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When Recorded Mail to:

City and County of San Francisco
Department of Homelessness and Supportive Housing
440 Turk Street
San Francisco, California 94102
Attn: Director

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Government Code Section 27383 and 27388.1

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and Taxation Code 11921

**LEASE AGREEMENT
(833 Bryant)**

THIS LEASE AGREEMENT (this “**Lease**”) is executed and entered into as of _____, 2021 (the “**Effective Date**”), by and between 833 Bryant, L.P., a California limited partnership (the “**Partnership**”), as lessor, and the City and County of San Francisco, a municipal corporation acting by and through the Department of Homelessness and Supportive Housing (the “**City**”), as lessee.

RECITALS

A. San Francisco Homes for the Homeless No. 1 LLC, a California limited liability company (the “**Landowner**”), is a wholly-owned subsidiary of The San Francisco Housing Accelerator Fund, a California nonprofit public benefit corporation, and fee owner of that certain real property located at 833 Bryant Street, San Francisco, California, and is more particularly described in Exhibit A (the “**Property**”). [Property description to be limited to residential property]

B. The Landowner has entered into a long-term ground lease of the Property to the Partnership (the “**Ground Lease**”). The Ground Lease obligates the Partnership to develop, own, and operate one-hundred forty-five (145) affordable residential units, plus one (1) additional manager’s unit and related improvements, which the Partnership and the City intend to be made available as permanent supportive housing for chronically homeless individuals (the “**Project**”), and to develop ground floor commercial space.

C. Pursuant to an Indenture of Trust, dated as of [July] 1, 2020 (the “**Indenture**”), between the California Housing Finance Agency (the “**Bond Issuer**”) and [U.S. Bank National Association], as trustee (the “**Bond Trustee**”), the Bond Issuer, on _____, 2020, issued its

California Housing Finance Agency Revenue Bonds (San Francisco Supportive Housing – 833 Bryant) 2020 Issue N (the “**Bonds**”), for the purposes of making a loan of the proceeds thereof to the Partnership pursuant to a Loan Agreement, dated as of [July] 1, 2020 (the “**Loan Agreement**”), between the Bond Issuer and the Partnership, for the purpose of financing the construction of the Project.

D. In order to achieve the policy goals of the City to reduce chronic homelessness, the City agreed pursuant to that certain [Commitment Letter] (the “**Commitment**”) to provide certain financial assistance to the Partnership for the development and operation of the Project.

E. The City is authorized pursuant to the laws of the State of California (the “**State**”) and the Charter of the City and County of San Francisco (the “**Charter**”) to lease real property when necessary and proper for public purposes.

F. In order to operate the Project on a day-to-day basis, the City will concurrently with the execution and delivery of this Lease sublease the Property back to the Partnership pursuant to a Sublease Agreement between the City, as sublessor, and the Partnership, as sublessee, dated as of the Effective Date (the “**Sublease**”). Under the Ground Lease, the Landowner has approved the transfers contemplated by this Lease and the Sublease. Pursuant to the Sublease, the Partnership has control of the day-to-day operations of the Project. Upon termination of this Lease and resulting termination of the Sublease, the Partnership as tenant under the Ground Lease will continue to have control of the day-to-day operations of the Project.

G. The City has determined that the conditions to the execution and delivery of this Lease and the Sublease set forth in the Commitment have been satisfied.

H. It is the intent of the Partnership and the City that the City’s only financial obligation under this Lease is to pay rent as provided herein, and the City will not incur any other financial obligation, cost, or liability related to the Project or the Property under this Lease or the Sublease

I. The Partnership and the City have entered into a separate contract and the City and _____ have entered into a contract pursuant to which the City has agreed to provide an annual operating subsidy to the Partnership to support the increased operating costs (the “**Operating Subsidy Agreement**”) and the City and _____ have entered into a contract (the “**Tenant Services Subsidy Agreement**”) and tenant services costs associated with providing long-term supportive housing services to chronically homeless individuals.

