen as a Disadvantaged Community that is disproportionately burdened by multiple sources of pollution. The potential vulnerability of the population to the effects of pollution is among the highest in the State of California. The tract is in the 99th percentile for exposure to diesel particulate matter, the 97th percentile for proximity to toxic cleanup sites, the 92nd percentile for incidence of asthma and the 97th percentile for incidence of low birth weight.

The population of the Census Tract is 7,630 persons. Of these, 5.6 percent is below the age of 10, 85.1 percent falls between the ages of 11 to 64, and 9.3 percent is over the age of 65. It has a CalEnviroScreen score of 41.93 placing it in the 78th percentile of impacted communities disproportionately affected by pollution. This score reflects that 52.3 percent of the area’s population lives below two times the federal poverty level, 15.1 percent have less than a high school education, 14.6 percent are linguistically isolated, and 28.7 percent is both low income and severely housing burdened, meaning that they pay more than 50% of their income for housing. The area is subject to advanced gentrification and is one of San Francisco’s Census Tracts with the highest risk of displacement.

According to the 2010 census, the racial/ethnic makeup of the Census Tract is 31.6 percent White, 13.6 percent Hispanic, 12.9 percent African American, 36.4 percent Asian, 1 percent Native American and 4.5 percent identified as other. Due to the ethnic/racial makeup and the poverty index, the area would be classified by HUD as an environmental justice community. As such it must be determined whether development of the Project would expose Project residents to adverse environmental effects and if so, documentation that the

affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, minimize, or mitigate) the adverse effect will be required.

***b) Zoning/Land use Entitlements***

The Site is located in the C-3-S- Downtown Support zoning district, which permits the variety of uses found on the blocks surrounding Yerba Buena Gardens. This includes special uses supporting functions such as wholesaling, printing, building services and secondary office spaces. The site is an Article 38 Air Pollution Zone and within the Filipino Cultural Heritage District. There is no residential density limit in the C-3-S Zoning District. Density is regulated by the permitted height and bulk, required setbacks, exposure and open space of each development lot. The Site is located in the 160-F height and bulk district.

A Project on the Site is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval.

***c) Soil and Environmental Conditions***

A Phase One Environmental Site Assessment was conducted by PANGEA Environmental Services, Inc in August 2015. No Recognized, Historical or Controlled Environmental Conditions were discovered. The Site is not listed on any database searched by Environmental Data Resources (EDR) as part of the Phase One ESA. The Site is not currently within the Maher Ordinance but is surrounded by Maher Ordinance coverage. During the site permitting process for development, the City may require subsurface assessment to evaluate subsurface conditions. If chemical impact is encountered during site assessment, a site mitigation plan may be required by the San Francisco Department of Public Health (“DPH”). No non-ASTM considerations were identified during the course of the Phase One Assessment.

***d) Available Due Diligence Documents***

- Phase I Environmental Site Assessment Report, 967-971 Mission Street, San Francisco, California, August 10, 2015
- ALTA/NPS Land Title Survey
- California Commercial Disclosure Report

### 3. Site Three, 1939 Market Street

#### **a) Background Information**

1939 Market Street (the “Market Street Site”) (Block 3501 Lot 006) is a 0.27-acre parcel located southeast of Market Street, west of Cameron Street, and north of Duboce Avenue on the northwestern edge of San Francisco’s Mission Neighborhood. The visual setting of the Project area is varied, reflecting the unique visual characteristics its topography, street grids, public open spaces, and surrounding neighborhoods adjacent to its boundaries. These include the Civic Center and Mid-Market to the east, the Inner Mission District and SOMA to the south, the Western Addition to the north and west, and Duboce Triangle to the west. The lot is irregularly shaped and currently improved with a parking lot and a multi-story office building. The building is currently occupied. The City acquired the site in 2020. A Restrictive Covenant has been recorded on the property requiring all future improvements to be made by signatories to collective bargaining agreements only.

In the 1960s and 70s, the Castro became one of the most prominent LGBTQ communities in the world, and it remains so today. An additional goal of development for this site is to be affirming to LGBTQ residents through all aspects of the housing development process and building operations and seek applicants that wish to be affirming of LGBTQ identities.

District 8, in which the Site is located, is less racially and ethnically diverse than the city overall. Almost two-thirds (63.8%) of all District 8 residents identify as white, compared to only 40.6% of all San Franciscans. District 8 has approximately half the citywide average of Black and Asian residents, and slightly less than the citywide average of Latinx residents. However, the district has more people that identify as another race (i.e., Native American, Pacific Islander, Other), or two or more races, than the citywide average.

Located in Census Tract 6075-020200, the population of the project area is 6,075. Of these, 5.7 percent are below the age of 10, the age of 83.7 percent of the residents is between 11 and 64, and 10.6 percent of the population is over the age of 65. According to the 2010 census, the racial/ethnic makeup of the project area census tract is 49.5 percent White, 25.2 percent Hispanic, 6 percent African American, 15.9 percent Asian, less than 1 percent native American and 2.9 percent identified as other.

According to the California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment CalEnviroScreen, the project area is not a Disadvantaged Community disproportionately burdened by multiple sources of pollution. It has a CalEnviroScreen of 23.34; this score reflects that 44.46 percent of the area’s population lives below two times the federal poverty level, 35.49 percent has less than a high school education, 53.66 percent are linguistically isolated, and 16.6 percent are both low income and

severely housing burdened, meaning that they pay more than 50% of their income for housing. The area is subject to advanced gentrification and is one of San Francisco's Census Tracts with the highest risk of displacement.

***b) Zoning/Land use Entitlements***

The site is located in the NCT-3 Moderate Scale Neighborhood Commercial Transit District and the Market and Octavia Planning Area. The NCT-3 Districts are mixed use districts that support neighborhood-serving Commercial Uses on lower floors and housing above. There is no residential density limit in the NCT-3 Zoning District. Density is regulated by the permitted height and bulk, required setbacks, exposure and open space of each development lot. The site is located in the 85-X height and bulk district.

A project on the site is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. This means that this site could be a high rise with density bonuses. Either program may be used in conjunction with SB 35 for ministerial approval.

***c) Soil and Environmental Conditions***

Rincon Consulting Inc., conducted a Phase One Environmental Site Assessment in January 2020. Four Recognized Environmental Conditions and one potential environmental concern were identified in connection with the subject property. The Recognized Environmental Conditions are:

- Serpentine rock containing naturally occurring asbestos ("NOA") underlying the subject property
- Former use of the subject property as a gasoline station, motorcycle repair, used automobile sales, and postage meter manufacturing
- Location of the subject property within a Maher Ordinance Area
- Presence of PCE and benzene exceeding residential ESLs underlying the subject property.
- Potential Environmental Concern - Long term use of a hydraulic elevator onsite. Recommendations are discussed in the ESA

In light of these findings, SCS Engineers (SCS) conducted a limited Phase II study to evaluate the presence of PCE and benzene in the soil vapor underlying the subject property in December 2019. Benzene was detected in three of five soil vapor samples at concentrations above both residential and commercial/industrial land use ESL values. Other fuel-related VOC constituents (toluene, ethylbenzene, and xylenes) were also detected in all or most samples. Each of these constituents, when detected, were below their



respective ESLs. Tetrachloroethylene (PCE) was detected in one sample (SV1) at a concentration of 51 µg/m³. The current residential and commercial ESLs for PCE are 15 and 67 µg/m³, respectively. No other VOCs were detected above their respective ESLs or at levels considered significant.

***d) Available Due Diligence Documents***

- Phase I Environmental Site Assessment, 1939 Market Street, San Francisco, California, Rincon Consultants, Inc., January 10, 2020
- SCS Phase II Summary Letter to McMorgan & Company LLC summarizing the results of a Limited Phase II performed at 1939 Market Street in San Francisco, California.
- Due Diligence Report, 1939 Market Street, March 2014, DES Architects and Engineers

**C. FAMILY HOUSING**

Expectations for Family Housing – In addition to any site-specific expectations identified and which are not inconsistent with overall expectations:

- Serve low-income families (in 1-3-bedroom units) unsubsidized with an income range between 30%-80% MOHCD Unadjusted San Francisco Area Median Income;
- Serve formerly homeless families, in units subsidized by the City's Local Operating Subsidy Program ("LOSP") and a City services contract. The projects should provide 25% of the total number of units as LOSP-subsidized units for formerly homeless families and have a 1:20 case management ratio;
- Set aside at least 5 units (10 units at Pier 70) for referrals from the City's Plus Housing list with rents set at no more than 50% AMI;
- Evaluate the potential for childcare and provide family-friendly amenities appropriate for children.
- Achieve a feasible project within the funding constraints, namely, \$250,000 of MOHCD subsidy per unit.
- Maximize the number of target population placements into the Project (COP holders, etc.).

LOSP will be available to units serving formerly homeless families. The LOSP will be administered through a 15-year contract with MOHCD, to cover the difference between tenant-paid rents for LOSP units and operating expenses attributable to LOSP units. LOSP operating subsidy calculations should account for all typical costs of operations, reserves and fees on a pro-rata basis. LOSP subsidies may not be used to pay hard debt service, other than qualified minimal debt service payments for state financing. Applicants offering LOSP units will need to apply for funding for provision of services to these formerly homeless households through the Department of Homelessness and Supportive Housing. Section 8 project based rental assistance is not anticipated to be available at this time.

## **1. Site Four, 1515 South Van Ness Avenue**

### ***a) Background Information***

1515 South Van Ness (the “South Van Ness Site”) is located on the southern border of San Francisco’s Mission District within the Calle 24 Latino Cultural District. The project site is located within Census Tract 6075-022901. This tract has a population of 4,460 persons. According to the 2010 Census, 60% of the tract’s population is of Hispanic origin, 24.5% is White, 8% is of Asian origin and 4.5% is African American. Close to 11% of the population is below the age of 10, 6.7% is over the age of 65 and the remainder is between the ages of 11 and 65. According to California Environmental Protection Agency the tract is not a Disadvantaged Community disproportionately subject to multiple sources of pollution. While not a Disadvantaged Community, the tract’s residents rank high in other socio-economic characteristics. Close to 58 percent of the population suffers from asthma. Forty percent of the population lives below two times the federal poverty level. 18.5% of residents are linguistically isolated and 30 percent have less than a high school education. The housing burden (percent of households paying more than 50% of income as rent) for the area is high at 17 percent.

The site is within the Calle 24 SUD Special Use District which is intended to preserve the prevailing neighborhood character of the Calle 24 Latino Cultural District while accommodating new uses and recognizing the contributions of the Latino community to the neighborhood and San Francisco.

The high housing burden reflects the advanced gentrification that has occurred in the neighborhood which has put the residents at high risk of displacement. The displacement of neighborhood residents began in earnest in the late 1990’s as a result of the dot-com boom in San Francisco. Following the Great Recession of 2008, gentrification fueled more displacement, primarily affecting the area’s LatinX population.

Migration from Mexico, Central, and South America to San Francisco accelerated during the post-WWII period, with the Mission District being the primary destination for the new arrivals. Later waves of Latino migrants came to the Mission District from the Southwestern United States, Central California, and Central American countries experiencing political strife in the 1970s and 1980s. Today, the neighborhood’s Latino population is concentrated in the southern part of the Mission District and represents a culturally diverse population with roots from all over the Americas.

The South Van Ness Site (Block 6571 Lot 008) is a 35,714 square foot irregularly shaped lot located at the intersection of South Van Ness Avenue and 26th Street in San Francisco, California. The 0.80-acre site currently consists of three separate lots (Block 6571 Lots 1, 1A and 8). The site is bounded by South Van Ness Avenue to the west, 26th Street to the north,

Shotwell Street to the east, an existing one-two story commercial building to the southeast (auto repair shops), and an existing one story commercial retail building (auto parts store) to the southwest.

At present, the site is occupied by a two-level commercial building (McMillan Electric) with surface parking and a small strip of landscaping. The parking lots are generally flat accomplished by retaining/building walls along South Van Ness Avenue, 26th Street and the neighboring properties to the south. The site generally slopes to the southeast with street slopes falling southerly along South Van Ness Avenue (approx. 8.0' drop in elevation), easterly along 26th Street (approx. 1.3' drop in elevation), and southerly along Shotwell Street (approx. 9.4' drop in elevation). The ground surface is covered by:

- A 1-story over basement commercial building which houses offices and warehouse (approximately 31,680 +/- sf.
- Narrow landscaping strip along Shotwell Street (475 +/- sf)
- Asphalt paved surface parking lots, drive aisles, and hardscaped surfaces (3,559 +/- sf).

***b) Zoning/Land use Entitlements***

The existing South Van Ness Site is currently zoned Mission Street Neighborhood Commercial Transit District (NCT). Controls are designed to permit moderate-scale buildings and uses, protecting rear yards above the ground story and at residential levels. New neighborhood-serving commercial development is encouraged mainly at the ground story. Ground story uses are required to include active commercial uses with storefronts facing the street. While offices and general retail sales uses may locate at the second story of new buildings under certain circumstances, most commercial uses are prohibited above the second story. Continuous retail frontage is promoted by requiring ground floor commercial uses in new developments and prohibiting curb cuts. Housing development in new buildings is encouraged above the ground story. Residential density in the Mission Street NCT is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls to the development lot. The Site is split between the 65-X height and bulk district and the 55-X height and bulk district.

A project on the South Van Ness Site is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval.

### ***c) Soil and Environmental Conditions***

A Phase I Environmental Site Assessment for the South Van Ness Site. was prepared by Langan Treadwell Rollo on 27 May 2014. Review of regulatory files revealed one controlled recognized environmental condition (CREC) in connection with the property. There was an underground storage tank (UST) on site that was closed on 24 August 2000. Analytical results collected from soil samples collected during the former UST removal and subsurface investigations revealed the presence of residual petroleum hydrocarbons beneath the east parking lot area. The San Francisco Department of Public Health issued administrative case closure with no additional investigation required in regards to the former UST on 24 August 2000. If any construction and/or excavation activities are to be performed within the sidewalk near the former UST locations, a soil management plan (SMP) and a health and safety (H&S) plan (prepared by others) may be required prior to construction because of the petroleum hydrocarbons detected at the site.

The site is located in a Maher Area per the “Expanded Maher Area, February 2014” map and maybe subject to the provisions of Health Code Article 22A which is administered by the SFDPH.

Asbestos Containing Materials (ACMs) were observed on accessible areas of the building interior, exterior, and roofing. Sampled materials were confirmed to be positive for asbestos content upon laboratory analysis. Samples of painted surfaces and window putty were reported by the laboratory as containing lead above the detection limit of the analytical method.

