

GROUND LEASE

This ground lease (“Ground Lease” or “Lease”) is dated as of, [Month]_____ 2018, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “City” or “Landlord”), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (“MOHCD”), and 735 Davis Senior LP, a California limited partnership, as tenant (the “Tenant”).

RECITALS

A. The City is the fee owner of the land described in Attachment 1 attached hereto and the existing improvements located thereon ("Site"). The Site is held under MOHCD’s jurisdiction.

B. On September 16, 2016, the Citywide Affordable Housing Loan Committee approved MOHCD’s selection of BRIDGE Housing Corporation and John Stewart Company to develop the Site into 52 units of affordable housing, plus 1 manager’s unit for low- and moderate income persons, including 15 units set aside for homeless seniors (defined herein) and approximately 1,260 square feet of commercial space (the “Project”).

C. On _____, the San Francisco Board of Supervisors and the Mayor approved Resolution No. _____, authorizing the City to enter into a ground lease with the Tenant for the purpose of developing the Project.

D. On _____, the City and the Tenant entered into that certain Option to Lease Agreement pursuant to which City granted Tenant an option to ground lease the Site (the “Option”) that expires on June 30, 2019 with an extension option for one additional 12-month period.

E. The Tenant is now exercising its Option to enter this Ground Lease, pursuant to which City will lease the Site to Tenant to develop the Project. It is the Tenant's intent to serve the needs of the low income residents by providing affordable rents, for all income-restricted units.

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

NOW THEREFORE, in consideration of the mutual obligations of the parties hereto, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which the City and Tenant hereby mutually agree.

ARTICLE 1: DEFINITIONS

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

1.01 Affiliate means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person; (ii) any Person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is

directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and (iv) any relative or spouse of the specified Person.

1.02 Agreement Date means the date first set forth above.

1.03 Area Median Income (or “AMI”) means median income as published annually by MOHCD, derived from the Income Limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as “Unadjusted Median Income.”

1.04 Effective Date means the date the City records the Memorandum of Ground Lease against the Site, but in no event shall the date be prior to the approval of the Ground Lease by the City’s Board of Supervisors and the Mayor.

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

1.06 First Mortgage Lender means any lender and its successors, assigns and participants or other entity holding the first deed of trust on the Leasehold Estate.

1.07 General Partner means collectively 735 Davis Senior BRIDGE LLC and JSCo 735 Davis Senior LLC, each a California limited liability company, and its permitted successor(s) and assign(s).

1.08 Ground Lease means this Ground Lease of the Site to the Tenant from the City, as amended from time to time.

1.9 Improvements means all physical construction, including all structures, fixtures and other improvements, to be constructed or rehabilitated on the Site.

1.10 **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.

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

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

1.13 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, and any assignment of the rents, issues and profits from the Site, or any portion thereof, which constitutes a lien on the Leasehold Estate created by this Ground Lease and is approved in writing by the City.

1.14 **Lender** means any entity holding a Leasehold Mortgage.

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

1.16 **Low Income Household** means, for any period of the Term (or extended term), a tenant household with combined initial income that does not exceed the lesser of the following: (a) sixty percent (60%) of Area Median Income; or (b) sixty percent (60%) income level for the County of San Francisco as published by the California Tax Credit Allocation Committee (TCAC).

1.17 **LOSP** means an operating subsidy provided to Tenant by the City, the amount of which is sufficient to permit Tenant to operate the Project.

1.18 **LOSP Program** means the program administered by MOHCD that regulates the distribution of Local Operating Subsidy.

1.19 **Managing General Partner** means 735 Davis Senior BRIDGE LLC, a California limited liability company, and its permitted successor(s) and assign(s).

1.20 **Moderate Income Household** means, for any period of the Term (or extended term), a tenant household with combined initial income that does not exceed the lesser of the following: (a) sixty percent (70%) of Area Median Income; or (b) seventy percent (70%) income level for the County of San Francisco using the California Tax Credit Allocation Committee (TCAC) published materials or calculations.

1.21 **MOHCD** means the Mayor's Office of Housing and Community Development for the City.

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

1.23 **Partnership Agreement** means the Amended and Restated Agreement of Limited Partnership of the Tenant dated as of [Month] __, [Year], as amended from time to time.

1.24 **Permitted Limited Partner** means, collectively, [TBD].

1.25 **Person** means any individual or entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

1.26 **Premises** means the Site together with any Improvements thereon.

1.27 **Project** has the meaning set forth in Recital B.

1.28 Project Expenses means all charges incurred in the operation of the Project including but not limited to (a) lease payments, utilities, real estate and/or possessory interest taxes, assessments, and liability, fire and other hazard insurance premiums or other 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 Tenant who maintain, administer, operate or provide services or are otherwise employed in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest, principal or annual servicing fees, if any, on any construction or permanent financing secured by the Project, including but not limited to the following bond issuer fee in the amount of \$_____ and annual monitoring fee of \$_____, and asset management fee of \$_____ to the Managing General Partner increasing by ___% annually; (d) all other expenses actually incurred by Tenant to cover operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (e) credit adjustor payments to the Permitted Limited Partner, including interest; (f) annual Base Rent payments; (g) any extraordinary expenses as approved in advance by the City; (h) deposits to reserves accounts required to be established under the Loan Documents, this Agreement or required by other Lenders and the Permitted Limited Partner, (i) any approved supportive service or resident service fees.

1.29 Project Fees means (i) a combined annual asset management and partnership management fee in the amount of [_____], increasing by [_____] % annually, payable to the [Tenant's General Partner], (ii) an annual investor services fee in the amount of \$[_____],

payable to Tenant's Permitted Limited Partner, and (iii) deferred developer fees approved by the City.