J. All acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the Partnership and the City (each a “**Party**”, and, collectively, the “**Parties**”), and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1.
LEASE OF THE PROPERTY; RENT; TERM

Section 1.1 Lease of the Property. As of the Effective Date, the Partnership hereby leases to the City, and the City hereby leases from the Partnership, the Property. The Partnership is conveying, and the City is accepting, the Property in its current “as is” condition subject to the representation or warranty regarding the Property’s condition contained in this Section. This Lease is subject, and subordinate, to the Ground Lease. Partnership represents and warrants to City, and covenants with City, as of the Effective Date as follows: (a) a temporary certificate of occupancy has been duly and validly issued by the San Francisco Department of Building Inspection with respect to one-hundred forty-five (145) residential units, plus one (1) additional manager’s unit comprising the Project; and (b) no Abatement Event (as defined in Section 1.5) has occurred and is continuing. Partnership shall at all times during the Term (defined below) maintain, at its cost, the Property in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, “**Laws**”), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws.

Section 1.2 Rent.

1.2.1 Rent Payments. In consideration for the lease of the Property, pursuant to this Lease, the City shall pay the Partnership the Rent Payments, in the amounts and the dates set forth under the caption “Rent Payments” in Exhibit B (the “**Rent Payments**”), as such amounts may be adjusted from time to time in accordance with the terms hereof.

Rent Payments shall be paid by the City to the Partnership in lawful money of the United States of America and, except as provided in Section 1.5 hereof, any amount necessary to pay any Rent Payments and or portion thereof that is not so deposited shall remain due and payable until received by the Trustee. Notwithstanding any dispute between the City and the Partnership hereunder, the City shall make all Rent Payments when due and shall not withhold any Rent Payments pending the final resolution of such dispute or for any reason whatsoever. The City’s obligation to make Rent Payments in the amount and on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 1.5 hereof.

As provided in Section 4.3, the City shall make Rent Payments by paying such amounts to the Bond Trustee.

1.2.2 Adjustment of Rent Payments. It is the intention of the Parties that the principal and the interest components of the Rent Payments correspond to 1.15 times the amounts of principal and interest payable on the Bonds. In the event any Bonds are redeemed prior to their maturity dates or scheduled dates of redemption, the Parties agree to revise Exhibit B hereto to make corresponding reductions to the principal and interest components of the Rent Payment Schedule.

1.2.3 Net Lease. It is the purpose and intent of the Partnership and the City that Rental Payments hereunder shall be absolutely net to the Partnership so that this Lease is a “net-net-net lease” and shall yield to the Partnership the Rent Payments, free of any charges,

assessments, or impositions of any kind charged, assessed or imposed on or against the Property, and without counterclaim, deduction, defense, deferment or set-off by the City, except as herein specifically otherwise provided.

Section 1.3 Fair Value. The Parties agree and acknowledge that the Rent Payments, for each year, is not, and will not be, in excess of the total fair rental value of the Property for such year. In making such determination, the Parties have considered the uses and purposes served by the Property and the benefits to the general public by reason of the Partnership's use of the Property for the Project, and the requirements imposed on the Partnership by the Ground Lease and other documents that limit the Property's use solely to the Project.

Section 1.4 Budget. The City covenants to take such action as may be necessary to include each Rent Payment in its annual budget and to make the necessary appropriations for each annual Rent Payment, subject to Section 1.5 hereof; provided, however, the City's obligation to make the Rent Payment do not constitute an obligation of the City to levy or pledge any form of taxation, or for which the City has levied or pledged any form of taxation. The requirement to include the Rent Payments in the annual budget and to make the necessary appropriations therefor are deemed to be, and shall be construed as, ministerial duties imposed by law. The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Charter.

Section 1.5 Abatement. During any period during which an Abatement Event has occurred and is continuing, Rent Payments due hereunder shall be abated proportionately to the impact of such Abatement Event on the City's beneficial use of the Property, and the City waives the benefits of California Civil Code Sections 1932(2) and 1933(4) and of Title 11 of the United States Code, Section 365(h) and any and all other rights to terminate this Lease by virtue of any such interference and this Lease shall continue in full force and effect.