### ***d) Available Due Diligence Documents***

- Feasibility Study
- Geotechnical Investigation
- Lead and Asbestos Survey
- DPH Phase One Approval
- Phase I Environmental Site Assessment for 1515 South Van Ness Ave., prepared by Langan Treadwell Rollo on 27 May 2014
- Tank Closure Report May 2000

## **2. Site Five, 88 Bluxome Street**

### ***a) Background Information***

The description of demographic characteristics of this site also applies to the 160 Freelon and the 71 Boardman sites as they are within the same Census Tract, 6075-018000. The Bluxome Street Site is located in the area of SOMA generally referred to as “south of Harrison Street of Western SOMA.” This area roughly bounded by Townsend Street to the south, Fourth Street to the east, Harrison Street to the north and Seventh Street to the west.

Unlike the 967 Mission Street site, which is also in SOMA, the Bluxome Street Site is not designated as a Disadvantaged Community by CalEnviroScreen. Despite the lack of such a designation, the Census Tract exhibits several environmental concerns. It ranks in the 96<sup>th</sup> and 95<sup>th</sup> percentiles for proximity to Cleanup sites and hazardous waste sites, respectively. The area is in the 80<sup>th</sup> percentile for traffic density and the 68<sup>th</sup> percentile for incidence of asthma. Its proximity to a number of Leaking Underground Storage tanks places it in the 97<sup>th</sup> percentile for impacts to groundwater. Ten percent of area residents have less than a high school education and 30 percent live below two times the federal poverty level. Eleven percent of the residents are low income persons with severe housing cost burden.

The development history of the site area is much like that of the 967 Mission Street site, except that this area of SOMA had a greater density of heavy industrial uses.

Site Five consists of one lot on the block bounded by Brannan Street to the north, 4th Street to the east, Bluxome Street to the south, and 5th Street to the west. The Bluxome Street Site is rectangular in shape, with plan dimensions of approximately 470 by 235 feet. The site is currently occupied by the San Francisco Tennis Club, a three-story structure with no basement, commonly referred to as the “88 Bluxome/Tennis Club”.

The affordable housing Project will be developed above the podium of the building to be located at the eastern end of the lot. This portion of the lot is approximately 80 feet wide by 240 feet deep. There will be a 30,120 s/f of community/recreation center at the ground floor and a 135,300 s/f relocated Tennis Club facility below-grade. Access to the affordable housing will be from Bluxome Street, through a 4,270 square foot lobby and back of house space dedicated to the Project. The Bluxome Street Site will contain 107 dwelling units, with 20 studios (19%), 42 one-bedroom units (39%), 21 two-bedroom units (20%), and 24 three-bedroom units (24%). There will be no off-street parking proposed. An air rights parcel for the development is to be created prior to close of construction financing.

#### ***b) Zoning/Land use Entitlements***

The Bluxome Street Site is zoned CMUO (“Central SoMa Mixed-Use Office”) District. This zoning district extends predominantly between 2nd Street and 6th Streets in the South of Market Area. The CMUO is designed to encourage a mix of residential and nonresidential uses, including office, retail, light industrial, arts activities, nighttime entertainment, and tourist hotels. The property is within both the Western SOMA and Central SOMA Planning Areas.

The Bluxome Street Site is also located in the proposed Central SOMA Special Use District (“CS SUD”). This overlay district contains controls that

are applied to the Site in addition to those in the CMUO District and address issues such as PDR retention and replacement, urban design and density controls, renewable energy requirements, and controls for specific uses and building features. Residential density in the CMUO District is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls to the development lot. The site is split between the 200-CS height and bulk district and the 130-CS height and bulk district.

Pursuant to Planning Code Section 329 (d), projects may seek specific exceptions to the provisions of the Code. Included among the exceptions are:

- Exceeding the principally permitted accessory residential parking ratio
- Exception from residential usable open space requirements
- Modification of the horizontal massing breaks required by Section 270
- Exception from satisfaction of loading requirements per Section 152.1
- Exception to height limits for vertical non-habitable architectural
- Exception to volumetric limitations for roof enclosures and screens pursuant to Section 260(b)(1)(F)
- Provision of the required minimum dwelling unit mix, as set forth in Section 207.6, pursuant to the criteria of Section 305(c)
- Exception for rear yards, pursuant to the requirements of Section 134(f);
- Flexible Units: Modification of the accessory use provisions of Section 803.3(b)(1)(c)

A project on the subject property is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval.

### ***c) Soil and Environmental Conditions***

The approximately 2.6-acre site is currently developed with an approximately 288,500-square foot building operated by the San Francisco Tennis Club. The Bluxome Street Site was developed by 1887 (and potentially earlier) with dwellings, a lumber yard, an engine works, a furniture factory, and an oil storage area. Other notable historical operations included a boiler/engine works, various furniture factories, a licorice factory, mill and planning work, and truck parking yard with a motor shop. The Bluxome Street Site was redeveloped for the current tennis club in 1974.

**d) Available Due Diligence Documents**

- 88 Bluxome Street Project: Land Dedication Project Planning Code Analysis
- Geotechnical Considerations
- Infrastructure Study – Land Density Study

**e) Additional City Expectations for Developer of this site**

- At least 10 Plus Housing units with rents set no higher than 50% AMI.
- Collaborate effectively with the Master Developer, the Department of Recreation and Parks, the Tennis Club, and MOHCD to ensure the Project is well integrated into the master development.

**3. Site Six, Pier 70 First Parcel**

**a) Background Information**

Site Six, Pier 70 First Parcel/C2A (the “Pier 70 Site”) is located in Census Tract 6075-022600. Pier 70 is a 69-acre facility under the jurisdiction of the Port of San Francisco. Located on the City’s Central Waterfront, the Site has been identified as a future National Historic District due to its long history of continuous operations in shipbuilding and repair, and the role it has played in the industrialization of the Western United States, the war efforts and architectural and engineering feats.

The area attracted early industrial operations because of its cheap land, deep-water access, and isolation from the more populated sections of the fast-growing city. This small cape of land, much enlarged and flattened over the decades, was the home of at least a half dozen major manufacturing and utility companies that played significant roles in the western and national economies, and in military and labor history. The Pier was the site of significant involvement in pivotal 20<sup>th</sup> century events including WWI Ship Building/ Repair, WWII Ship Building/ Repair, Vietnam War Ship Repair, and fabrication of the BART Transbay Tube.

The Pier 70 Site is located in the Dogpatch neighborhood of San Francisco, long a bastion of the blue-collar working class employed in the area’s industries. The neighborhood has undergone substantial gentrification since the 1990s.

The area in which the Pier 70 Site is located is less racially and ethnically diverse than the city overall. The Census Tract has a population that is 75.2 percent White, 9.8 percent Hispanic, 8.9 percent Asian, 2.1 percent Black and 0.2 percent Native American. 84.7 percent of the tract’s population is between the ages of 10 and 65, 9.2 percent is over 65 and 6.1 percent is below the age of ten.

Despite its long history as an industrial area, the Census Tract is not designated as a Disadvantaged Community by the California Environmental Protection Agency. However, it is in the 95<sup>th</sup> percentile for exposure to diesel particulate matter and 30<sup>th</sup> percentile for proximity to hazardous material sites. Fourteen percent of the tract's residents are lower income with a severe housing cost burden. Five percent of the residents have less than a high school education and five percent are linguistically challenged.

Notwithstanding the census tract's characterization by the California EPA, the development of the Pier itself is subject to implementation of a Risk Management Plan. Remedies for recognized environmental conditions include engineering controls (e.g., removing, replacing, or capping soil with durable cover) and institutional controls (e.g., deed restrictions, soil management measures, health and safety plans) to manage potential health risks.

The remedies include:

- Durable Covers over existing native soil that meet the remedial action objective of preventing human exposure to constituents of concern (COCs) in the soil beneath the Site.
- Long-term maintenance and monitoring of durable covers to ensure that covers continue to function as designed are described further in Appendix A.
- Institutional controls to minimize the potential to impact human health and the environment after installation of durable cover.

The Pier 70 Site will be located on a new segment of Louisiana Street between a new segment of 21<sup>st</sup> Street and a rebuilt 22<sup>nd</sup> Street within the Pier 70 Special Use District ("Pier 70 SUD"). The Site is a rectangular-shaped lot of 16,590 square feet. A map showing the location and configuration of the Site is attached as **Exhibit X**.

The Pier 70 Site will continue to be owned by the Port Authority of San Francisco and will be leased to the affordable housing developer through a 75-year (plus 24-year extension) ground lease with MOHCD, as described in a MOU between MOHCD and Port. Maximum rents will be restricted to an average income of 60% Unadjusted San Francisco Area Median Income, as defined by MOHCD.

Under the Disposition and Development Agreement (DDA), the Master Developer is required to complete all horizontal improvements serving the Site with the exception of water laterals (potable, non-potable and fire); delivery of the Site is expected by the end of 2020. The Master Developer anticipates completion of 22<sup>nd</sup> Street and Louisiana Street in 2020 while 21<sup>st</sup> Street extension between Illinois Street and Louisiana Street is scheduled for



Phase 2 of the project and the schedule for Irish Hill Park is yet to be determined.

***b) Zoning and Land Use Entitlements***

Pier 70 Special Use District: Development and use of the Site is regulated by the Pier 70 SUD (Planning Code Section 249.79), the Pier 70 D4D, and the Affordable Housing Plan attached as Exhibit B3 to the Pier 70 DDA. Under the Pier 70 SUD, the Site is predominantly zoned for residential use and has a height limit of 90 feet. Ground floor accessory uses are also permitted (but not required), as shown in Table 249.79(g)(l) of the Pier 70 SUD. Per the Affordable Housing Plan, the maximum amount of parking permitted on the Site is .25 spaces per residential unit.

The Project will be subject to the administrative design review process set forth in Section 249.79(l) of the Pier 70 SUD, which focuses on consistency and compliance of proposed projects with the Pier 70 SUD and D4D. Additionally, the selected Developer will be required to make an informational presentation regarding the consistency of its application with the Pier 70 SUD and D4D to the Port's Central Waterfront Advisory Group.

***c) Soil and Environmental Conditions***

A preliminary geotechnical investigation of the 28-Acre Site, including the Pier 70 Site, was completed in 2012 by Treadwell & Rollo. The selected Developer will still be required to commission its own geotechnical studies as part of its design and engineering work, but, for purposes of this RFQ, it is assumed that any required mitigation, soil and subsoil conditions on the Site will support a development that complies with the maximum allowable height, bulk and density limitations of the Site's applicable zoning requirements.

A Phase I Environmental Site Assessment for the 28-Acre Site, including the Site, was completed by Geosyntec in 2011. In addition, the Site is covered by a Risk Management Plan ("RMP"), prepared by Treadwell and Rollo in 2013 and approved by the Regional Water Quality Control Board in 2014. The RMP specifies measures to be taken prior to, during and post development in order to mitigate risks to human health and the environment posed by hazardous materials along with naturally occurring asbestos in the fill materials and bedrock at the site.

***d) Available Due Diligence Documents***

- Pier 70 Risk Management Plan, Pier 70 Master Plan Area, San Francisco, California, Prepared For Port of San Francisco, San Francisco, California, 25 July 2013, Project No. 730496301, Treadwell Rollo

**e) *Design and Development Agreement Exhibit B3 Affordable Housing Plan of Disposition and Development Agreement (Pier 70 28-Acre Site) Additional City Expectations for Developer of this site***

- Provide an affordable housing structure containing a minimum of 100 units;
- Serve low-income families (in 1-3 bedroom units, minimum of 50% 2BR or larger) unsubsidized with an income range between 30%-80% MOHCD Unadjusted San Francisco Area Median Income;
- Income average the available and total tax-credit units rent restrictions to no more than 60% MOHCD Unadjusted San Francisco Area Median Income;
- Serve a minimum of 10 households to be referred from MOHCD Plus Housing waitlist in a minimum of 10 units;
- Provide resident services coordinator at ratio of 1:100 units for families and 1:50 units for Plus Housing households paid from operations;
- Collaborate effectively with the Master Developer, the Port of San Francisco ("Port"), and MOHCD to ensure Pier 70 affordable housing is well integrated into the Pier 70 SUD;

**f) *Other Pier 70 Requirements Applicable to The Project***

- *Transportation Management Association:* In order to comply with Mitigation Measure M-AQ-1f of the MMRP, the Project is obligated to participate in a Transportation Management Association ("TMA") to implement and administer a Transportation Demand Management Program ("TDM Program") for the Pier 70 SUD. The goal of the TDM Program is to produce 20% fewer vehicle trips than identified in the Pier 70 FEIR through measures such as resident transit passes, unbundled parking, and a TMA-operated shuttle to regional transit connections. The Project will be responsible for all TMA assessments that may be owing with respect to the Site following the close of escrow. The current estimate for the TMA assessment is \$0.55/Residential GSF (\$2018) and \$0.21/Retail GSF.
- *Workforce Development Plan:* The Project is subject to the Workforce Development Plan, attached to the Pier 70 DDA as Exhibit B4, which includes goals and targets for local hiring and local business enterprise utilization, compliance with the City's First Source Hiring program, and the provision of funding for CityBuild and TechSF job readiness and training programs.
- *Vertical Cooperation Agreement:* Prior to close of escrow, the Selected Developer will be required to enter into a Vertical Cooperation Agreement ("VCA") with the Master Developer. The VCA may include provisions related to (i) sequencing and coordination of infrastructure work as between Horizontal Developer and Vertical Developer, (ii) each party's obligations related to liability for damage

- and restoration thereof, and (iii) repaving obligations to the extent of any underground work performed after Horizontal Developer's paving.
- *Building Code and Building Permit Review:* Because the Site is within the Port's jurisdiction, the Project is subject to Port Building Code and the Port will issue all building permits. However, the Port currently anticipates that the City's Department of Building Inspection will review all permit submittals and perform inspections on the Port's behalf.
- *Master CC&R:* All Vertical developments will be subject to Master CC&R as the instrument to collect the TMA assessments described above. No additional Homeowner's Association (HOA) fees will be required.

#### **4. Site Seven, 160 Freelon (598 Brannan)**

##### ***a) Background Information***

See demographic discussion at the 88 Bluxome Street site discussion.

160 Freelon will be the residential component of the 598 Brannan Project, a mixed-use development containing office, PDR/retail, institutional, a public park, and residential uses on an approximately 4.5-acre site in the Central SOMA area, comprised of current lots 45, 50, 51, and 52 in Assessor's Block 3777. The site is bounded by Welsh and Bryant Streets to the north, a mixture of surface parking lots and light industrial-style buildings to the east, Freelon and Brannan Streets to the south, and 5th Street and light industrial-style buildings to the west. The residential component will be located at the center of the project site between Welsh and Freelon streets.