1.24 Project Income means all revenue, income receipts, and other consideration actually received from the operation of leasing the Improvements and Project, including non-residential and/or commercial uses of the Site (unless otherwise agreed to by City). Project Income shall include but not be limited to: all rents, fees and charges paid by tenants or users of any portion of the Site, unless otherwise agreed to by the City; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding, if applicable; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

1.25 SFMOH Loan means [_____].

1.26 Site means the real property as more particularly described in the Site Legal Description, Attachment 1.

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

1.28 Surplus Cash means all Project Income in any given Lease Year remaining after payment of Project Expenses for such Lease Year and Project Fees for such Lease Year. The amount of Surplus Cash will be based on figures contained in audited financial statements. All

permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(g) of this Ground Lease.

1.29 Tenant means 735 Davis Senior LP, a California limited partnership, and its successors and assigns (or a Subsequent Owner, where appropriate).

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

ARTICLE 2: TERM

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

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

(c) **Notice of Extension.** Tenant shall have one (1) option to extend the term of this Ground Lease for a period of twenty-four (24) years from the Termination Date. Not later than one hundred eighty (180) days prior to the Termination Date, the Tenant may notify the City in writing that it wishes to exercise its option to extend the term of this Ground Lease (an “Extension Notice”). Upon Tenant’s exercise of this option, the Initial Term shall be extended

for twenty-four (24) years from the Termination Date for a total Ground Lease term not to exceed ninety-nine (99) years.

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

(e) Holding Over. Any holding over after expiration of the Term or, if applicable, extended term without the City's written consent will constitute a default by Tenant and entitle the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City elects to accept one or more payments of Annual Rent.

(f) Early Termination for Failure to Close Financing. Notwithstanding anything to the contrary contained herein, in the event that the close of escrow for all financing required to construct the Project does not occur by December 31, 2020 (the "Outside Effective Date"), the Term shall expire on the Outside Effective Date.

ARTICLE 3: FINANCING

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

ARTICLE 4: RENT

4.01 Annual Rent

(a) Tenant shall pay to the City _____(_____) (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 shall 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 shall be equal to ten percent (10%) of the appraised fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Tenant. Any such adjustment shall be made to the Residual Rent and not to the Base Rent.

(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 shall be set by mutual agreement of the parties; provided however that Annual Rent during the extended term shall 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 shall agree on a neutral third-party appraiser to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, after the neutral third party process, Tenant, in its sole discretion, may rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease.

4.02 Base Rent

(a) “Base Rent” means, in any given Lease Year, Fifteen Thousand Dollars (\$15,000) per annum; provided, however, that in the event that the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, (and after the expiration, without cure, of all cure periods granted to Lenders), to comply with the provisions of Section 9.02, Base Rent shall be increased

to the full amount of Annual Rent. Base Rent shall be due and payable in arrears on January 31st of each Lease Year; however, no Base Rent shall be due until the fourth anniversary of the Agreement Date. Additionally, in the event that a Subsequent Owner elects pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or any Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without compliance with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

(b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of Project Expenses in items (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 no fewer than sixty (60) days prior to the Base Rent due date along with supporting documentation for Tenant's position that it is unable to pay Base Rent from Project Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual shall be due and payable each year from and to the extent Surplus Cash is available to make such payments. Any Base Rent Accrual shall be due and payable upon the earlier of (i) sale of the Project (but not a refinancing or foreclosure of the Project); or (ii) termination of this Ground Lease (unless a new lease is entered into with a mortgagee pursuant to Section 26.09 below).

(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 shall 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 shall not apply to Base Rent Accrual that has been

previously approved by the City pursuant to 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 insure 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, (\$_____), subject to any periodic adjustments pursuant to Section 4.01(a). Residual Rent shall be due in arrears on May 15th following each Lease Year. Except as otherwise provided in Section 26.07(a), Residual Rent shall be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent shall not accrue. In the event that in any year Surplus Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to the City in writing by May 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to City any supporting documentation reasonably requested by City to allow City to verify the insufficiency.

4.04 Triple Net Lease

This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs, charges, taxes, impositions and other obligations related thereto accruing after the Agreement Date. If the City pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by City. Failure to timely pay the additional rent shall be an event of default.

ARTICLE 5: CITY COVENANTS

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

ARTICLE 6: TENANT COVENANTS

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

6.01 Limited Partnership Authority

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

6.02 Use of Site and Rents

During the Term of this Ground Lease, Tenant and its successors and assigns shall 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 shall devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground Lease.

6.02(b) Non-Discrimination

Tenant shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the

sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Improvements, or any part thereof, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Occupants, subtenants or vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or required by funding source. Tenant shall not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

6.02(c) Non-Discriminatory Advertising

All advertising (including signs) for sublease of the whole or any part of the Site shall include the legend “Equal Housing Opportunity” in type or lettering of easily legible size and design, or as required by applicable law.

6.02(d) Access for Disabled Persons

Comply with all applicable laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

6.02(e) Equal Opportunity Marketing Plan

Tenant shall submit a Fair Housing Marketing Plan to be approved by the City. Any Fair Housing Marketing Plan must follow the City’s marketing requirements for such plans.

6.02(f) Lead Based Paint

Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in

certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

6.02(g) Permitted Uses of Surplus Cash

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

- i. First to Base Rent Accrual payments, if any;
- ii. Second, to replenish the operating reserve account, if necessary, up to the amount required by Lenders;
- iii. Third, Two-thirds (2/3) of remaining Surplus Cash to the City, provided however, if the Project includes a deferred developer fee and Tenant is in compliance with the City Loan documents and all applicable MOHCD's policies, as set forth herein and in the City Loan documents, then fifty percent (50%) of remaining Surplus Cash 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) that the fifteenth (15th) Payment Date, or (ii) in which all deferred developer fees have been paid to Developer. The City's portion of Surplus Cash 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, remaining Surplus Cash shall be used by Tenant as set forth in the Partnership Agreement.