For purposes of this Section 1.5, "Abatement Event" means the occurrence and continuation of any of the following:

(a) If the City is making the full operating subsidy payments as provided in the Operating Subsidy Agreement and the full tenant services subsidy payments as provided in the Tenant Services Subsidy Agreement, the Partnership shall fail, for a period of six months during which time the City shall have been using its best efforts to compel such compliance (exercising its remedies under the Sublease), to substantially comply with its obligation to provide or cause to be provided long-term supportive housing services to chronically homeless individuals as provided in the Operating Subsidy Agreement and the Tenant Services Subsidy Agreement.

(b) If the City is not making the full operating subsidy payments as provided in the Operating Subsidy Agreement or the full tenant services subsidy payments as provided in the Tenant Services Subsidy Agreement, the Partnership shall fail to make the Property available for occupancy by low and moderate income persons at an affordability level determined by the parties under the Operating Subsidy Agreement, but at a minimum with residential rents and/or other available subsidy to cover operating expenses and achieve a 1.15 debt service coverage ratio.

(c) By reason of condemnation or material damage to or destruction of the Property, neither the Partnership nor the City has beneficial use and occupancy of the Property.

Section 1.6 Term. The term of this Lease shall commence as of the Effective Date and shall remain in full force and effect from such date until [April 1, 2050] [Note: Date of final maturity for Bonds] (the “**Term**”), unless such Term is extended or sooner terminated as set forth in Section 1.7.

Section 1.7 Extension; Early Termination. If, on [April 1, 2050] [Note: Date of final maturity for Bonds], the Rent Payments shall not have been paid, or provision therefor made, for any reason, including, without limitation, because the rental payable hereunder shall have been abated at any time and for any reason, then the Term shall be extended until ten (10) days after all the principal components and the interest components of the Rent Payments shall have been paid, or provision therefor made and no Bonds remain outstanding; provided, the Term shall in no event be extended beyond [April 1, 2060] [Note: Ten years after date of final maturity for Bonds]. If at any time prior to [April 1, 2050] [Note: Date of final maturity for Bonds] Rent Payments shall have been paid in full, or provision of moneys therefor made in and no Bonds remain outstanding, the Term shall end and this Lease shall automatically terminate without further action of the Parties.

ARTICLE 2. QUIET ENJOYMENT; USE

Section 2.1 Quiet Enjoyment. The Parties intend that as of the Effective Date the Property will be leased back to the Partnership pursuant to the Sublease for the term thereof. Subject to any rights that the Partnership may have under the Sublease (in the absence of an event of default under the Sublease) to possession and enjoyment of the Property, the Partnership hereby covenants and agrees that it will not take any action to prevent the City from having quiet and peaceable possession and enjoyment of the Property during the Term, and will, at the request of the City and at the Partnership’s cost, to the extent that it may lawfully do so, join in any legal action in which the City asserts its right to such possession and enjoyment. Nothing in this Section limits the obligation of the City to enter into the Sublease or the Partnership’s right to use and occupy the Property under the Sublease. At no cost to the City, Partnership shall furnish all utilities and services to the Property.

Section 2.2 Use. Throughout the Term, the Property shall only be used solely for the construction and operation of the Project, provided, however, as more particularly set forth in the Sublease, as between the City and the Partnership, so long as the Sublease remains in effect the Partnership is solely responsible for all obligations of developing, owning, and operating the Project.

Section 2.3 Partnership’s Maintenance and Repairs. At no cost to the City, Partnership shall repair and maintain the Property at its cost and in safe and sanitary condition (normal wear and tear excepted), including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Property and any common areas. Without limiting the

foregoing, Partnership shall maintain the Property in a clean, safe and attractive manner, shall provide exterior graffiti removal with reasonable frequency, and shall not permit to be done in or about the Property anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

Section 2.4 Changes to the Property. The Partnership shall, at its sole cost, have the right during the Term to make improvements to the Property or to attach any fixtures, structures or signs to the Property if such improvements, fixtures, structures or signs are necessary or beneficial for the use of the Property; provided, such actions by the Partnership shall not materially adversely affect the operation of the Property for the purpose intended or reduce the fair rental value of the Property in any material respect.