The City conditionally accepted the dedication of the Site for affordable housing development from Brannan & Bryant, LLC, in lieu of jobs-housing linkage fee generated by the Sponsor's principal development project at 598 Brannan Street. Acquisition of the Site by the City is expected to take place concurrent with construction loan closing. The Site is located in an area with elevated pollutant concentrations. Sensitive use buildings, as defined in the Applicability section of the Ordinance, must comply with Health Code Article 38.

##### ***b) Zoning and Land Use Entitlement***

As part of the recently-adopted Central SOMA Plan, the entire 598 Brannan Project site was rezoned into the Central SOMA Mixed Use Office zoning district and the Central SOMA Special Use District. Residential uses are permitted. Residential density in the CMUO District is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls to the development lot. The Site is split between the 130-CS, 160-CS and 50-X height and bulk districts.

A project on the subject property is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval.

***c) Soil and Environmental Conditions***

Projects that are located on sites with known or suspected soil and/or groundwater contamination are subject to the provisions of Health Code Article 22A, which is administered by the Department of Public Health (DPH). Submittal of the Maher Application to and coordination with DPH may be required. Applicants may contact DPH for assistance.

***d) Due Diligence Documents Available***

- A Preliminary Geotechnical Information Memorandum was prepared by Rollo and Ridley in September 2016.
  - A Phase I Environmental Site Assessment was prepared by Environ for 639 Bryant Street. Recognized Environmental Conditions were identified.
- The site is within a Maher Zone and an application to DPH will be required.

**D. SUPPORTIVE HOUSING FOR HOMELESS ADULTS**

Respondents seeking to develop supportive housing for homeless adults must be comprised of the following: a non-profit developer (or developers) with experience developing permanent supportive housing in San Francisco or a for-profit developer working in partnership with a nonprofit developer, of which one of the joint venture partners must have experience developing permanent supportive housing in San Francisco (the “Developer”); a property manager with experience serving the target population; and a qualified supportive service provider with experience serving the target population. The development team must have demonstrated experience conducting effective community outreach and engagement. These Minimum Qualifications differ from those identified in Section IV.B.1 for those Respondents applying for development of senior and family housing.

The City’s LOSP will be available to units serving formerly homeless adults. The LOSP will be administered through a 15-year contract with MOHCD, to cover the difference between tenant-paid rents for LOSP units and operating expenses attributable to LOSP units. LOSP operating subsidy calculations should account for all typical costs of operations, reserves and fees on a pro-rata basis. LOSP subsidies may not be used to pay hard debt service, other than qualified minimal debt service payments for state

financing. Applicants offering LOSP units will need to apply for funding for provision of services to these formerly homeless households through the Department of Homelessness and Supportive Housing. Section 8 project based rental assistance is not anticipated to be available at this time.

### **Development Program Objectives**

- MOHCD and partner agency, Department of Homelessness and Supportive Housing (HSH), intend to target this housing to chronically homeless persons who are prioritized utilizing the newly developed Coordinated Entry System (CES).
- Up to one half of the units would include proposed financing from the State of California No Place Like Home (NPLH) program which targets adults with serious mental illness who are chronically homeless.
- Achieve a feasible project within the funding constraints, namely, \$250,000 of MOHCD subsidy per unit.

Expectations for Homeless Housing - In addition to any site-specific expectations identified and which are not inconsistent with overall expectations, MOHCD expects the Respondent team to include:

- At least one community-based non-profit development entity as sole developer or joint-venture partner, defined as a nonprofit organization whose mission includes the development of affordable housing in low income communities, with experience developing housing for formerly homeless adults in San Francisco;
- A property management entity with experience managing housing for formerly homeless adults, preferably in San Francisco;
- A community-based, service-providing entity with experience providing culturally competent services appropriate for formerly homeless adults in a supportive housing context and experience billing to Medi-Cal.

### **1. Site Eight, 71 Boardman (aka 356 Harriet Street)**

#### ***a) Background Information***

See demographic discussion at the 88 Bluxome Street site description. 71 Boardman Place (the "Boardman Place Site") (Block 3779 Lot 084) is a 0.2246 acre flat vacant lot generally running north to south extending to Harriet Street and between Bryant and Brannan Streets. The lot is rectangularly shaped and currently improved with a parking lot. The Boardman Place Site is located in an area with elevated pollutant concentrations. Sensitive use buildings must comply with Health Code Article 38.

**b) Zoning and Land Use Entitlement**

The Service/Arts/Light Industrial (SALI) District is largely comprised of low-scale buildings with production, distribution, and repair uses. The district is designed to protect and facilitate the expansion of existing general commercial, manufacturing, home and business service, and light manufacturing activities, with an emphasis on preserving and expanding arts activities. Nighttime Entertainment is permitted although limited by buffers around RED and RED-MX districts. Residential Uses, Offices, Hotels, and Adult Entertainment uses are not permitted, except that certain Affordable Housing Projects are permitted within the district pursuant to Section [846.24](#) of the Planning Code, and Accessory Dwelling Units are permitted within the district pursuant to subsection [207\(c\)\(4\)](#) of the Planning Code.

Affordable Housing Projects shall be subject to the Use Standards applicable to Residential Uses in the RED-MX District. Residential density in the RED-MX District is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls to the development lot. The Site is located in the 40/55-X height and bulk district.

A project on the Boardman Place Site is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval. Eligible Supportive Housing projects may also be eligible for ministerial approval pursuant to AB 2162.

**c) Soil and Environmental Conditions**

Projects that are located on sites with known or suspected soil and/or groundwater contamination are subject to the provisions of Health Code Article 22A, which is administered by the San Francisco Department of Public Health (DPH). Submittal of a Maher Application to and coordination with DPH may be required. Applicants may contact DPH for assistance.

**d) Available Due Diligence Documents**

To be determined.

**2. Site Nine, 725 Harrison Street**

**a) Background Information**

See demographic discussion at the 88 Bluxome Street site description.

Site Nine, 725 Harrison Street (the “Harrison Street Site”) is a portion of the property bounded by Harrison and Perry Streets to the north and south, and adjacent properties and 4th Street and to the east and west. The Site is L shaped and approximately 16,000 s/f in area. Current uses include a parking lot and small outbuildings. The site is adjacent to a freeway. MOHCD conditionally accepted the dedication of a portion of 725 Harrison for affordable housing development from Boston Properties, Inc. (“Sponsor”), as satisfaction of inclusionary housing obligations generated by the Sponsor’s 4<sup>th</sup> and Harrison Street principal development project, which will be located adjacent to the Site. Acquisition of the Site by the City is expected to take place in 2021.

***b) Zoning and Land Use Entitlements***

The Harrison Street Site is zoned CMUO (“Central SOMA Mixed-Use Office”) District. This zoning district extends predominantly between 2nd Street and 6th Streets in the South of Market Area. The CMUO is designed to encourage a mix of residential and nonresidential uses, including office, retail, light industrial, arts activities, nighttime entertainment, and tourist hotels. Production, Distribution and Repair Uses (PDR) are acceptable uses for the ground floor. Residential density in the CMUO District is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls to the development lot. The site is split between the 160-CS and 85-X height and bulk districts.

The Harrison Street Site is also a “Key Site,” as defined in Section 329(e) of the Planning Code, and therefore is eligible for exceptions to Code requirements that aren’t otherwise available to non-Key Sites. The property is within both the East SOMA and Central SOMA Planning Areas.

A project on the subject property is eligible for approval using the State Density Bonus Program, which provides up to 35% additional density, up to three incentives/concessions and unlimited waivers. The project may also be eligible for approval under the Affordable Housing Density Bonus Program (AHBP), as long as the project is compliant with all objective standards of the Planning Code plus the allowable Zoning Modifications provided by the AHBP in Planning Code Section 206.4(c)(5). The AHBP also provides three additional stories of height and form-based density. Either program may be used in conjunction with SB 35 for ministerial approval. Eligible Supportive Housing projects may also be eligible for ministerial approval pursuant to AB 2162.

***c) Soil and Environmental Conditions***

Langan, Treadwell Rollo conducted a Phase I Environmental Site Assessment of the Site in February 2014. The assessment revealed evidence

of three Recognized Environmental Conditions (RECs) in connection with the subject property:

- The fill material below the Site contains total and soluble lead levels that exceed State of California hazardous waste criteria as well as other residual petroleum hydrocarbons. The fill material below the Site contains State of California hazardous concentrations of soluble lead and residual petroleum hydrocarbons.
- Residual petroleum hydrocarbons exist in the subsurface at the Site due to the Site's past use as automotive repair facilities and the past use of USTs.
- The groundwater contains residual petroleum hydrocarbons which have likely migrated from an adjacent property.

Because hazardous materials were detected at the Site, a soil management plan (SMP) and a health and safety (H&S) plan (prepared by others) most likely would be required prior to construction. The Site is within a Maher Zone.

***d) Available Due Diligence Documents***

- Langan, Treadwell Rollo conducted a Phase I Environmental Site Assessment of the Site in February 2014
- Cost estimate for soil disposal
- Soil Classification.



## **V. SELECTION PROCESS, MINIMUM EXPERIENCE AND CAPACITY REQUIREMENTS, SELECTION CRITERIA AND SCORING, AND SUBMITTAL REQUIREMENTS OVERVIEW**

### **A. SELECTION PROCESS**

MOHCD staff will review all submittals for completeness and satisfaction of minimum experience and capacity requirements (see Section B below). If a submittal does not meet minimum experience and capacity requirements, the Respondent may submit an appeal to MOHCD staff on technical grounds only.

A Selection Panel will be appointed by the Director of MOHCD composed of persons with expertise in the areas of development, affordable housing finance, affordable housing construction management, community development, commercial space development, housing access/marketing, housing and services for homeless households, and public design/arts commission, as well as community representatives.

The Selection Panel will review all qualified responses (see Section C below) and may interview top-scoring Respondents, at which time Respondents will be asked to present and explain the major characteristics of their submittal, particularly as they relate to the Scoring Criteria, and respond to questions from the Selection Panel.

After any interviews have been completed, the Selection Panel will meet to determine the final ranking of all responses and present this ranking to the Director. The Selection Panel's scoring of each proposal will be done by consensus and will be final.

The Director will then select a development team and advise the Mayor of this selection. MOHCD staff will then exclusively negotiate a binding contract with the selected team for purposes of the Site's development. If MOHCD staff cannot complete a contract with the selected development team that is in the best interest of the City, the MOHCD Director may terminate negotiations in his sole discretion. If the MOHCD Director terminates negotiations with the selected development team, the MOHCD Director reserves the right, in his sole discretion, to (1) negotiate with the next highest ranked Respondent, or (2) reject any and all other proposals, in whole or in part, prior to award, and (3) may re-advertise a request for qualifications for any Project under such terms the MOHCD Director deems to be in the City's best interest. MOHCD reserves the right to appoint additional parties to the selected development team should it be determined that the team lacks representation necessary to the achievement of the goals of the RFQ.

### **B. MINIMUM EXPERIENCE AND CAPACITY REQUIREMENTS**

Respondents must meet the following minimum development team characteristics, experience, and capacity requirements in order to qualify to be scored and ranked under this RFQ. For Minimum Qualifications for respondents applying for 100% housing for homeless adults please refer to Sections III.D and IV.C.

**Racial Equity Capacity:** The proposed Development team must document its capacity to successfully plan, design, and develop racial equity strategies that will lower barriers to obtaining quality affordable housing for communities of color through employment of staff with appropriate experience and capacity, contracted services, and/or collaboration with other organizations. Respondents should submit demographic data of the Boards of Directors of member organizations of the Development Team and of the staff of the various organizations that make up the respondent team.

## **1. Minimum Development Team Characteristics**

The proposed development team must include members able to work with MOHCD to create developments that are responsive to populations disproportionately impacted by systemic racism; implement a culturally competent approach throughout the development process; align the development program with City policies on anti-displacement, racially inclusive communities, and creation of stable housing for vulnerable populations; and create opportunities for Black- and Brown-led developers to be competitive within the RFQ process.

The proposed Development Team must include:

- At least one San Francisco-based non-profit development entity whose mission includes the development of affordable housing in low-income communities with experience developing housing for the identified priority populations (such as Certificate of Preference Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, Plus Housing waitlist households and/or formerly homeless households) acting either as sole developer or as a partner in a joint venture, or joint-venture partner, defined as a nonprofit organization;
- A property owner entity with experience owning housing for low-income communities, including for priority populations (such as COP Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, Plus Housing waitlist households and/or formerly homeless households);
- A property management entity with experience managing housing for low-income communities, including for priority populations (such as COP Holders, displaced tenants, neighborhood residents, San Francisco residents, seniors, families, Plus Housing waitlist households and/or formerly homeless households);
- At least one services-providing entity with experience providing services appropriate for the intended target population(s) of each site.

*Letters of Intent or Memoranda of Understanding from service providers and property management entities that are not affiliated with the developer must be submitted with the application.*

## 2. Minimum Development Team Experience

Minimum experience must be demonstrated by identifying specific **Qualifying Projects** in which team members have participated, as further described below. The proposed Development Team must submit **Attachment 4 - Qualifying Project Form**, to document how the Qualifying Project characteristics meet each of the experience categories below (developer, owner, property manager, service provider.)

To demonstrate the minimum required development team experience, each team should submit one project for each experience category. When appropriate, teams may submit the same project as evidence of experience across multiple experience categories or may use different projects to demonstrate experience across categories. In all cases, no more than four (4) total Qualifying Projects should be submitted.

**Qualifying Projects will not be scored but are used to determine if the proposed Development Team meets the minimum development team experience required to develop the Site.**

For Developer and Owner, a **Qualifying Project** must have all of the following characteristics:

- New construction in either a Type V over I or Type III over I construction type (not a requirement for Minimum Property Manager and Service Provision Experience)
- At least 75 units in size
- Majority multiple-bedrooms, *only for family projects*
- Mixed-use including residential (not a requirement for Minimum Service Provision Experience)
- Affordable to low- and very low-income households<sup>1</sup>, formerly homeless residents, families and/or seniors
- Financed with Low-Income Housing Tax Credits.

### **a. Minimum Development Experience:**

The proposed Developer must have completed within the past ten years at least **one** Qualifying Project located in San Francisco. “Completed” means the Project must have received its Temporary Certificate of Occupancy by the date of the issuance of the RFQ.