Notwithstanding the foregoing, Tenant and City agree that the foregoing distribution of Surplus Cash may be modified by amendment to this Ground Lease as required by the 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 shall be deemed beneficiary of the agreements and covenants provided in this Article 6 for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The City shall have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION

Forty-five (45) days after recordation of a NOC (as defined in Section 10.14) by the Tenant for the Improvements, Tenant will furnish to the City a list of the persons who are Occupants of the Improvements, the specific unit which each person occupies, the household income of the Occupants of each unit, the household size and the rent being charged to the

Occupants of each unit along with an income certification, in the form set forth in Attachment 6, for each Occupant. In addition, each Occupant must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the Occupant's income. If any state or federal agency requires an income certification for Occupants of the Improvements containing the above-referenced information, the City agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to the City regarding each Occupant of the Improvements not later than twenty (20) business days after such Occupant commences occupancy.

ARTICLE 8: CONDITION OF SITE - "AS IS"

Neither the City, nor any employee, agent or representative of the City has made any representation, warranty or covenant, expressed or implied, with respect to the Site, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth explicitly in this Ground Lease, and the Tenant understands and agrees that the City is making no such representation, warranty or covenant, expressed or implied; it being expressly understood that the Site is being leased in an "AS IS" condition with respect to all matters.

ARTICLE 9: IMPROVEMENTS AND PERMITTED USES

9.01 Schedule of Performance

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

9.02 Permitted Uses and Occupancy Restrictions

The permitted uses of the Project are limited to 52 units of affordable rental housing for low- and moderate income seniors plus one manager's unit, (collectively, the "Residential Units"), common areas and approximately 1,260 square feet of commercial uses. Upon the completion of construction, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the Project shall be occupied or held vacant and available for rental by Low Income and Moderate Income Households. In addition, fifteen (15) of the Residential Units must be set aside for Homeless Seniors, per LOSP Program requirements; provided however that this requirement shall only apply so long as the Project receives LOSP subsidy funding or other funding for all such units designated as set aside for Homeless Seniors. Residential Units shall 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. "**Homeless Seniors**" means the referring agency's definition of homeless senior household for initial occupancy and upon available vacancies thereafter, as per the LOSP contract or other funding sources.

ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS

10.01 General Requirements and Rights of City

All construction documents, including but not limited to preliminary and final plans and specifications for the construction of the Improvements by Tenant (collectively the "Construction Documents") shall be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Ground Lease, 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 Federal, State and local laws and regulations. The architect shall 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 Effective Date.

10.02 City Approvals and Limitation Thereof

The Construction Documents must be approved by the City in the manner set forth below:

10.02(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 shall be subject to general architectural review and guidance by City as part of this review and approval process.

10.02(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 State or Federal law relating to construction standards or requirements. Tenant further understands and agrees that City is entering into this Ground Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Ground Lease shall limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Ground Lease, City is in no way modifying

or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable laws.

10.02(c) City Determination Final and Conclusive

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

10.03 Construction to be in Compliance with Construction Documents and Law

10.03(a) Compliance with City Approved Documents

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

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

The construction shall be in strict compliance with all applicable local, State and Federal laws and regulations. Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted hereunder will require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of City as Landlord under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or City's interest therein must first be approved by City in its sole discretion. Any

finer or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 21.01 (Tenant's Indemnity) 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 except to the extent such Claims are caused by the City's or an Indemnified Party's gross negligence or willful misconduct.

10.04 Approval of Construction Documents by City

Tenant shall submit and City shall approve or disapprove the Construction Documents referred to in this Ground Lease within the times established in the Schedule of Performance. Failure by City either to approve or disapprove within the times established in the Schedule of Performance shall entitle Tenant to a day for day extension of time for completion of any activities delayed as a direct result of City's failure to timely approve or disapprove the Construction Documents. [City hereby acknowledges that, as Landlord under this Ground Lease, as of the Effective Date, MOHCD has approved the Construction Documents for the Project.]

10.05 Disapproval of Construction Documents by City

If the City disapproves the Construction Documents in whole or in part as not being in compliance with this Ground Lease, Tenant shall submit new or corrected plans which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents shall continue to apply until the Construction Documents have been

approved by the City; provided, however, that in any event Tenant must submit satisfactory Construction Documents (i.e., approved by City) no later than the date specified therefor in the Schedule of Performance.

10.06 Reserved

10.07 Issuance of Building Permits

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

10.08 Performance and Payment Bonds

Prior to commencing Construction, Tenant shall provide to the City, at Tenant's sole cost and expense either: (1) one or more payment and performance bonds issued by a responsible surety company licensed to do business in the State and in form acceptable to the City from Tenant's contractors naming the City as co-obligee in a principal amount no less than one hundred ten percent (110%) of the estimated cost of the Initial Improvements; or (2) an alternative security mechanism in form, substance and amount satisfactory to the MOHCD and approved by the City's Risk Manager in writing in his or her sole discretion to ensure completion of such Improvements and to protect the City against any liability for mechanics' and materialmen's liens, and stop notices (such as a personal completion guaranty, a letter of credit in a form and issued by an acceptable institution or placement of funds in an escrow account with joint escrow instructions acceptable to both parties). Notwithstanding the foregoing, the parties agree that the following will constitute an acceptable alternative security mechanism with respect to the Improvements: (a) each of BRIDGE Housing Corporation and the John Stewart

Company provide to the City a binding completion guaranty for the Construction in a form acceptable to MOHCD and City's Risk Manager; (b) Tenant's general contractor demonstrates to the reasonable satisfaction of MOHCD and the City's Risk Manager that it has the financial capacity to complete the Construction project pursuant to the terms and conditions of the construction contract approved by MOHCD pursuant to the Loan Documents; and (c) Tenant's general contractor obtains commercially reasonable insurance, in coverages and amounts acceptable to MOHCD and the City's Risk Manager such as subguard insurance to insure performance of its subcontractors.

10.09 City Approval of Changes after Commencement of Construction

Tenant may not approve or permit any change to the plans and specifications approved by the City without the City's prior written consent. Tenant must provide adequate and complete backup documentation for analysis of the appropriateness the change order request to the City. Questions, comment or requests for additional information shall be issued by the City within five (5) business days of receipt of change order request. City shall promptly review and approve or disapprove change order requests within ten (10) 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) day period, the change order shall be deemed approved. If the City disapproves the change order request, it shall specify the reasons for the disapproval in writing.