For joint venture Developer teams, the experience of the lead entity may suffice for the joint-venture partnership. A signed Memorandum of Understanding or Term Sheet between joint-venture Development partners that outlines roles and responsibilities, proposed ownership structure, etc. must be submitted with the application. Furthermore, a Respondent can qualify for development experience by contracting with a development consultant for comprehensive project management services. Finally, the requirement to have served formerly homeless residents may be satisfied in a non- Type V over I or Type III over I building. In such a case, the proposed Developer must provide evidence of

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<sup>1</sup> “Low Income” is defined as 60% MOHCD AMI and below. “Extremely Low Income” is defined as 30% MOHCD AMI and below.

having completed a partially Type V over I or Type III over I affordable housing building, and separately, an affordable housing building that serves formerly homeless residents.

- b. Minimum Ownership Experience:** The proposed Owner must have owned at least **one** Qualifying Project for at least four years prior to the Submittal Deadline of this RFQ. For purposes of this requirement, the member of the general partner of the tax credit partnership that will own the completed project is the proposed “Owner.”
- c. Minimum Property Management Experience:** The proposed Property Manager must have managed at least **one** Qualifying Project for at least 24 months.
- d. Minimum Service Provision Experience:** The proposed service provider(s) must have at least 36 months experience providing services to low-income family residents, communities of color, homeless persons and/or senior citizens within a Qualifying Project.

**Note Regarding Experience:** For any Respondent team member, the experience of key staff members may be substituted for the experience of the organization as a whole as long as the staff members’ experience in other firms was substantive and involved responsibilities similar to those that they are anticipated to perform during the proposed development of the site. Any substitution should be clearly identified in Attachment 4, Qualifying Project Form.

### 3. Minimum Developer and Owner Capacity Requirements

The proposed Developer and Owner must demonstrate the financial and staffing capacity to successfully complete the project and manage the asset in the long-term, as further described below.

- a. Financial Capacity:** The proposed Developer (or Guarantor where another entity is providing required guarantees) must demonstrate its ability to obtain competitive financing, as evidenced by submitting the latest (2) years of either signed federal income tax returns (including schedules or attachments, if any); or audited financial statements (with management letters, if any). The proposed Developer must also submit **Attachment 5 – Financing Terms for Developer’s Qualifying Project** documenting the equity pricing and debt terms for the Qualifying Project submitted under Minimum Developer Experience.
- b. Staffing Capacity:** The proposed Developer must document its capacity to successfully plan, design, and develop the Project, throughout the period of development, either through staff with appropriate experience and capacity, contracted services, or collaboration with other organizations. To document this, the proposed Developer must submit a written narrative **no more than one page** (in Times New Roman font, 12 font size, and 1-inch margins) to document

the experience and capacity of key staff, their workloads, and the organizational structure for supporting staff. The proposed Developer must also submit **Attachment 6 – Projected Staffing Workload Form** to document the work assignments (existing or contemplated) associated with each staff person expected to work on the Project for Developer.

- c. **Asset Management Capacity:** The proposed Owner must document its capacity to successfully manage real estate assets in compliance with City regulatory agreements and restrictions. To document this, the proposed Owner must submit a recent Real Estate Owned (REO) schedule, stating the number of projects and average number of units/project currently in Owner's asset management portfolio, proposed Owner's current asset management staffing noting job titles, FTEs, and status of each position (filled/vacant) and proposed Owner's organizational chart.
- d. **Racial Equity Capacity:** The proposed Developer must document its capacity to successfully plan, design, and develop racial equity strategy that will lower barriers to obtaining quality affordable housing for communities of color through staff with appropriate experience and capacity, contracted services, or collaboration with other organizations. Documentation should include information evidencing the Developer's capacity to achieve the goals of this RFQ (see especially pages 4-5).
  - Select partners that are able to work with MOHCD to deploy city resources, tools and expertise to create developments that are responsive to populations disproportionately impacted by systemic racism;
  - Ensure that development teams are working within a culturally competent approach through the development process;
  - Align each Project with the implementation of City policies on anti-displacement, racially inclusive communities, and creating stable housing for vulnerable populations;
  - Create opportunities for growth of smaller and Black, Indigenous and people of color, (BIPOC)-led organizations in development role or as member of development team
  - Submit demographic data for the Boards of Directors of each Development Team member and for the staff of each organization represented on the Team.

**C. MINIMUM EXPERIENCE AND CAPACITY REQUIREMENTS FOR RESPONDENTS APPLYING FOR 100% SUPPORTIVE HOUSING FOR HOMELESS ADULTS**

## 1. Team Member Specific Minimum Requirements

- a. **Minimum Developer Requirements** - Lead Developer itself or in partnership with other co-developers must provide evidence of the following experience:
- New construction of at least two affordable housing developments that are both high-density infill sites, with an aggregate unit count of approximately 75 units or more
  - Development of at least one supportive affordable housing development for formerly homeless adults and/or formerly homeless seniors (may be new construction or substantial rehabilitation of an existing building)
  - Use of Low-Income Housing Tax Credit financing

For joint-venture Development partners, the experience of either entity may suffice for the joint-venture partnership. A Memorandum of Understanding between joint-venture Development partners must be submitted with the application.

Furthermore, a Respondent can qualify for development experience by contracting with a development consultant for comprehensive project management services. Project management services should include financial packaging, selection of other consultants, selection of construction contractor and property management agent, oversight of architectural design, construction management, and consultation on major aspects of the development process. The contract for development services must be submitted with the RFQ response and must be acceptable to MOHCD.

- b. **Minimum Ownership Experience** - The proposed Owner of the Project must have owned at least one supportive formerly homeless project in San Francisco for at least 5 years prior to the Submittal Deadline of this RFQ. In addition, each proposed Owner must provide evidence of experience with owning housing financed with Low Income Housing Tax credits. This experience does not have to be on the same project that satisfies the 5-year ownership requirement. If the Selected Developer entity is not the same entity as the proposed Owner, MOHCD reserves the right to require that certain members of the Selected Developer remain active in the ownership for whatever length of time MOHCD deems necessary to ensure operating and financial stability.

For purposes of this requirement, the managing general partner of the tax credit partnership intended to take ownership of the completed Project and to provide asset management for the Project is the proposed "Owner".

- c. **Minimum Property Manager Requirements** - The proposed property manager for the Project must have managed at least three supportive formerly homeless

or supportive senior rental projects, including at least one in San Francisco, each for at least 36 months. In addition, the Property Manager for the Project must provide evidence of experience with managing housing financed with Low Income Housing Tax credits.

- d. **Minimum Service Provision Requirements** - The proposed service provider(s) must have at least 36 months' experience providing supportive services to formerly homeless adults and/or formerly homeless seniors including case management and comprehensive services for homeless households in a residential setting in San Francisco. The proposed service provider(s) must have the infrastructure to supervise and train the onsite staff and their supervisors. The service provider must also have experience with and capacity to bill Medi-Cal.
- e. **Other Consultants** – For any Respondent team, the experience of key staff members or “other consultants” may be substituted for the experience of the organization as a whole as long as the staff member’s or consultant’s experience in other firms was substantive and involved responsibilities similar to what they are anticipated to perform as a member of the Respondent’s team.

#### **D. SELECTION CRITERIA AND SCORING**

All applications that meet the Minimum Experience and Capacity Requirements will be scored and ranked according to the following selection criteria:

	<b>Category</b>	<b>Points</b>
<b>A.</b>	<b>EXPERIENCE:</b>	<b>40</b>
i.	<b>Developer (12 pts)</b> <ul style="list-style-type: none"> <li>➤ Experience with the following: <ul style="list-style-type: none"> <li>○ Completing projects on time and on budget</li> <li>○ Obtaining competitive financing terms</li> <li>○ Developing Type V/I or III/I construction</li> <li>○ Developing housing for low-income families, seniors, or the homeless</li> </ul> </li> <li>➤ Building community support through outreach</li> <li>➤ Current staff capacity and experience to take on this project type</li> </ul>	
ii.	<b>Owner (4 pts)</b> <ul style="list-style-type: none"> <li>➤ Track record successfully owning housing financed with Low-Income Housing Tax Credits</li> </ul>	

	<ul style="list-style-type: none"> <li>○ Experience owning affordable housing for low-income families, seniors and/or the homeless</li> <li>➤ Current asset management structure, staffing, and portfolio</li> <li>➤ Capacity for assuming asset management of an expanded portfolio once the development is complete</li> </ul>	
iii.	<b>Property Manager (8 pts)</b> <ul style="list-style-type: none"> <li>➤ Experience managing property for target populations</li> <li>➤ Experience achieving high rates of housing retention</li> <li>➤ Implements low barrier tenant selection policies</li> <li>➤ Contributes to long-term sustainability of the development</li> <li>➤ Achieves cost efficiencies in operations</li> </ul>	
iv.	<b>Service Providers (8 pts)</b> <ul style="list-style-type: none"> <li>➤ Experience delivering services to target populations</li> <li>➤ Experience linking residents to the City's safety net of services</li> <li>➤ Works with property management to achieve high rates of housing retention</li> <li>➤ Supports positive outcomes for residents around health and economic mobility</li> <li>➤ If applicable, provides explanation for service contracts terminated prematurely within the last 5 years</li> <li>➤ Discusses barriers to communities of color accessing quality health care services, employment and educational opportunities</li> </ul>	
v.	<b>Racial Equity Strategy (8 pts)</b> <ul style="list-style-type: none"> <li>➤ Describes level of racial equity awareness</li> <li>➤ Experience providing housing to COP and neighborhood preference holders</li> <li>➤ Uses innovative approaches to engagement with COP and neighborhood preference holders</li> <li>➤ Demonstrates commitment to racially diverse project development teams</li> </ul>	



	<p>Proposes a substantive partnership that increases opportunity/capacity for growth of smaller and Black, Indigenous and people of color, (BIPOC)-led organizations</p> <ul style="list-style-type: none"> <li>➤ Demonstrates experience with serving historically excluded communities of color</li> <li>➤ Describes approaches to overcoming historical obstacles to communities of color obtaining high quality affordable housing</li> <li>➤ Describes experience providing access and implementing service delivery strategies to historically excluded communities of color</li> </ul>	
<b>B.</b>	<b>VISION:</b>	<b>60</b>
i.	<p><b>Program Concept (20 pts)</b></p> <ul style="list-style-type: none"> <li>➤ Describes vision for a development program at this site, while best achieving the project goals, and includes: <ul style="list-style-type: none"> <li>○ A residential program and other envisioned uses;</li> <li>○ Indicates how the proposed uses and amenities will enhance the lives of the proposed target population and the surrounding neighborhood.</li> </ul> </li> <li>➤ Indicates particular groups served by the programs and spaces (tots, children, teens, homeless people, young adults, adults, elderly, disabled etc.).</li> <li>➤ Describes how the program will contribute to lowering barriers to persons of color seeking and retaining quality housing.</li> </ul>	
ii.	<p><b>Community Engagement Strategy (10 pts)</b></p> <ul style="list-style-type: none"> <li>➤ Describes community engagement strategy and includes: <ul style="list-style-type: none"> <li>○ The team's philosophy on community engagement;</li> <li>○ Process for establishing and/or building positive relationships with surrounding neighbors and the larger community;</li> <li>○ Efforts designed to engage all interested community members, including monolingual</li> </ul> </li> </ul>	

	<p>non-English speaking members of the community;</p> <ul style="list-style-type: none"> <li>○ How the Development Team intends to comply with the City's Language Access Ordinance.</li> </ul> <p>➤ Describes the Team's approach to achieving entitlements for the project expeditiously and the Team's approach to maintaining and building community relationships after entitlements have been achieved and the development is in operations.</p> <p>➤ Indicate how particular community engagement strategy will address the historical exclusion of communities of color from quality housing, including but not limited to marketing to attract target populations.</p>	
iii.	<p><b>Services Delivery Strategy (10 pts)</b></p> <p>➤ Describes the Development Team's services delivery strategy and includes:</p> <ul style="list-style-type: none"> <li>○ The overall service philosophy;</li> <li>○ Model for providing any anticipated services to formerly homeless residents (including case management ratio and provision of amenities such as front desk clerks, if applicable);</li> <li>○ The services goals of the proposed vision.</li> </ul> <p>➤ A brief description of the desired outcome of the services to be provided and innovative approaches to services provision, including the strategy of engaging residents and encouraging access to services.</p> <p>➤ Describes how services for residents will be coordinated with the existing network of services in the neighborhood and community.</p>	
iv.	<p><b>Finance &amp; Cost Containment Approach (10 pts)</b></p> <p>➤ Narration that describes the Development Team's financing approach to the project.</p> <p>➤ Includes the Team's process for structuring the project and controlling development costs.</p>	

	<ul style="list-style-type: none"> <li>➤ Includes innovative strategies intended to minimize MOHCD's projected capital gap financing.</li> <li>➤ Describes any innovative (i.e. non-standard, routine or commonly used) direct or indirect cost-cutting strategies relevant to overall development, construction or operating expenses.</li> <li>➤ Do not include proforma financials.</li> </ul>	
v.	<p><b>Racial Equity Strategy (10 pts)</b></p> <ul style="list-style-type: none"> <li>➤ Describes proposed resident services program, including the activities or types of services, how they will be provided, and the approach (such as timeline, hours and days of operation, examples, and best practices).</li> <li>➤ Explain how the Development Team's model removes barriers to intergenerational wealth, self-sufficiency and resiliency for persons of color, particularly COP holders, African American households and/or households in historically African American neighborhoods.</li> <li>➤ Explain how the strategy aligns with the four primary goals of this RFQ set forth in the Introduction.</li> </ul>	
<b>TOTAL POSSIBLE POINTS</b>		<b>100</b>

## 1. Experience

In **no more than five pages** of written narrative (in Times New Roman font, 12 font size, 1-inch margins), describe how each member of the Proposed Development Team has the most relevant experience for the successful development of the Project. **Describe how the Development Team has implemented lessons learned from past affordable housing experience.** Please note that Respondents are not limited to discussing the Qualifying Project(s).

- a. Developer:** Describe the Developer's track record successfully developing high-quality affordable housing, including supportive housing. In particular, discuss the Developer's experience completing affordable housing development projects on time and on budget, obtaining competitive financing terms, developing type V/I or III/I construction, developing for low-income families, seniors and homeless people and building community support for mixed use projects (affordable residential with ground floor commercial) through outreach for similar projects. In addition, describe the experience and capacity of current staff to take on a project of this type.

- b. Owner:** Describe the Owner's track record successfully owning housing financed with Low-Income Housing Tax Credits. In particular, discuss the Owner's experience owning affordable housing for low-income families, seniors or homeless people and describe the Owner's current asset management structure, staffing and portfolio, and its capacity for assuming asset management of an expanded portfolio once the development is complete. For purposes of this requirement, the managing general partner of the tax credit partnership intended to take ownership of the completed Project and to provide asset management for the Project is the proposed "Owner".
- c. Property Manager:** Describe the Property Manager's track record successfully managing high-quality affordable housing communities. In particular, discuss the Property Manager's experience providing management services for low-income families, seniors, homeless persons and communities of color; experience achieving high rates of housing retention, implementing low barrier tenant selection policies, contributing to the long-term sustainability of the development, and achieving cost efficiencies in operations.
- d. Services Provider(s):** Describe the Services Provider(s)' track record delivering highly impactful services to residents in affordable housing developments. In particular, discuss the Services Provider(s)' experience delivering services to low-income families, seniors, homeless persons and communities of color linking residents to the City's safety net of services, working with property management to achieve high rates of housing retention, and supporting positive outcomes for residents around health, economic mobility, and housing stability. If the Service Provider(s) have had any services contracts prematurely terminated in the last five years, include an explanation for each termination. Discuss barriers to communities of color accessing quality health care services, employment and educational opportunities
- e. Racial Equity Strategy:** The Mayor's Office of Housing and Community Development (MOHCD) recognizes the oppressive history of racial injustice, especially in housing and community services, the structural inequities that remain today, and the trauma those inequities perpetuate. Please describe the Developer team's level of racial equity awareness using the guidelines below:
- Understands and communicates that reducing racial inequities is mission critical
  - Routinely collects, disaggregates, and analyzes data by race/ethnicity in programmatic and operational work
  - Views diversity as a value-added feature of organizations, and enquires about the cultural competence of staff and grantees to work with diverse groups
  - Has mechanisms for management accountability for equity, diversity, and inclusion
  - Has mechanisms for staff accountability for equity, diversity, and inclusion

- Describes Development Team's present and future practices to meet MOHCD's racial equity goals as articulated in the four primary racial equity goals of this RFQ.
- Describes the Developer's experience with serving historically excluded communities of color.
- Has experience providing access and implementing service delivery strategies to historically excluded communities of color.
- Describes the demonstrated commitment to racially diverse project development teams
- Describes any substantive partnership that is part of the RFQ response that increases opportunity/capacity for growth of smaller and Black, Indigenous and people of color, (BIPOC)-led organizations in development role.

## 2. Vision

In **no more than seven pages** of written narrative (in Times New Roman font, 12 font size, 1-inch margins), describe the Proposed Development Team's vision for the successful development of the Project:

- a. Program concept:** Describe the Development Team's vision for a development program at this Site, while best achieving the original project goals (i.e. serve low-income families including a residential program and all other envisioned uses). Indicate how the proposed uses and amenities will enhance the lives of the future residents and the surrounding neighborhood. Indicate particular groups served by the programs and spaces (tots, children, teens, young adults, adults, elderly, disabled, homeless, etc.). Describe how the program will contribute to lowering barriers to persons of color seeking and retaining housing. Do not submit architectural drawings; scored responses must be in narrative form only.
- b. Community engagement strategy:** Describe the Development Team's community engagement strategy, including the team's philosophy on community engagement and process for establishing and/or building positive relationships with surrounding neighbors and the larger community. Describe the Team's approach to achieving entitlements for the project expeditiously and the Team's approach to maintaining and building community relationships after entitlements have been achieved and the development is in operations. The strategy should include efforts designed to engage all interested community members, including monolingual non-English speaking members of the community and how the Development Team intends to comply with the City's Language Access Ordinance. In particular address how the community engagement strategy will address the historical exclusion of communities of color from quality housing.
- c. Services delivery strategy:** Describe the Development Team's services delivery strategy, including the overall philosophy and model for providing services to targeted populations (including case management ratio and provision of amenities

such as front desk clerks), the services goals of the proposed vision, a brief description of the desired outcomes of the services to be provided and innovative approaches to services provision, including the strategy for engaging residents and encouraging access to services, and how services for residents will be coordinated with the existing network of services in the neighborhood and community.

- d. *Financing and cost containment approach:*** Describe the Development Team's financing approach to the project, including the Team's process for structuring the project and controlling development costs. Describe any innovative strategies intended to minimize MOHCD's projected capital gap financing. Also, describe any innovative (i.e., non-standard, routine or commonly used) direct or indirect cost-cutting strategies relevant to overall development, construction or operating expenses. Do not submit a development budget or pro forma. Scored responses must be in narrative form only.
- e. *Racial Equity Strategy:*** Please submit an overall statement regarding how the Development Team will incorporate the principles of racial equity in the development of the program concept, the community engagement strategy and services delivery strategy and marketing programs. Describe your proposed resident services program, including the activities or types of services, how they will be provided, and your approach (such as timeline, hours and days of operation, examples, and best practices). Explain how the Development Team's model removes barriers to intergenerational wealth, self-sufficiency and resiliency for persons of color, particularly COP holders, African American households and/or households in historically African American neighborhoods. Explain how the strategy aligns with the four primary goals of this RFQ set forth in the Introduction.

## **E. SUBMITTAL REQUIREMENTS OVERVIEW**

Using **Attachment 1 – Submittal Checklist**, check boxes of all items that will be submitted. Complete and submit **Attachment 2 - RFQ Registration Form**. All addenda, responses and additional information will be distributed to all parties who have submitted a registration form in accordance with Section IIB above.

### **1. Minimum Development Team Characteristics**

Submit **Attachment 3 - Respondent Description** to document the name of each organization, names of the organization's Director (or equivalent position) and primary contact persons, and phone numbers and email addresses for each of the following:

- Lead Developer and Co-Developers (if applicable)
- Development Consultant (if applicable)
- Owner(s)
- Property Manager(s)

- Service Provider(s)

For each Lead Developer and/or Co-Developer, submit a current copy of the following documents:

- a. **Certificate of Good Standing** from the California Secretary of State
- b. **Certification of 501(c)(3) status** (for nonprofit corporations) from the Internal Revenue Service.

## 2. Minimum Development Team Experience

Submit **Attachment 4 - Qualifying Project Form**, to document how the Qualifying Project characteristics meet each of the experience categories below (developer, owner, property manager, service provider.) The Development Team may submit more than one (1) Qualifying Project for each of the experience categories:

- a. **Minimum Development Experience**
- b. **Minimum Ownership Experience**
- c. **Minimum Property Management Experience**
- d. **Minimum Service Provision Experience**
- e. **Minimum experience in incorporating principles of racial equity into development, management and service experience**

To demonstrate the minimum required development team experience, each team should submit one project for each experience category. When appropriate, teams may submit the same project as evidence of experience across multiple experience categories, or may use different projects to demonstrate experience across categories. In all cases, no more than five (5) total Qualifying Projects should be submitted. **Qualifying Projects will not be scored, but are used to identify if the proposed Development Team meets the minimum development team experience required to develop the Site.**

## 3. Minimum Developer and Owner Capacity Requirements

### a. Financial Capacity

- Latest two (2) years of either signed federal income tax returns (including schedules or attachments, if any); or audited financial statements (with management letters, if any).
- **Attachment 5 – Financing Terms for Developer’s Qualifying Project** to document the equity pricing and debt terms for the Qualifying Project submitted under Minimum Developer Experience.

### b. Staffing Capacity

- Description of Key Staff Experience – Provide written narrative of **no more than one page** (in Times New Roman font, 12 font size, and 1-inch margins) to document the experience and capacity of key staff, their workloads, and the organizational structure for supporting staff.

- **Attachment 6 – Projected Staffing Workload Form**, documenting the work assignments (existing or contemplated) associated with each staff person expected to work on the Project for Developer.
- c. **Asset Management Capacity**
- Proposed Owner’s recent **Real Estate Owned (REO) schedule**, documenting the number of projects and average number of units/project currently in Owner’s asset management portfolio.
  - Proposed Owner’s current **asset management staffing**, noting job titles, FTEs, and status of each position (filled/vacant).
  - Proposed Owner’s **organizational chart**.
- d. **Racial Equity Capacity**
- Demonstrate how developer has met the City’s minimum compliance standards for Equal Employment Opportunities on the **Qualifying Project**.

#### 4. Selection Criteria and Scoring

- a. **Experience** – Provide written narrative of **no more than five pages** (in Times New Roman font, 12 font size, and 1-inch margins).
- b. **Vision** - Provide written narrative of **no more than seven pages** (in Times New Roman font, 12 font size, and 1-inch margins).

Additional documents submitted in this section will not be allowed. The two written narratives above will only be the only documents reviewed and scored by the panel.

#### 5. Evidence of Authority

Provide a certified corporate resolution of the applicant or, in the case of a partnership, the applicant’s general partner, expressly authorizing the applicant to provide a response to this RFQ and, if selected by the City, to enter into negotiations with the City for the long-term lease of the MOHCD Site.

#### 6. Disclosure Form

Submit a completed and signed copy of **Attachment 7 – Disclosures**, which requires any respondent to this RFQ to disclose defaults, lawsuits, legal proceedings, bankruptcy filings or financial interests affiliated with MOHCD staff or Citywide Affordable Housing Loan Committee members. The individual who signs the form must be authorized to enter into legal agreements on behalf of the Respondent.

**Note Regarding Submittals:** Respondents may amend their response prior to the submission deadline. However, after the submission deadline, corrections are only allowed if immaterial and at the sole discretion of MOHCD.



## **VI. TERMS AND CONDITIONS OF REQUEST FOR QUALIFICATIONS**

### **A. DEVELOPER RESPONSIBILITIES**

The Selected Developer will be responsible for all aspects of development of the Site, including but not limited to the following:

- Involving local community stakeholders in the program setting and initial design of the Site.
- Marketing the development to intended target audiences consistent with the four goals of this RFQ, most notably outreach to Black communities historically excluded from quality housing or displaced from their neighborhoods.
- Conducting all appropriate due diligence, investigating and determining conditions of the Site and the suitability of the Site for the proposed Development.
- Securing all required development approvals, including but not limited to any necessary permits or approvals from the City's Planning Department and Department of Building Inspection, and from Federal and State agencies associated with environmental and historic preservation reviews (including Certificates of Appropriateness) as applicable.
- Obtaining adequate financing for all aspects of the proposed Development, including predevelopment, construction and operation.
- Designing and building the Development in a manner that produces a high-quality, enduring living environment.
- Owning, managing, and operating the Development in a manner that ensures its long-term financial viability and the ongoing satisfaction of residents.
- Complying with the requirements of any financing for the Development, including but not limited to:
  - a. Equal Employment Opportunities – The Selected Developer will be required to comply with local and federal procurement requirements, including the provision of equal employment opportunities for disadvantaged business consultants, architects, contractors, and other potential development team members to participate in the Development. To ensure that equal opportunity plans are consistent with City and Federal procurement requirements, sponsors should meet with MOHCD and San Francisco Contract Monitoring Division (CMD) staff prior to hiring their development team to develop a plan for such compliance. Although the City's Contract Monitoring Division (CMD) does not require prior approval or monitoring of procedures for selecting the architect for purposes of responding to this RFQ, the architect's Small Business Enterprise (SBE) status will be counted toward the overall Development's procurement goals which will be set at a later date.
  - b. Environmental Review - Depending on conditions at the Development Site and on Development plans, the proposed Development will be subject to

review under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA) and specifically the Section 106 historical resources preservation review. Department of City Planning design review may also be required.

- c. Accessibility Requirements - Development sponsors will be responsible for meeting all applicable accessibility standards related to publicly-funded multifamily housing under Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act, the Americans with Disabilities Act, and certain statutes and regulations of the City and County of San Francisco. Units must meet TCAC accessibility requirements, which at the time of RFQ drafting require at least 50% of all units to be adaptable and a minimum of 10% of the units to be accessible, including units for the visually and hearing impaired.
- d. Prevailing Wages – This Development will be subject to applicable local, state or federal requirements with regard to labor standards. Developers should take prevailing wage requirements and labor standards into account when seeking estimates for contracted work, especially the cost of construction, and other work to which the requirements apply, and when preparing development budgets overall.
- e. Employment and Training – The Selected Developer will be required to work with the CityBuild initiative of the Office of Economic and Workforce Development to comply with local and federal requirements regarding the provision of employment opportunities for local and low-income residents and small businesses during both the development and operation of the Development, including complying with the City’s First Source Hiring requirements.
- f. Sustainable Design – The Mayor’s Office of Housing and Community Development seeks to maximize the overall sustainability of financed projects. The selected development team will be required to pursue any funding that may become available to help pay for the cost of planning and implementing green building components.
- g. Minimum Insurance Requirements – see Exhibit A – Minimum Insurance Requirements.

## **B. ERRORS AND OMISSIONS IN RFQ**

Respondents are responsible for reviewing all portions of this RFQ. Respondents are to promptly notify MOHCD, in writing, if the respondent discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to MOHCD promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

### **C. ADDENDA TO RFQ**

MOHCD may modify the RFQ, prior to the response due date, by issuing written addenda. Addenda will be sent via email to the last known address of each person or firm listed with MOHCD as having received a copy of the RFQ for proposal purposes. MOHCD will make reasonable efforts to notify Respondents in a timely manner of modifications to the RFQ. Notwithstanding this provision, the Respondent shall be responsible for ensuring that its proposal reflects any and all addenda issued by MOHCD prior to the proposal due date regardless of when the proposal is submitted.

### **D. OBJECTIONS**

1. **RFQ Terms.** If any interested party objects to any provision or legal requirement in this RFQ, such party must provide written notice to MOHCD at mohcdrfq9@sfgov.org setting forth with specificity the grounds for the objection no later than seven (7) calendar days of the date for submitting qualifications (See Section III(A)). Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection to this RFQ.
2. **Notice of Non-Responsiveness.** A Respondent may object to a determination that its submission of qualifications is non-responsive to this RFQ by delivering written notice to MOHCD setting forth with specificity the grounds for the objection no later than seven (7) calendar days after the date of the written notice to Respondent of MOHCD's determination of non-responsiveness. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.
3. **Selection of Development Team for Exclusive Negotiations.** A Respondent may object to the selected Development Team and MOHCD Director's authorization to proceed with exclusive negotiations with such Development Team by delivering written notice to MOHCD setting forth with specificity the grounds for the objection by no later than seven (7) calendar days after the selected Development Team has been announced and made public by MOHCD. If a Respondent files a timely objection, the MOHCD Director will review such objection and respond in a timely manner, and MOHCD's authorization to enter into exclusive negotiations with the selected Development Team will not be binding until the MOHCD Director denies the objection. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.
4. **Delivery of Objections.** Respondents must submit objections in writing, addressed to the person identified in this RFQ, and delivered to the MOHCD via email at mohcdrfq9@sfgov.org by the dates specified above in order to be

considered. Written objections must be transmitted by email and that will provide written confirmation of the date MOHCD received the objections. If a written objection is delivered by US mail, the Respondent bears the risk of non-delivery by the deadlines specified above.