10.10 Times for Construction

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

completed no later than the dates specified in the Schedule of Performance, subject to force majeure and Section 10.15 below, unless such dates are extended by the City.

10.11 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, shall be considered in breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall have notified the other party thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of performance of any of Tenant's obligations to be performed prior to the commencement of construction, nor shall the failure to timely perform pre-commencement of construction obligations extend or be construed

to extend Tenant's obligations to commence, prosecute and complete construction of the Improvements in the manner and at the times specified in this Ground Lease.

10.12 Reports

Commencing when construction of the Improvements commences and continuing until completion of construction of the Improvements, Tenant shall 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 such construction. The MOHCD Monthly Project Update required under the MOHCD Loan Documents shall satisfy this requirement.

10.13 Access to Site

Commencing as of the Effective Date, Tenant shall permit access to the Site to the City whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever City believes that emergency access is required.

10.14 Notice of Completion

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

10.15 Completion of Improvements by New Developer

In the event a Lender or a successor thereto forecloses, obtains a deed in lieu of foreclosure or otherwise realizes upon the Premises and undertakes construction of the Improvements (“New Developer”) (A) such New Developer shall not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the

Improvements but shall only be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the City, (B) such New Developer shall only be required to complete the Improvements in accordance with all applicable building codes and ordinances, and the approved Construction Documents with such changes that are mutually agreed upon by the City and the New Developer pursuant to Subsection (C) hereof; and (C) City and New Developer shall negotiate in good faith such reasonable amendments and reasonable modifications to Section 10 of this Ground Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 11: COMPLETION OF IMPROVEMENTS

11.01 Certificate of Completion – Issuance

Promptly after completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, and upon the request of Tenant, the City will furnish Tenant with an appropriate instrument so certifying (the “Certificate of Completion”). Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors and assigns, to construct the Improvements in accordance with City approved Construction Documents and the dates for the beginning and completion thereof; provided, however, that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that City issuance of any Certificate of Completion does not relieve Tenant or any other person or entity from any and all City requirements, regulatory approvals, or conditions relating to construction or

occupancy of the Improvements, which requirements or conditions must be complied with separately.

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

11.02 Certifications to be Recordable

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

11.03 Certification of Completion - Non-Issuance Reasons

If MOHCD shall refuse or fail to provide any certification in accordance with the provisions of Section 11.01, the City shall provide Tenant with a written statement, within fifteen (15) days after receipt by the City of the original written request by Tenant, indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Ground Lease or is otherwise in default

hereunder and what measures or acts will be necessary, in the opinion of the City, for Tenant to take or perform in order to obtain such certification.

ARTICLE 12: CHANGES TO THE IMPROVEMENTS

12.01 Post Completion Changes

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

12.02 Definition of Change

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

12.03 Enforcement

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

ARTICLE 13: TITLE TO IMPROVEMENTS

City acknowledges that fee title to the Improvements shall be vested solely in Tenant during the Term. It is the intent of the Parties that this Ground Lease and Memorandum of Lease shall create a constructive notice of severance of the Improvements from the Land without the necessity of a deed from Lessor to Lessee. City and Tenant hereby agree that fee title to the Improvements shall 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 shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to Tenant, and without the necessity of a deed from Tenant to the City. Notwithstanding the foregoing, if requested by City, upon expiration or sooner termination of this Ground Lease, Tenant shall execute, acknowledge, and deliver to the City a good and sufficient grant deed conveying to City Tenant's fee interest in the Improvements. Tenant shall 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

Except as otherwise expressly provided in this Ground Lease, Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s) or affiliates of Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other than leases to residential tenants and commercial tenants in the ordinary course of business, nor may it contract or agree to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. The City reserves the right to review and approve any commercial leases and commercial tenants for the Site. If Tenant subleases the commercial space in the Project (the "Commercial Space"), upon the election of Tenant, with prior written approval of the City which approval shall not be unreasonably withheld or delayed, the subtenant or subtenants shall assume the obligation to pay any portion of the Annual Rent that is attributable to or arising from the Commercial Space directly to Landlord, and no income will be distributed through the Tenant. The parties shall amend this Lease as necessary to effectuate the intent of this provision.

14.02 Assignment, Sublease or Other Conveyance by City

The parties acknowledge that any sale, assignment, transfer or conveyance of all or any part of the City's interest in the Site, 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 shall not be affected by any such sale, and Tenant shall attorn to any such purchaser or assignee. If Tenant subdivides the Commercial Space from the Residential Space, the City will not unreasonably withhold consent to a partial assignment of this Lease to an Affiliate of Tenant who would lease the Commercial Space (the

"Commercial Lessee"). The intent of the partial assignment would be to allow for the City to have two leases: (a) a lease for the Commercial Space with the Commercial Lessee and (b) a lease for the Residential Units and related improvements and appurtenances with Tenant. The parties shall amend this Lease as necessary to effectuate the intent of this provision.

ARTICLE 15: TAXES

Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all valid taxes, assessments and similar charges on the Site which become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the City. In the event of any such contest, Tenant shall protect, defend and indemnify the City against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The City shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that such information is in the City's possession or control or is otherwise available to the public. City hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from

taxes or assessments levied on the Site, the Improvements or on Tenant's interest therein.

Tenant shall have no obligation under this Section prior to the Effective Date, including but not limited to any taxes, assessments or other charges levied against the Site which are incurred prior to the Effective Date.