#### **E. CLAIMS AGAINST MOHCD**

No Respondent will obtain by its response to this RFQ, and separately by its response waives, any claim against MOHCD by reason of any or all of the following: any aspect of this RFQ, any part of the selection process, any informalities or defects in the selection process, the rejection of any or all proposals, the acceptance of any proposal, entering into exclusive negotiations, conditioning exclusive negotiations, terminating exclusive negotiations, approval or disapproval of plans or drawings, entering into any transaction documents, the failure to enter into a lease or lease disposition and development agreement, any statements, representations, acts, or omissions of MOHCD, the exercise of any discretion set forth in or concerning any of the above, and any other matters arising out of all or any of the above.

#### **F. SUNSHINE ORDINANCE**

In accordance with San Francisco Administrative Code Section 67.24(e), contractors' bids, responses to RFQ's and all other records of communications between the City and persons or firms seeking contracts shall 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 or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

#### **G. RESERVATIONS OF RIGHTS BY THE CITY**

1. The issuance of this RFQ and the selection of a developer pursuant to this RFQ are in no way a limitation of the discretion of any City board, commission, department, employee or official with respect to any review or approval required in connection with the proposed Development. The City's selection of a developer is in no way deemed to be the final approval of any Development proposed by the developer.
2. The information in this RFQ is provided solely for the convenience of respondents.

3. The City expressly reserves the right at any time to do waive or correct any defect or technical error in any response or procedure, as part of the RFQ or any subsequent negotiation process; reject any or all responses, without indicating the reasons for such rejection; cancel this RFQ at any time prior to award and reissue a Request for Qualifications; modify or suspend any and all aspects of the selection procedure, the scope of the proposed Development or the required responses, or the processes indicated in this RFQ; request that respondents clarify, supplement or modify the information submitted; extend deadlines for accepting responses, or request amendments to responses after expiration of deadlines; negotiate with any, all or none of the respondents to this RFQ; make a selection based directly on the proposals, or negotiate further with one or more of the respondents; during negotiation, expand or contract the scope of the proposed Development, or otherwise alter the Development concept in order to respond to new information, community or environmental issues; if at any time prior to the execution of binding agreements with the selected Development Team, MOHCD, in its sole discretion, determines that the selected Development Team will be unable to proceed with a timely and feasible Development in accordance with this RFQ or that the agreement will not serve in the City's best interest, MOHCD may terminate negotiations with the selected Development Team and begin negotiations with the next highest ranked Respondent; or determine that no Development will be pursued.
4. The issuance of this RFQ does not obligate the City to pay any costs whatsoever incurred by any respondent, including but not limited to costs incurred in connection with the preparation or presentation of responses or negotiations with the City. Developer teams responding to this RFQ do so at their own expense.
5. The issuance of this RFQ is only an invitation to submit qualifications and does not constitute an agreement by the City that any contract will actually be entered into by the City. This RFQ does not in any way limit the discretion of any City board, commission, employee or official with respect to any review or approval of any aspect of a proposed Development.
6. The City will not approve any ground lease for the Site that would allow for its development until there has been compliance with the California Environmental Quality Act (CEQA), and, as applicable, the National Environmental Protection Act (NEPA). If the proposed Development is found to cause significant adverse impacts, the City reserves absolute discretion to require additional environmental analysis, and to: (a) modify the Development to mitigate significant adverse environmental impacts; (b) select feasible alternatives which avoid significant adverse impacts of the proposed Development; or (c) reject or proceed with the Development as proposed, depending upon a finding of whether or not the economic and social benefits of the Development

outweigh otherwise unavoidable significant adverse impacts of the Development.

7. The City reserves the right to disqualify any respondent to this RFQ based on any real or apparent conflict of interest that is disclosed by the responses submitted or on the basis of other information available to the City. The City may exercise this right in its sole discretion.

## **Exhibit A: Minimum Insurance Requirements**

### **1. Developer, Contractors.**

(a) to the extent Developer or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Developer is conducting any activity on, alteration or improvement to the Family Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Developer's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Developer shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Developer's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Family Site coverage. This policy may be provided by the Developer's

contractor, provided that the policy must be “claims made” coverage and Developer must require Developer’s contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

## 2. Property Insurance.

Developer must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

### (a) Prior to construction:

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

### (b) During the course of construction:

(i) Builder’s risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Developer or its contractor, including coverage in transit and storage off-Family Site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; 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-Development 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 Developer as dual obligees or other completion security approved by the City in its sole discretion.

### (c) Upon completion of construction:



- (i) (i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Developer or its contractor. For rehabilitation/construction Developments that are unoccupied by residential or commercial tenants, Tenant must obtain Property Insurance by the date that the Development receives a Certificate of Substantial Completion.
- (ii) (ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Family Site that is used by Developer for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a Developer, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

### 3. Commercial Space.

Developer must require that all nonresidential tenants' liability insurance policies include Developer and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Development, Developer must require commercial tenants to maintain insurance as follows:

- (a) to the extent the tenant has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;
- (b) commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months; owners' and contractors' protective; broad form property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars (\$1,000,000), as appropriate;

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(f) full coverage plate glass insurance covering any plate glass on the commercial space.

#### 4. General Requirements.

(a) General and automobile liability policies of Developer, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Developer hereby waives all rights of subrogation against the City to the extent of any loss covered by Developer's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Developer's insurance by the City will not relieve or decrease the liability of Developer under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an

increase, unless Developer demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Developer.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

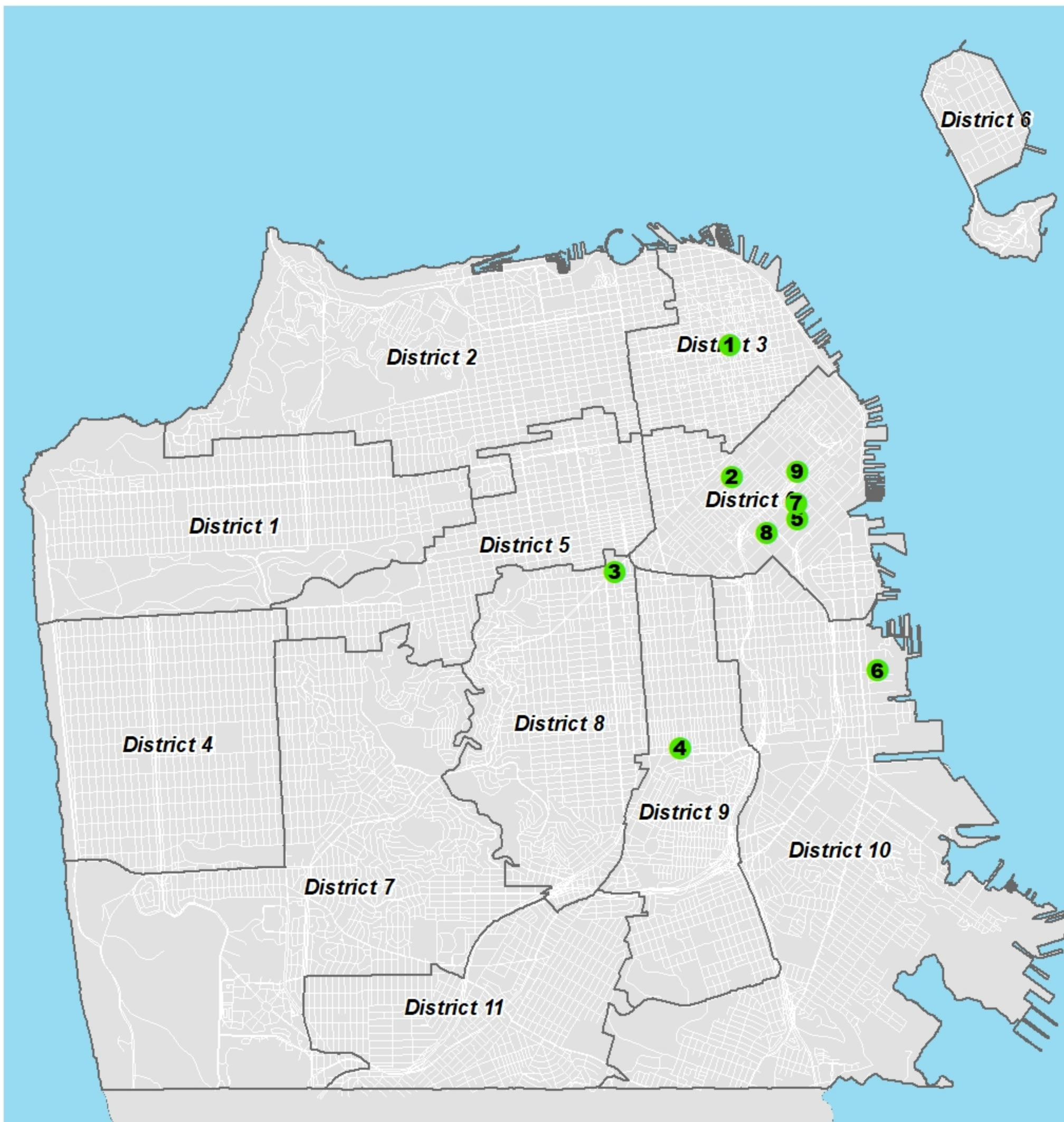
(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Developer must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

## **VII. APPENDICES**

### **Exhibit 1: Map of the Sites**

Please see attached.



## Housing Sites by Address

- 1** 772 Pacific Avenue
- 2** 967 Mission Street
- 3** 1939 Market Street
- 4** 1515 South Van Ness Avenue
- 5** 88 Bluxome
- 6** Unassigned (Parcel C2A)
- 7** 160 Freelon (598 Brannan)
- 8** 71 Boardman Place
- 9** 725 Harrison Street

 Supervisor District



**Attachment 1**  
**RFQ Submittal Checklist**

See attached spreadsheet.

## Multisite RFQ - Submittal Checklist

### Attachment 1

Project Sponsor:

Check Box	Tab #	Submittal Requirement	Attachments & Notes
		RFQ Registration Form	Attachment 2 - RFQ Registration Form
<input type="checkbox"/>	1)	Development Team Characteristics	Attachment 3 - Respondent Description
<input type="checkbox"/>	1.a	Certificate of Good Standing	
<input type="checkbox"/>	1.b	Certification of 501(c )(3) status (for nonprofit corporations)	
<input type="checkbox"/>	2)	Minimum Development Team Experience	
<input type="checkbox"/>	2.a	Minimum Development Experience	Attachment 4 - Qualifying Project Form
<input type="checkbox"/>	2.b	Minimum Ownership Experience	Attachment 4 - Qualifying Project Form
<input type="checkbox"/>	2.c	Minimum Property Management Experience	Attachment 4 - Qualifying Project Form
<input type="checkbox"/>	2.d	Minimum Service Provision Experience	Attachment 4 - Qualifying Project Form
<input type="checkbox"/>	3)	Minimum Developer and Owner Capacity Requirements	
<input type="checkbox"/>	3.a	Financial Capacity	Latest (two) 2 years of tax returns or audited financial statements w/ management letters
<input type="checkbox"/>			Attachment 5 - Financing Terms for Developer's Qualifying Project
<input type="checkbox"/>	3.b	Staffing Capacity	Description of Key Staff Experience – written narrative of no more than one page (in Times New Roman font, 12 font size, and 1-inch margins)
<input type="checkbox"/>			Attachment 6 - Projected Staffing Workload Form
<input type="checkbox"/>	3.c	Asset Management Capacity	Proposed Owner's recent Real Estate Owned (REO) schedule
<input type="checkbox"/>			Proposed Owner's Asset Management staffing noting job titles, FTEs, and status of each position
<input type="checkbox"/>			Proposed Owner's organizational chart
<input type="checkbox"/>			
<input type="checkbox"/>	3.d	Racial Equity Capacity	Meeting City's minimum compliance standards for Equal Employment Opportunities on Qualifying Project
	4)	Selection Criteria and Scoring	
<input type="checkbox"/>	4.a	Experience	Written narrative of no more than 5 pages (in Times New Roman font, 12 font size, 1-inch margins)
	i.	Developer	
	ii.	Owner	
	iii.	Property Manager	
	iv.	Services Provider	
	v.	Racial Equity Strategy	
<input type="checkbox"/>	4.b	Vision	Written narrative of no more than 7 pages (in Times New Roman font, 12 font size, 1-inch margins)
<input type="checkbox"/>	i.	Program Concept	
	ii.	Community Engagement Strategy	
	iii.	Services Delivery Strategy	
	iv.	Financing and Cost Containment Approach	
<input type="checkbox"/>	v.	Racial Equity Strategy	
<input type="checkbox"/>	5)	Evidence of Authority	Certified corporate resolution
<input type="checkbox"/>	6)	Signed Disclosure Form	Attachment 7 - Disclosures

**Attachment 2**  
**RFQ Registration Form**

See attached. Submit one per organization.



**MOHCD Multisite RFQ**

**Attachment 2**

**RFQ Registration Form**

Name of Organization

Address

Contact Person

Phone:

Email:

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**Attachment 3**  
**Respondent Description**

See attached document.

## ATTACHMENT 3: MOHCD MULTISITE RFQ RESPONDENT DESCRIPTION

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### A1. Developer Information

Name of Lead Developer:	
Director:	
Phone/email address:	
Primary Contact person:	
Phone/email address:	

### A2. Co-Developer Information (if applicable)

Name of Co-Developer:	
Director:	
Phone/email address:	
Primary Contact person:	
Phone/email address:	

### A3. Development Consultant Information (if applicable)

Name of Consultant:	
Phone/email address:	
Primary Contact person:	
Phone/email address:	

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### B. Owner Information (if different than above)

Name of Owner:	
Director:	
Phone/email address:	
Primary Contact person:	
Phone/email address:	

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### C. Property Manager Information

Name of Management Company:	
Address:	
Director:	
Phone/email address:	
Primary Contact Person:	
Phone/email address:	

---

**NOTE:** This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form must be submitted along with all other proposal materials as described in the RFQ.

MOHCD RFQ Version November 2020

**D1. Service Provider Information**

Name of Service Provider:	
Address:	
Director:	
Phone/email address:	
Primary Contact Person:	
Phone/email address:	

***NOTE: This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form must be submitted along with all other proposal materials as described in the RFQ.***

***MOHCD RFQ Version November 2020***

**Attachment 4**  
**Qualifying Project Form**

See attached document.

# MOHCD MULTISITE RFQ

## ATTACHMENT 4: QUALIFYING PROJECT FORM

<b>Experience Categories</b> (circle which applies to this form)	a. Development b. Ownership c. Property Management d. Service Provision																									
<b>Project Name and Address</b>																										
<b>Developer Name</b>																										
<b>Developer Role(s)</b> (i.e. managing partner, limited partner, consultant, etc; identify if joint-venture)																										
<b>Project Type</b> (i.e. new construction, rehabilitation)																										
<b>Construction Dates</b> (indicate construction start and completion year)																										
<b>Construction Type(s)</b> (indicate material, i.e. wood, steel, etc)																										
<b>Total Number of Residential Units</b>																										
<b>Unit Mix</b> (i.e. # of studios, 1-Bdrms, etc; <u>most restricted</u> Area Median Income breakdown, average affordability level)	<table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <th style="width: 15%;">Unit Type</th> <th style="width: 15%;">≤ 30% AMI</th> <th style="width: 15%;">40% AMI</th> <th style="width: 15%;">50% AMI</th> <th style="width: 15%;">60% AMI</th> </tr> <tr> <td>Studio</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>1-br</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2-br</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3-br</td> <td></td> <td></td> <td></td> <td></td> </tr> </table> <div style="margin-top: 10px;">             Total Number of Units: _____              Average Affordability Level: _____           </div>	Unit Type	≤ 30% AMI	40% AMI	50% AMI	60% AMI	Studio					1-br					2-br					3-br				
Unit Type	≤ 30% AMI	40% AMI	50% AMI	60% AMI																						
Studio																										
1-br																										
2-br																										
3-br																										
<b>Population Breakdown</b> (i.e. Family Rental, Senior Rental, Supportive Housing)																										
<b>Amenities Included</b> (i.e. community room, front desk, laundry, resident courtyards)																										
<b>Total Residential Square Footage</b>																										
<b>Total Square Footage of Commercial Area and Use, if any</b>																										
<b>Summary of Financing Sources</b> (indicate construction and																										

**NOTE:** This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form however must be submitted along with all other proposal materials as described in the RFQ.

## MOHCD MULTISITE RFQ

permanent financing sources and amounts)	
<b>Total Development Cost</b> (include per unit and per square foot cost)	
<b>Government Affordable Housing Program Involvement</b> (briefly describe)	
<b>Budget/Schedule Variance</b> (describe any variance from budget and schedule approved at construction start; explain amount, length of time, reasons and source of funds to cover additional costs)	

**NOTE:** This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form however must be submitted along with all other proposal materials as described in the RFQ.

**Attachment 5**  
**Financing Terms for Developer's Qualifying Project**

See attached document.



## ATTACHMENT 5: FINANCING TERMS FOR DEVELOPER'S QUALIFYING PROJECT (submitted under Minimum Developer Experience)

Project Name:		Construction Loan/L.P. Closing Date:	
Joint Venture (circle Y or N, if applicable): Y or N			
<b>CONSTRUCTION LENDER NAME</b>			
Loan Amount			
Construction Loan Rate			
Term			
<b>PERMANENT LENDER NAME</b>			
Loan Amount			
Permanent Rate			
Term/Amortization			
<b>Lender's Fees &amp; Requirements:</b>			
Debt Service Coverage Ratio (DSCR)			
Replacement Reserves (per unit annum)			
Operating Reserves			
Conversion Requirements			
Other Conditions			
<b>TAX CREDIT INVESTOR NAME</b>			
Total Investor Contribution and Amount/Credit			
<b>Capital Contribution Schedule (include timing &amp; amount):</b>			
Construction Closing			
During Construction (describe timing)			
At Conversion			
Other			
Final			
<b>Investor's Fees &amp; Requirements:</b>			
Guarantor(s)			
Asset Management Fee			
General Partner Management Fee			
Incentive Management Fee			
Replacement Reserves (per unit annum)			

**NOTE:** This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form however must be submitted as a hard copy along with all other proposal materials as outlined in the RFQ.

Operating Reserves	
Credit Adjuster and Timing Adjuster Requirements	
Other Conditions	

**NOTE:** This form will be posted along with the RFQ on the MOHCD website and can be downloaded and filled out electronically. The completed form however must be submitted as a hard copy along with all other proposal materials as outlined in the RFQ.

**Attachment 6**  
**Projected Staffing Workload Form**

See attached spreadsheet.

ATTACHMENT 6 - PROJECTED STAFFING WORKLOAD FORM

PROJECTED STAFFING WORKLOAD

Please complete this form for Developer and Co-developer Add additional lines and/or columns if necessary.  
List and identify all work assignments (existing or contemplated) associated with each staff person expected to work on the identified project from the beginning of predevelopment to start of construction.  
Estimate the percentage FTE each person is expected to dedicate to each Project Assignment or other task

DEVELOPER (Name):			Development Project Assignments (% FTE for each assignment) - must identify all projects				Other Assignments	
Staff person Name	Position Title	Total FTE %						
		0%						
		0%						
		0%						
		0%						

CO-DEVELOPER (Name):			Development Project Assignments (% FTE for each assignment) - must identify all projects				Other Assignments	
Staff person Name	Position Title	Total FTE %						
		0%						
		0%						
		0%						
		0%						

NOTE: This form will be available along with the RFQ on the MOHCD website and can be downloaded and filled out electronically.  
However, the completed form must be submitted along with all other proposal materials as outlined in the RFQ.

## **Attachment 7**

### **Disclosures**

**Instructions:** *Please respond completely to each question below. If the Respondent<sup>i</sup> is an individual, then the information relative to that individual should be disclosed. If the Respondent is a group or joint venture, then information relative to each member of the group or entities that comprise the joint venture should be disclosed. If the Respondent is a corporation, then the information relative to the corporation should be disclosed.*

1. Has Respondent ever defaulted on a loan or other financial obligation? This includes all affiliate corporations and partnerships in which Respondent is or was a general partner. If so, please describe the circumstances including dates and current status:
  
2. Are there any prior or pending legal proceedings, actions, convictions or judgments that have been filed against Respondent or its wholly owned subsidiaries, or any prior or pending arbitrations or mediations? If so, provide dates the complaints were filed and the present status of the litigation or the status of the arbitrations or mediations:
  
3. Are there any prior or pending administrative complaints/hearings against or any debarment or suspensions of or other administrative determinations by any federal, state or local government entity relating to Respondent, against any of Respondent's affiliated corporations or partnerships in which Respondent is a general partner, or other business entity? If so, please describe the circumstances including dates, agency or body conducting the investigation or inquiry and the current status:
  
4. Has Respondent or its wholly owned subsidiaries ever filed for bankruptcy? Please include dates and jurisdiction of filing, the reason, and current status:
  
5. Describe any business, property, gifts, loans, investments or other financial relationships Respondent, or its individual principals, corporation, LLC, LLP, affiliated corporations or partnerships in which Respondent is a general partner, may have with any senior staff of the Mayor's Office of Housing and Community Development (MOHCD) or any member of the Citywide Affordable Housing Loan

Committee or his/her immediate family which are considered a financial interest as defined by Section 87103 of the Fair Political Practices Act.<sup>ii</sup>

Respondent hereby certifies under penalty of perjury under the laws of the State of California that all information provided in this Disclosure questionnaire is true and correct.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

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<sup>ii</sup> For the purposes of this RFP, the term “Respondent” shall mean the respondent to this RFP regardless of legal form. Thus Respondent applies to individuals, sole proprietorships, joint ventures, unincorporated associations, partnerships, LLCs, LLPs, corporations (whether for profit, nonprofit, California or out of state) and any other entity legally entitled to do business in the State of California.

<sup>ii</sup> In summary Government Code Section 87100 requires any public officials participating in making decisions to refrain from using their official position to influence a governmental decision in which they know or has reason to know they have a financial interest. Section 87103 defines a financial interest as one that has a material, financial effect on the official or a member of their immediate family as follows: business interest – over \$2,000; real property interest – over \$2,000; other source of income within 12 months before the decision – over \$500; gift or intermediary for donor of gift within 12 months - \$250; business entity in which the official is a director, officer, partner, trustee, employee or holds a position of management. See Government Code Section 87103 for the complete definition.



## GENERAL PLAN REFERRAL

February 6, 2023

**Case No.:** 2023-000990GPR  
**Block/Lot No.:** 3777/052  
**Project Sponsor:** Mayor's Office of Housing and Community Development  
**Applicant:** Claudia J. Gorham.  
City and County of San Francisco Real Estate Division  
25 Van Ness Ave, Ste 400, San Francisco California 94102  
[Claudia.Gorham@sfgov.org](mailto:Claudia.Gorham@sfgov.org)  
(415) 701-5500  
**Staff Contact:** Amnon Ben-Pazi – (628) 652-7428  
[Amnon.Ben-Pazi@sfgov.org](mailto:Amnon.Ben-Pazi@sfgov.org)

**Recommended By:**   
AnMarie Rodgers, Director of Citywide Policy for  
Rich Hillis, Director of Planning

**Recommendation:** The project, on balance, is **in conformity** with the General Plan.

### Project Description

The City and County of San Francisco, acting through the City's Real Estate Division, proposes to enter into a Purchase and Sale Agreement (PSA) for 160 Freelon Street, a portion of Key Development Site 5 of the Central SoMa Area Plan, to facilitate development of affordable housing.

On June 6, 2019, pursuant to Planning Commission Motion No. 2012.0640B/ENX, the San Francisco Planning Commission approved a multi-phase mixed use development at Key Development Site 5 (Principal Project). The San Francisco Planning Code requires commercial projects to comply with certain housing requirements set forth in the Jobs-Housing Linkage Program to create affordable housing in San Francisco (Affordability Requirement). Development projects within the Central SoMa Special Use District may satisfy all or a portion of the Affordability Requirements by dedication of land to the City for the purpose of constructing affordable housing. The owner of Key Development Site 5 (Owner) desires to satisfy a portion of the Affordability

Requirement for the Principal Project through a land dedication pursuant to Planning Code Section 249.78 (e)(2)(B) (Land Dedication Option).

Owner and City are entering into a PSA for \$1, to facilitate satisfaction of the Affordability Requirement for the Principal Project under the Land Dedication Option through a transfer to the City of the Property. The PSA and subsequent land transfer documents will be presented to the Board of Supervisors for approval in February 2023.

The Mayor's Office of Housing and Community Development (MOHCD) has identified a Project Sponsor who intends to construct a nine (9) story multi-family residential building with 85 affordable housing units that will each have a full kitchen and bathroom. There will be 15 studios, 24 one-bedrooms, 22 two-bedrooms, 23 three-bedrooms, and 1 managers unit. The building will also include resident support and management areas at the ground floor including offices, a community room, children's playground, and other support areas.

## Environmental Review

The project is considered a ministerial approval and is not subject to CEQA (pursuant to Assembly Bill 2162).

## General Plan Compliance and Basis for Recommendation

As described below, the proposed Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

### CENTRAL SOMA AREA PLAN

#### POLICY 2.3.2

Require contribution to affordable housing from commercial uses.

#### OBJECTIVE 8.5

**ENSURE THAT LARGE DEVELOPMENT SITES ARE CAREFULLY DESIGNED TO MAXIMIZE PUBLIC BENEFIT.**

*The proposed PSA would allow the Principal Project to contribute to the City's supply of affordable housing. The Principal Project includes commercial buildings, a park, pedestrian alleys and the affordable housing site at 160 Freelon Street. These have been carefully designed to maximize public benefits including affordable housing, PDR space, recreation, and publicly accessible circulation through the large site.*

### HOUSING ELEMENT



**GOAL 4**

PROVIDE SUFFICIENT HOUSING FOR EXISTING RESIDENTS AND FUTURE GENERATIONS FOR A CITY WITH DIVERSE CULTURES, FAMILY STRUCTURES, AND ABILITIES.

**OBJECTIVE 4A**

SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.

**POLICY 35**

Require new commercial developments and large employers, hospitals, and educational institutions to help meet housing demand generated by anticipated job growth to maintain an appropriate jobs-housing fit, and address housing needs of students.

**Action 1.2.3**

Prioritize land dedication, donation, or purchase of sites as a major strategy for securing affordable housing, including social housing and shared equity cooperatives, through partnerships with religious institutions, other philanthropic or private property owners, and non-profit developers, including ownership models referenced under Action 1.6.1.

*The proposed Project would facilitate an affordable housing development via land dedication by a new commercial development. The proposed affordable housing development would be accessible and provide permanently affordable studios, one-bedroom, two-bedroom and three-bedroom units, a community room, children's playground and other resident support areas to meet the needs of residents with diverse family structures and abilities.*

**Planning Code Section 101 Findings**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Project would facilitate new residential units in SoMa. New residents could patronize and thus enhance local neighborhood-serving retail uses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Project would facilitate new affordable housing in SoMa. conserving and protecting the neighborhood's character as a home for San Franciscans of diverse incomes and cultures.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Project would facilitate a new affordable housing project, enhancing the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Project would have no effect on commuter traffic.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Project would facilitate new affordable housing, maintaining the diverse economic base of the neighborhood.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Project would facilitate a new affordable housing project which would comply with all safety codes.*

7. That the landmarks and historic buildings be preserved;

*The proposed Project site is vacant land which does not include any landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Project is part of the Principal Project, which includes a new park. The affordable housing project that would be facilitated by the Project would be located to the north of the new park, maximizing the new park's access to sunlight.*

**Recommendation: The project, on balance, is in conformity with the General Plan.**



## NOTICE OF FINAL APPROVAL OF AN AB-2162 PROJECT

*Date:* **February 9, 2023**  
*BPA No.:* **202209283327**  
*Planning Record No.* **2022-008873PRJ**  
*Project Address:* **160 Freelon Street (639 Bryant Street)**  
*Zoning:* **Central SoMa Mixed-Use Office (CMUO)**  
**Central SOMa Special Use District**  
**50-X Height and Bulk District**  
*Block/Lot:* **3777/052**  
*Project Sponsor:* **Ann Silverberg**  
**160 Freelon Housing Partners, L.P.**  
**44 Montgomery Street, Suite 1300**  
**San Francisco, CA 94104**  
*Staff Contact:* **Claire Feeney, Senior Planner, [claire.feeney@sfgov.org](mailto:claire.feeney@sfgov.org), 628-652-7313**

### Project Description

This project would construct a nine (9) story multi-family residential building with 85 affordable housing units that will each have a full kitchen and bathroom. There will be 15 studios, 24 one-bedrooms, 22 two-bedrooms, 23 three-bedrooms, and 1 manager's unit. The building will also include resident support and management areas at the ground floor including offices, a community room, children's playground, and other support areas.