ARTICLE 16: UTILITIES

From and after the Effective Date, Tenant shall procure water and sewer service from the City and electricity, telephone, natural gas and any other utility service from the City or utility companies providing such services, and shall pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between the City and Tenant, Tenant shall be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. All electricity necessary for operations in the Premises shall 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 shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

ARTICLE 17: MAINTENANCE

Tenant, at all times during the term hereof, shall maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the City, including the exterior, interior, substructure and foundation of the Improvements and all fixtures, equipment

and landscaping from time to time located on the Site or any part thereof. The City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

ARTICLE 18: LIENS

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

ARTICLE 19: GENERAL REMEDIES

19.01 Application of Remedies

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

19.02 Notice and Cure Rights for Tenant and Permitted Limited Partner

(a) The City may not exercise its remedies under this Ground Lease for a default by the Tenant unless and until: (i) the City has given written notice of any such default, in accordance with the notice provisions of Article 38, to Tenant, Permitted Limited Partner, who have requested notice as set forth below, and (ii) such default has not been cured within sixty (60) days or such longer period as may be set forth herein, following the giving of such notice or, if such default cannot be cured within such 60-day period, such longer period as is reasonably necessary to cure such default, provided that such cure has been commenced within such 60-day period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot cure a default due to an automatic stay in Bankruptcy court because the General Partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

(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 such cure requires removal of the General Partner, so long as the Permitted Limited Partner is proceeding diligently to remove the General Partner in order to effect a cure of such default.

(c) Subject to the terms of the Partnership Agreement and unless otherwise provided for herein, any Person wishing to become a Permitted Limited Partner (other than any Permitted Limited Partner identified in Section 38 and/or its Affiliates) 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. Such Person will become a Permitted Limited Partner upon the expiration of the five-day period. A Person will not be afforded the protections of this section with respect to any default occurring prior to the time such Person becomes a Permitted Limited Partner.

19.03 Breach by City

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

19.04 Breach by Tenant

19.04(a) Default by Tenant

Subject to the notice and cure rights under Section 19.02, the following events each constitute a basis for the City to take action against Tenant:

- (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.02;
- (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease or otherwise with the approval of the City;
- (3) From and after the Effective Date, Tenant, or its successor in interest, shall fail to pay real estate taxes or assessments on the Premises or any part thereof prior to delinquency, or shall place thereon any encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to be made, or any material supplier's or mechanic's lien

or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged within the time period provided in Article 18; provided, however, that Tenant shall have the right to contest any tax or assessment pursuant to Article 15 and Article 18 and, upon the posting of an adequate bond or other security, to contest any such lien or encumbrance. In the event of any such contest, Tenant shall protect, indemnify and hold City harmless against all losses and damages, including reasonable attorneys' fees and costs resulting therefrom;

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

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

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

19.04(b) Notification and City Remedies

Upon the happening of any of the events described in Section 19.04(a) above, and prior to exercising any remedies, the City shall notify Tenant, the Permitted Limited Partner, 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 receipt of such notice to cure such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is

not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.02 and Article 26, the City thereafter shall be afforded all of its rights at law or in equity, including without limitation any or all of the following remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for damages; (3) seeking specific performance of this Ground Lease; or (4) in the case of default under Section 19.04(a)(1), 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, City may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6) above which remains uncured after the applicable cure period therefor.

ARTICLE 20: DAMAGE AND DESTRUCTION

20.01 Insured Casualty

From and after the Effective Date, if the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is

required or elects to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease shall, subject to any applicable rights of Lenders, be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by the City any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right to do so under this Section 20.01, or elects not to restore the Improvements, the insurance proceeds shall be divided in the order set forth in Section 20.03.

20.02 Uninsured Casualty

From and after the Effective Date, if (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender, other than the 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 shall notify the City promptly and not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Ground Lease pursuant to this Section 20.02, all insurance proceeds and damages payable by reason of the casualty shall be divided among 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 casualty, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition prior to such damage or destruction in accordance with the provisions of Section 20.01 and shall, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds.

20.03 Distribution of the Insurance Proceeds

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

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

(b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying property, and for the cost of any work or service required by any statute, law, ordinance, rule, regulation or order of any federal, state or local government, or any agency or official thereof, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

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

(d) The remainder to Tenant.

20.04 Clean Up of Housing Site

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

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

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

21.01 Damage to Person or Property - General Indemnification

City shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity or association on or about the Site, unless arising from any gross negligence or willful misconduct of the City or any of its commissioners, officers, agents or employees. Tenant shall 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 its tenancy, its or their use of the Site, 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 such 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 as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and 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 which 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 City and continues at all times thereafter. Notwithstanding the foregoing, this Article 21 shall not be deemed or construed to and shall not impose any obligation to indemnify and save harmless the Indemnified Parties from any claim, loss, damage, liability or expense of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by an Indemnified Party. Tenant's obligations under this Article shall survive the termination or expiration of this Ground Lease.

21.02 Hazardous Materials – Indemnification

(a) Tenant shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (a) violation of any Environmental Law, or b) any Tenant Environmental Condition (as defined below).

Notwithstanding the foregoing, this Section 21.02(a) shall not be deemed or construed to, and shall not impose an obligation on Tenant to indemnify and save harmless the Indemnified Parties from, any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence of any Indemnified Party.

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

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

(ii) "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Ground Lease.

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

(iv) "Tenant Environmental Condition" shall mean the Release or threatened Release of Hazardous Substance and any condition of pollution, contamination or Hazardous Substance related nuisance at, on, under or from the Site which occurs after the Effective Date

and is caused by Tenant's, or Tenant's employees, agents, affiliates or contractors, act or omission that (1) increases the quantity or concentration of Hazardous Substance in the affected area, (2) causes the increased migration of a plume of Hazardous Substance in soil or groundwater, (3) causes a Release of Hazardous Substance that had been contained until the act or omission, (4) requires investigation or remediation that would not have been required but for the act or omission other than mere discovery of such Hazardous Substance, or (5) otherwise disturbs, removes or generates Hazardous Substance in the course of Tenant's operations, maintenance, repair, improvements and changes under this Ground Lease.

ARTICLE 22: INSURANCE

22.01 Insurance

The Tenant shall maintain insurance meeting the requirements of this Article.

22.01(a) Insurance Requirements for Tenant

During the term of this Ground Lease, Tenant shall procure and maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any work hereunder by the Tenant, its agents, representatives, employees or subcontractors and the Tenant's use and occupancy of the Site and the Improvements.