### Background

California Assembly Bill 2162 (AB-2162) was signed by Governor Jerry Brown on September 26, 2018 and became effective January 1, 2019. AB-2162 applies statewide and requires the supportive housing be a use that is permitted by right in zones where multifamily and mixed-use development is permitted. AB-2162 amends Government Code Section 66583 and adds Code Section 65650 to require local entities to streamline the approval of housing projects containing a minimum amount of Supportive Housing by providing a ministerial approval process, removing the requirement for CEQA analysis and removing the requirement for Conditional Use Authorization or similar discretionary entitlements granted by the Planning Commission.

Ann Silverberg of 160 Freelon Housing Partners, L.P. submitted an AB-2162 Application for the project at 160 Freelon Street on September 20, 2022 and it was deemed accepted on October 4, 2022. On October 26, 2022,

department staff determined that the AB-2162 Application was complete, and that the proposed project was eligible for AB-2162.

## Project Approval

The Project Sponsor seeks to proceed pursuant to Planning Code Section 206.6, Individually Requested State Density Bonus Law, Government Code Section 65915 et seq (the State Law). Under the State Law, a housing development that includes affordable housing is entitled to additional density concessions and incentives, and waivers from development standards that might otherwise preclude the construction of the project. Since the Project Sponsor is providing 85 units of housing affordable to moderate-, lower-, and very low-income households, the project is entitled to a density bonus of 50%, up to four concessions/incentives that result in actual and identifiable cost reductions to provide for affordable housing costs, and unlimited waivers from development standards that might otherwise preclude the construction of the project. .

Since the Project Sponsor is providing 84 units of housing affordable to low- and very low-income households, and the project is located within one-half mile of a major transit stop, the project is not subject to any maximum control on density, and is entitled to receive up to four concessions/incentives and an additional three stories, or 33 feet of height and unlimited waivers. The project sponsor is requesting a concession/incentive from the development standards for Residential Usable Open Space (Sec. 135), Required Active Use (Sec. 145.1), and Better Roofs-Living Roof Alternative (Sec. 149). The project is located in a 50-X Height and Bulk District and proposes a maximum building height of 84 feet, excepting those features specified as exemptions to the height limit under Planning Code Section 260(b). The project has requested waivers from the development standards for Rear Yard (Sec. 134), Ground Floor Ceiling Height (Sec. 145.1), Required Off-Street Freight Loading (Sec. 152.1), Lot Coverage (Sec. 249.78), Height (Sec. 260), Narrow Street Controls (Sec. 261.1), and Apparent Mass Reduction (Sec. 270).

## Concessions and Incentives

The project has requested concessions/incentives from the development standards for Residential Usable Open Space (Sec. 135), Required Active Use (Sec. 145.1), and Better Roofs-Living Roof Alternative (Sec. 149). Pursuant to Planning Code Section 206.6, the Department shall grant the concession or incentive requested by the applicant unless the Department makes a written finding, based upon substantial evidence, of any of the following:

- A. The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

*Residential Usable Open Space. The requested incentive results in actual cost and identifiable cost reductions. The requested incentive allows the Project to increase residential density on site within bounds of the State Density Bonus Program and decrease costs so that the Project can financially move forward. Sec. 135 requires 80 square feet of open space for each of the 85 units, 6,800. The Project is providing 2,972 square feet of usable open space on the first and second floors. Per Sec. 426, the Open Space Fee in Eastern Neighborhoods Mixed-Use Districts, the Project would have to pay an \$890 fee for the remaining 3,828 square foot of open space. This*

*\$3,406,920 fee and would result in a direct identifiable and actual cost increase to the project that would impede development.*

***Required Active Use.** The requested incentive results in actual cost and identifiable cost reductions. The requested incentive from required active uses at the street frontages allows the project to locate tenant services and associated offices on the ground floor instead of an upper floor. Per Sec. 145.1, the Project is required to provide active uses for the first 25-feet of building depth on the ground floor and they must “have access directly to the public sidewalk or street.” This requirement conflicts with AB 2162 which requires social services for building occupants to be located on site, the project would not be eligible for critical financial assistance through AB 2162 if these residential service areas were not provided. In addition, the cost estimate to add the additional exterior door, stairs, ramp, hand rails, and ADA features would be approximately \$78,000.00, resulting in a direct identifiable and actual cost increase to the project that would impede development.*

***Better Roofs-Living Roof Alternative.** The requested incentive results in actual cost and identifiable cost reductions. The requested incentive from the Better Roofs-Living Roof Alternative allows for more mechanical equipment to be located on the rooftop rather than take up available occupiable square footage on the ground floor for residential and social services. Sec. 149 requires 50% of the roof to be planted green space, about 6,000 square feet. The Project is providing 3,092 square feet of living roof space. The cost estimate to add the 2,908 sf of living roof would be at least \$130,860.00, resulting in a direct identifiable and actual cost increase to the project that would impede development.*

- B. The concession or incentive would have a specific, adverse impact, as defined in paragraph upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

*The requested concessions/incentives from the development standards for Residential Usable Open Space, Required Active Use, and Better Roofs-Living Roof Alternative would not result in a specific, adverse impact to public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources.*

- C. The concession or incentive would be contrary to state or federal law.

*The requested concessions/incentives from the development standards for Residential Usable Open Space, Required Active Use, and Better Roofs-Living Roof Alternative would not be contrary to state or federal law.*

## Waivers

The Planning Department may waive any development standard that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by the State Density Bonus Law. The Department is not required to waive or reduce development standards if the waiver or

reduction would have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The Department is not required to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

The project has requested waivers from the development standards for Rear Yard (Sec. 134), Ground Floor Ceiling Height (Sec. 145.1), Required Off-Street Freight Loading (Sec. 152.1), Lot Coverage (Sec. 249.78), Height (Sec. 260), Narrow Street Controls (Sec. 261.1), and Apparent Mass Reduction (Sec. 270).

- D. The waiver is not required to permit the construction of the project meeting the density permitted or with the Concessions and Incentives permitted under Planning Code Section 206.6.

**Rear Yard.** *The requested waiver results in increased residential density. The requested waiver from rear yard setback allows the project to add an additional thirty-two (32) dwelling units, half of which are three-bedroom apartments, on the Eastern side of the property. The building is U-shaped to create a courtyard where the rear yard would otherwise be required in order to better align with existing neighborhood pattern of mid-block open space.*

**Ground Floor Ceiling Height.** *The requested waiver results in increased residential density. The requested waiver from ground floor ceiling height allows the project to add an additional eleven (11) dwelling units by allowing for shorter floor-to-floor heights. This waiver effectively allows for an additional floor of residential units to be included within the building envelope proposed by the project.*

**Required Off-Street Freight Loading.** *The requested waiver from off-street freight loading allows the project to add at least one (1) dwelling unit. Site constraints including the street frontages of the lot and the open space and circulation designs for the larger 639 Bryant Street development (2012.0640ENX) make an off-street loading space that meets the dimensional and locational standards of Planning Code Sections 154 and 155 infeasible without requiring relocation of tenant services or mechanical spaces to one of the residential floors.*

**Lot Coverage.** *The requested waiver results in increased residential density. The requested waiver from lot coverage allows the project to add an additional thirty-two (32) dwelling units. The project would be limited to utilizing only 80% of the property, losing approximately 2,500 square feet of space per floor. Across all nine floors the project would cumulatively lose the ability to develop approximately 23,500 square feet of built space.*

**Height.** *The requested waiver results in increased residential density. The requested waiver from height allows the project to add an additional forty-four (44) dwelling units by allowing four stories over the height limit.*

**Narrow Street Controls.** *The requested waiver results in increased residential density. The requested waiver from narrow street controls allows the project to add an additional fifteen (15) dwelling units along the Freelon Street frontage. The required setbacks to meet the sun access plane would result in a substantial loss of buildable area above the third floor.*

***Apparent Mass Reduction.** The requested waivers result in increased residential density. The requested waiver from apparent mass reduction allows the project to add an additional fifteen (15) dwelling units. The project would need to decrease mass and minimize the building façade along Freelon Street, which qualifies as a narrow street, by 50% for floors five through nine.*

- E. The waiver would have a specific, adverse impact, as defined in paragraph upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

*The requested waivers from the development standards for Rear Yard (Sec. 134), Ground Floor Ceiling Height (Sec. 145.1), Required Off-Street Freight Loading (Sec. 152.1), Lot Coverage (Sec. 249.78), Height (Sec. 260), Narrow Street Controls (Sec. 261.1), and Apparent Mass Reduction (Sec. 270) would not result in a specific, adverse impact to public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources.*

- F. The waiver would be contrary to state or federal law.

*The requested waivers from the development standards for Rear Yard (Sec. 134), Ground Floor Ceiling Height (Sec. 145.1), Required Off-Street Freight Loading (Sec. 152.1), Lot Coverage (Sec. 249.78), Height (Sec. 260), Narrow Street Controls (Sec. 261.1), and Apparent Mass Reduction (Sec. 270) would not be contrary to state or federal law.*

The Department has determined that the project meets all the objective standards of the Planning Code and has completed design review of the project. The project has been approved in accordance with the provisions of AB-2162, as recorded in Building Permit Application No.202209283327.



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 250461

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Jennifer Collins	415-244-3243
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
MYR Mayo's Office of Housing & Comm Dev	jennifer.m.collins@sfgov.org



5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> 160 Freelon Housing Partners, L.P.	<b>TELEPHONE NUMBER</b> (925) 876-6348
<b>STREET ADDRESS (including City, State and Zip Code)</b> 18201 Von Karman Ave, Ste 900, Irvine, CA 92612	<b>EMAIL</b> ssheaff@related.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 250461
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$22,577,900		
<b>NATURE OF THE CONTRACT (Please describe)</b> This contract is for financing 100% affordable housing for an 85 unit building located in the SOMA neighborhood at 160 Freelon Street.		

7. COMMENTS
160 Freelon Housing Partners, L.P. consists of San Francisco Housing Development Corporation and Related California Affordable entities.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

# 9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Witte	William	CEO
2	Silverberg	Ann	CEO
3	Cardone	Frank	Other Principal Officer
4	Sobel	David	CEO
5	Robinson	Lena	Board of Directors
6	Wong	Daniel	Board of Directors
7	Golvin	Ben	Board of Directors
8	McGill	Antoinette	Board of Directors
9	Turner	Chuck	Board of Directors
10	walker	Eddie	Board of Directors
11	Ramirez	Josie	Board of Directors
12	Eskildsen	Jennifer	Board of Directors
13	Mkondiwa	Cecilia	Board of Directors
14	Jeng	Melissa	Board of Directors
15	Zha	Fanny	Board of Directors
16	Talley-Gage	April	Board of Directors
17	Green	Howard	COO
18	Sherman	Steve	CFO
19			

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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

### 10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b>  BOS Clerk of the Board	<b>DATE SIGNED</b>
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## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 250461

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

##### TYPE OF FILING

Original

##### DATE OF ORIGINAL FILING (for amendment only)

##### AMENDMENT DESCRIPTION – Explain reason for amendment

#### 2. CITY ELECTIVE OFFICE OR BOARD

##### OFFICE OR BOARD

Board of Supervisors

##### NAME OF CITY ELECTIVE OFFICER

Members

#### 3. FILER'S CONTACT

##### NAME OF FILER'S CONTACT

Angela Calvillo

##### TELEPHONE NUMBER

415-554-5184

##### FULL DEPARTMENT NAME

Office of the Clerk of the Board

##### EMAIL

Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

##### NAME OF DEPARTMENTAL CONTACT

Jennifer Collins

##### DEPARTMENT CONTACT TELEPHONE NUMBER

415-244-3243

##### FULL DEPARTMENT NAME

MYR Mayor's Office of Housing and Comm Dev

##### DEPARTMENT CONTACT EMAIL

jennifer.m.collins@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> 160 Freelon Housing Partners, L.P.	<b>TELEPHONE NUMBER</b> 925-876-6348
<b>STREET ADDRESS (including City, State and Zip Code)</b> 18201 Von Karman Ave, Ste 900, Irvine, CA	<b>EMAIL</b> ssheaff@related.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 250461
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$15,000 annually		
<b>NATURE OF THE CONTRACT (Please describe)</b> 75 Year Ground Lease (\$15,000 per year plus residual receipts) by the City and County of San Francisco, through SF MOHCD, to 160 Freelon Housing Partners, L.P., to allow the development of 84 100% affordable housing units plus 1 manager unit at 160 Freelon.		

7. COMMENTS
160 Freelon Housing Partners, L.P. consists of San Francisco Housing Development Corporation and Related California Affordable entities.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
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### 10. VERIFICATION

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**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b>	<b>DATE SIGNED</b>
BOS Clerk of the Board	



TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Adam Thongsavat, Liaison to the Board of Supervisors  
RE: [Ground Lease, Easement Agreements, and Amended and Restated Loan Agreement - 160  
Freelon Housing Partners, L.P. - 160 Freelon Street - 100% Affordable Housing - \$15,000 Annual  
Base Rent - Loan Not to Exceed \$22,577,900]  
DATE: April 29, 2025

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Resolution 1) approving and authorizing the Director of Property and the Director of the Mayor's Office of Housing and Community Development ("MOHCD") to enter into a Ground Lease for real property owned by the City located at 160 Freelon Street ("Property") with 160 Freelon Housing Partners, L.P. ("Developer") for a lease term of 75 years and one 24-year option to extend and an annual base rent of \$15,000 ("Ground Lease") in order to construct a 100% affordable, 84-unit multifamily rental housing development affordable to low-income households, plus one manager's unit, including 22 LOSP units reserved for formerly homeless households and 5 units for referrals from the City's Plus Housing List (the "Project"); 2) approving and authorizing an Amended and Restated Loan Agreement in an amount not to exceed \$22,577,900 for a minimum loan term of 57 years ("Loan Agreement") with Developer to finance the development and construction of the Project; 3) approving and authorizing easement agreements between the City, 598 Brannan Street Phase 1, L.L.C., and the Developer to benefit the Project and maintain compliance with the Building Code and Fire Code ("Easement Agreements"); 4) determining that the less than market rent payable under the Ground Lease will serve a public purpose by providing affordable housing for low-income households in need, in accordance with Section 23.30 of the Administrative Code; 5) adopting findings declaring that the Property is "exempt surplus land" pursuant to the California Surplus Lands Act; 6) adopting findings that the Project and proposed transactions are consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and 7) authorizing the Director of Property and/or the Director of MOHCD to execute the Ground Lease, Loan Agreement, and Easement Agreements, make certain modifications to such agreements, and take certain actions in furtherance of this Resolution, as defined herein.

Should you have any questions, please contact Adam Thongsavat at [adam.thongsavat@sfgov.org](mailto:adam.thongsavat@sfgov.org)