22.01(b) Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (form CG 00 01 - "Occurrence") or other form approved by the City's Risk Manager.
- (2) Insurance Services Office Automobile Liability coverage, code 1 (form CA 00 01 - "Any Auto") or other form approved by the City's Risk Manager.

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

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

(5) 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.

(6) 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 shall maintain limits no less than:

(1) 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 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 Tenant is conducting any activity on, alteration or improvement to the Site with risk of explosion, collapse, or underground hazards.

(2) 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.

(3) 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.

(4) Professional Liability: Professional Liability insurance of no less than One

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

(5) 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.

(6) 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 shall 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.

(7) Property Insurance:

(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 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, 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 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, 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 Tenant 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 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 or commercial tenants, Tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion. (ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

22.01(d) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions in excess of \$25,000 must be declared to and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer shall reduce or eliminate such 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 shall 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 are to contain, or be endorsed to contain, the following provisions:

(1) 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 shall contain no special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents or employees. (Limits required may be achieved through the use of primary and excess liability policies.)

(2) Workers' Compensation and Property Insurance: The insured shall 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.

(3) Claims-made Coverage: Should any of the required insurance be provided under a claims-made form, Tenant shall 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, should occurrences during the contract term give rise to claims made after expiration of the Ground Lease, such claims shall be covered by such claims-made policies.

(4) All Coverage: Each insurance policy required by this Article shall:

(a) Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to City, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

(b) Contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(c) For any claims related to this Ground Lease, the Tenant's insurance coverage shall 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 shall be in excess of the Tenant's insurance and shall not contribute with it.

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

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

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

(g) 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 Tenant demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Tenant.

22.01(f) Acceptability of Insurers

Insurance is to be placed with insurers with 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 shall 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 shall include all subcontractors and consultants as additional insureds under its policies or shall furnish separate certificates and endorsements for each. Tenant shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Tenant as additional insureds. All coverage for subcontractors and consultants shall be subject to all of the requirements stated herein unless otherwise approved by the City's Risk Manager.

ARTICLE 23: COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01 Compliance with Legal Requirements

From and after the Effective Date, Tenant shall at its cost and expense, promptly comply with all applicable Laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, including without limitation the requirements of the fire department or other similar body now or hereafter constituted and with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, insofar as any thereof relates to or affects the condition, use or occupancy of the Site. In the event Tenant contests any of the foregoing, Tenant shall not be obligated to comply therewith to the extent that the application of the contested law, statute, ordinance, rule, regulation or requirement is stayed by the operation of law or administrative or judicial order and Tenant indemnifies the Indemnified Parties against all loss, cost, expense or damage 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 its construction of the Improvements on the Premises and development of the Project will require approval, authorization or permit by governmental agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning Administrator and the Department of Building Inspection. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any such 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 shall not be unreasonably withheld or delayed. Throughout the permit process for any regulatory approval, 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 the City and its commissioners, officers, agents or employees from and against any and all losses 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 gross negligence or willful misconduct of the City or any other Indemnified Party.

ARTICLE 24: ENTRY

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

(i) to inspect the work being performed by Tenant in developing the Project.

(ii) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Material Investigations);

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

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

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

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

(b) In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises and alter or remove any Improvements or Tenant’s personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for any damage or injury to any property, nor 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.

(c) 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 gross negligence or willful misconduct of the City or its agents. The City will be responsible for any losses resulting from its gross negligence or willful misconduct and will repair any resulting damage promptly.

(d) Tenant will not be entitled to any abatement in Annual Rent if the City exercises any rights reserved in this Section, subject to subsection (c) above.

(e) 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 hereunder.

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 shall not be unreasonably withheld, conditioned or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition, design, construction, renovation or reconstruction of the Project; refinancing of financing used to acquire, design, construction, renovation, reconstruct, or rehabilitate the Project; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, rehabilitate, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. The City, acting solely in its capacity as landlord under this Ground Lease and not in its capacity as a Project Lender, hereby acknowledges and accepts [TBD]_____ as a Lender, and consents to the Leasehold Mortgage associated with Lender's construction and permanent loan 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 such Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Ground Lease be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee the completion of the construction of the Improvements, except as provided in Section 26.06(ii), nothing in this Ground Lease shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements authorized under Section 9.02 and any reasonable modifications in plans proposed by any Holder or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion. Except as provided in Section 26.06(ii), 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 as provided above.

25.03 Failure of Holder to Complete Construction

In any case where six (6) months after assumption of obligations pursuant to Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City shall be afforded the rights against such Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; subject to any extensions of time granted pursuant to Section 10.15 of this Ground Lease.

25.04 Default by Tenant and City's Rights

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

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

25.04(b) Notice of Default to City

Tenant shall use its best efforts to require Lender to give the City prompt written notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also 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 shall bear all of the costs and expenses in connection with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26: PROTECTION OF LENDER

26.01 Notification to City

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this Article 26, each Lender shall 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 shall constitute City's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The City hereby acknowledges that [TBD]_____ is deemed to have given such written Notice as First Mortgage Lender.

26.02 Lender's Rights to Prevent Termination

Each Lender shall have the right, but not the obligation, at any time prior to termination of this Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent a termination of this Ground Lease to the same effect as if the same had been made, done and performed by Tenant instead of by Lender.

26.03 Lender's Rights When Tenant Defaults

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

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

(ii) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default shall be remedied or deemed remedied in accordance with Article 26.04 below.

All rights of the City to terminate this Ground Lease as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, the City having first given Lender written notice of such event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 26.03, and upon the Permitted Limited Partner having failed to proceed as permitted under Sections 19.02(b) or 26.06(iv). 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 Section 25.04 of this Ground Lease or (B) to 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 such defaults shall automatically be deemed cured and waived.

26.04 Default Which Cannot be Remedied by Lender

Any event of default under this Ground Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (i) within sixty (60) days after receiving notice from the City setting forth the nature of such event of default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to completion, (iii) Lender shall have fully cured any event of default arising from failure to pay or perform any monetary obligation in accordance with Section 26.03, and (iv) after gaining possession of the Improvements, Lender shall diligently proceed to perform all other obligations of Tenant as and when the same are due in accordance with the terms of this Ground Lease.

26.05 Court Action Preventing Lender's Action

If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the City agrees to 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

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

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

(ii) each Subsequent Owner shall take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section 26.07 below, the Subsequent Owner may operate and maintain the 81 residential units without any limitations on the rents charged or the income of the occupants thereof, subject to any applicable regulatory agreement, restrictive covenant or other encumbrance;

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

(iv) any Permitted Limited Partner of Tenant shall have the same rights as any Lender under Sections 26.02, 26.03, and 26.06(iii), and any reference to a Lender in said section shall be deemed to include such Permitted Limited Partner; provided, however, that the rights of such Permitted Limited Partner shall be 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 shall be set as follows:

(a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the City, and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner.

Subsequent to 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 9.02, 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 such restrictions. All deferred Annual Rent shall accrue, with simple interest at six percent (6%) per annum until paid.

(b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner,

if any, and the Base Rent shall be increased to the new fair market rent pursuant to this Section 26.07(b) and the provisions of Section 6.02(g) shall be suspended; provided, however, that the City shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Low Income Households as the City and the Subsequent Owner shall agree. The fair market rental value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the 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. Provided, however, that after the neutral third party process, the Lender, in its sole discretion may rescind its written notification of intent to not comply with Section 9.02 of this Ground Lease.

26.08 Permitted Uses After Lender Foreclosure

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

26.09 Preservation of Leasehold Benefits

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

(a) That subject to Section 19.04(b) the City shall 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 thereunder, without the prior written consent of the Lender or Permitted Limited Partner (which will not be unreasonably withheld or delayed);

(b) That the City shall not enforce against a Lender any waiver or election made by the Tenant under this Ground Lease which 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);

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

(d) That the City shall 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 therein as an interested party.

26.10 No Merger

The Leasehold Estate in the Site pursuant to this Ground Lease shall not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

26.11 City Bankruptcy

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

(b) The City acknowledges that (i) the Tenant seeks to construct improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the City waives its right to sell the City's fee interest in the Site pursuant to section 363(f) of the Bankruptcy Code, free and clear of the leasehold interest under this Ground Lease.

(c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as follows: (i) the Tenant shall be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant; and (iii) in connection with any such sale, the Tenant shall not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received and paid over to each Lender outstanding balance of the obligations under its respective loan.

(d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in or consent to any bankruptcy, insolvency, receivership or court proceeding concerning the leasehold 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 Site or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 27, subject to the rights of any Lender.

27.02 Total Taking

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

27.03 Partial Taking

If any portion of the Site is taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may, with Lender's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to the City within thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify the City of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified the City of its election to terminate; except that this Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall continue in full force and effect.

27.04 Effect on Rent

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

27.05 Restoration of Improvements

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

27.06 Award and Distribution

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

- (a) First, to pay the balance due on any outstanding Leasehold Mortgages and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals and lease residuals, to the extent provided therein; and
- (b) Second, to the Tenant in an amount equal to the fair market value of Tenant's interest in the Improvements and its leasehold interest in the Site (including, but not limited to, the value of Tenant's interest in all subleases to occupants of the Site), such value to be determined as it existed immediately preceding the earliest taking or threat of taking of the Site; and;
- (c) Third, to the Landlord.

27.07 Payment to Lenders

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

ARTICLE 28: ESTOPPEL CERTIFICATE

The City or Tenant, as the case may be, shall 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 the same, 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 hereof on the part of Tenant or the City to be performed or observed and whether any notice has been given to Tenant or the City of any default which has not been cured and, if so, specifying the same.

ARTICLE 29: QUITCLAIM

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

ARTICLE 30: EQUAL OPPORTUNITY

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

ARTICLE 31: CITY PREFERENCE PROGRAMS

To the extent permitted by applicable federal and state law, Tenant agrees to comply with the requirements of the City's current housing preference programs, as amended from time to time; provided, however, that such requirements shall apply only to the extent permitted by the requirements of non-City funding approved by the City for the Project.

ARTICLE 32: LABOR STANDARDS PROVISIONS

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

ARTICLE 33: CONFLICT OF INTEREST

No commissioner, official, or employee of the City shall have any personal or financial interest, direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or employee participate in any decision relating to this Ground Lease which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 34: NO PERSONAL LIABILITY

No commissioner, official, or employee of the City shall 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 which may become due to Tenant or its successors or on any obligations under the terms of this Ground Lease.

ARTICLE 35: ENERGY CONSERVATION

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

ARTICLE 36: WAIVER

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

ARTICLE 37: TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as the City may deem necessary, there shall be made available to the City and its authorized representatives for examination all records, reports, data and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained herein shall 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 furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the Premises.

ARTICLE 38: NOTICES AND CONSENTS

All notices, demands, consents or approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of [HUD,]the Tenant[,] and the City as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed

if to Tenant at: 735 Davis Senior, LP
600 California Street, Suite 900
San Francisco, CA 94108

With a copy to the
Permitted Limited
Partner at: [TBD]

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

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Article 38. Any notice given pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

ARTICLE 39: HEADINGS

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

ARTICLE 40: SUCCESSORS AND ASSIGNS

This Ground Lease shall be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground Lease, it shall mean and include their respective successors and assigns; provided, however, that the City shall have no obligation under this Ground Lease to, nor shall any benefit of this Ground Lease accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Ground Lease. At such time as City sells the Site to any third party, City shall require such third party to assume all of the City's obligations hereunder 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 shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Ground Lease and all such other provisions shall remain in full force and effect.

ARTICLE 43: APPLICABLE LAW; NO THIRD PARTY BENEFICIARY

This Ground Lease shall be governed by and construed pursuant to 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, to the extent specifically provided under this Ground Lease, the Permitted Limited Partner and any Lender hereunder. Other than as set forth in the preceding sentence, this Ground Lease and does not create rights in any other third party.

ARTICLE 44: ATTORNEYS' FEES

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

ARTICLE 45: EXECUTION IN COUNTERPARTS

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

ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE

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

ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, without the prior written consent of the City, in its reasonable discretion, other than: (a) leases, subleases or occupancy agreements to Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion, (c) transfers from Tenant to a limited partnership or limited liability company formed for the tax credit syndication

of the Project, where Tenant or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity; (d) transfers of the general partner interest in Tenant to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partner interest in Tenant pursuant to the tax credit syndication of the Project and/or as otherwise permitted by Tenant's Partnership Agreement; or (f) any transfer by foreclosure or deed in lieu of foreclosure; (g) if the Tenant is a Lender (or a Lender's affiliate), transfers of ownership interests in such Lender (or its affiliate); or (h) the grant or exercise of an option agreement between Tenant and the General Partner, BRIDGE or JSCO or any of their Affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by the City. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute 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 Ground Lease.

ARTICLE 48: CITY PROVISIONS

48.1 Non-Discrimination

(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.

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

(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 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 Lease. As a condition to this Ground Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form

CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Commission.

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

48.2 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.

48.3 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 which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Ground Lease.

48.4 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.

48.5 Tropical Hardwood/Virgin Redwood Ban. Pursuant to 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 shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products.

48.6 Tobacco Product Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products may be allowed on the Premises. The foregoing prohibition will include 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.

48.7 Pesticide Ordinance. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("IPM") plan that (A) 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, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) 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 shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing

herein shall 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.

48.8 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.

48.9 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.

48.10 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code

Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground Lease by reference and made a part of this Ground Lease as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to them in Chapter 12Q. Notwithstanding this requirement, City recognizes that the residential housing component of the Improvements is not subject to the HCAO.

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

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

(c) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the City's written notice of a breach of this Lease for violating the HCAO or, if the breach cannot reasonably be cured within the 30-day period, Tenant fails to commence efforts to cure within the 30-day period, or thereafter fails diligently to pursue the cure to completion, the City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any sublease entered into by Tenant for commercial space in the Project must require the subtenant to comply with the requirements of the HCAO and must contain

contractual obligations substantially the same as those set forth in this Section. Tenant must notify the City's Purchasing Department when Tenant enters into a sublease and must certify to the Purchasing Department that Tenant has notified the subtenant of the obligations under the HCAO and has imposed the requirements of the HCAO on subtenant through the sublease. Tenant will be responsible for its subtenants' compliance with this Chapter. If a subtenant fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the subtenant's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant 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.

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

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

(h) 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.

(i) 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.

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

(k) If Tenant is exempt from the HCAO when this 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.

48.11 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 shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

48.12 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 hereby agrees it

shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

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

48.14 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" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, 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" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48.15 Nondisclosure of Private Information. Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The

provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference 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 shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Tenant nor any of its subcontractors shall 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.

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

(c) Private Information shall mean 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.

(d) Any failure of Tenant to comply with the Nondisclosure of Private Information Ordinance shall 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.

48.16 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 shall 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" shall 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.). Any failure of Tenant to comply with this section of this Ground Lease shall constitute an event of default of this Ground Lease.

48.17 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 shall 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.

48.18 Food Service Waste Reduction. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Ground Lease as though fully set forth herein. 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. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

48.19 Local Hire Requirements. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations (as defined in Section 7.1) 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, including the use of federal funding for the Project. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

Tenant shall include, and shall 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 such contract shall 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 shall 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 shall constitute a material breach of this 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.

48.20 Criminal History in Hiring and Employment Decisions

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

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

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

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

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

(f) Tenant and subtenants (if any) shall 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 shall 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.

(g) Tenant and subtenants (if any) understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this 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.

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

48.21 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 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall 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 shall 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 shall constitute a material breach of this 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.

48.22 Sugar-Sweetened Beverage Prohibition

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

48.23 Taxes, Assessments, Licenses, Permit Fees and Liens

(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.

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

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

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

48.24 Vending Machines; Nutritional Standards

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 48.24 shall be deemed a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord shall 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.

48.25 All-Gender Toilet Facilities.

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An

“all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact MOHCD for guidance.

ARTICLE 49: COMPLETE AGREEMENT

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

ARTICLE 50: 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 shall affect or alter this Ground Lease, but each and every term, covenant and condition of this Ground Lease shall 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, shall 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 Lease (a) changing the legal description of the Site, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the

Site 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 Lease shall additionally require the approval of the City's Board of Supervisors.

ARTICLE 51: ATTACHMENTS

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

1. Legal Description of Site
2. Schedule of Performance
3. 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 LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

TENANT:

735 DAVIS SENIOR LP,
a California limited partnership

By: _____
Name: _____
Title: _____

CITY AS LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Pennick
Acting Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 1

LEGAL DESCRIPTION OF THE SITE

(735 Davis Street)

ATTACHMENT 2
SCHEDULE OF PERFORMANCE

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, 5th Floor
San Francisco, CA 94103

RE: _____, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 25.01 of the _____ Ground Lease, dated _____, 20__, between the City and County of San Francisco (“City”) and _____, a California _____, 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,

_____,
A California Limited Partnership

By: _____
Name: _____
Title: _____
enc.

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

Mayor's Office of Housing and Community Development

Kate Hartley, Director

ATTACHMENT 4

Reserved

ATTACHMENT 5
MEMORANDUM OF LEASE

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, Fifth Floor
San Francisco, California 94103
Attn: Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of _____, 2018, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and _____, A California _____ ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated _____, 20__, between City and Tenant.

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

It is the intent of the parties to the Lease that the Lease shall create 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 shall remain real property.

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

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

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

Executed as of _____, 2018 in San Francisco, California.

TENANT:

_____,
a California Limited Partnership.

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Pennick
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 6
FORM OF TENANT INCOME CERTIFICATION

ATTACHMENT 7

INTENTIONALLY OMITTED