Section 2.5 Damage and Destruction.

(a) If the Property is damaged by fire, earthquake or other casualty, Partnership shall repair the same without delay. The City shall have no obligation to make any repairs to the Property and shall have no financial obligation with respect to any repairs to the Property. This Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent Payments as provided in Section 1.5.

(b) If, in Partnership's reasonable judgment made in good faith, the Partnership determines that (i) repairs cannot be made within two hundred ten (210) days after the date of damage or (ii) available insurance proceeds (excluding any deductible for which Partnership shall be responsible) will not be sufficient to make necessary repairs, Partnership may elect to terminate this Lease by written notice to the City within thirty (30) days of such determination. If the Partnership does not elect to terminate this Lease as provided in this paragraph (b), this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent Payments as provided in Section 1.5.

(c) The parties intend that the provisions of this Section 2.5 govern fully their rights and obligations in the event of damage or destruction, and Partnership and the City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

Section 2.6 Eminent Domain.

2.6.1 Definitions.

(a) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which the City is dispossessed.

(c) “Taking” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action

2.6.2 General. If there is any Taking of all or any part of the Property or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section 2.6. The City and the Partnership intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

2.6.3 Total Taking; Automatic Termination. If there is a total Taking of the Property, then this Lease shall terminate as of the Date of Taking.

2.6.4 Partial Taking; Election to Terminate. If there is a Taking of any portion (but less than all) of the Property, (i) the partial Taking, in the City’s reasonable judgment, renders the remaining portion of the Property untenable or unsuitable for continued use by the City for its intended purposes or otherwise materially adversely affects the normal operations of the Property and (ii) the condition rendering the Property untenable or unsuitable either is not curable or is curable but Partnership is unwilling or unable to cure such condition, the City may, by giving written notice to the Partnership before or within thirty (30) days after the Date of Taking, elect to terminate this Lease and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

2.6.5 Termination of Lease; Rent and Award. Upon termination of this Lease in its entirety pursuant to Section 2.6.3, or pursuant to an election under Section 2.6.4, then: (a) the City’s obligation to pay Rent Payments shall continue up until the date of termination and thereafter shall cease, and (b) Partnership shall be entitled to the entire Award in connection therewith, except that the City shall receive any Award made specifically for the City’s expenses.

2.6.6 Partial Taking; Continuation of Lease. If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 2.6.4 above, then this Lease shall terminate as to the portion of the Property so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent Payments shall be abated as provided in Section 1.5, and (b) Partnership shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for the City’s expenses.

2.6.7 Temporary Taking. Notwithstanding anything to contrary in this Section 2.6, if a Taking occurs with respect to the Property for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and the City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, the City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by the City for the period of the Taking.

Section 2.7 Partnership's Indemnity and Insurance.

2.7.1 Partnership's Indemnity. Partnership shall Indemnify the City and its agents against any and all Claims arising out of or as a result of (a) any failure of the Property or any portion thereof to comply with applicable Laws as provided in Section 1.1 or any misrepresentation by the Partnership under Section 1.1, (b) any default by Partnership in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Partnership under this Lease, or (c) any negligent acts or omissions of Partnership or its agents in, on or about the Property; provided, however, Partnership shall not be obligated to Indemnify the City or its Agents to the extent any Claim arises out of the active gross negligence or willful misconduct of the City or its Agents. In any action or proceeding brought against the City or its Agents by reason of any Claim Indemnified by Partnership hereunder, Partnership may, at its sole option, elect to defend such Claim by attorneys selected by Partnership. Partnership shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that the City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Partnership's obligations under this Section 2.7.1 shall survive the termination of this Lease.

2.7.2 Definitions

(a) "Claims" means any liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind.

(b) "Indemnity" means to indemnify, defend and hold harmless.

2.7.3 Insurance. Partnership acknowledges and agrees that City shall not be required to carry any insurance with respect to this Lease.

Section 2.8 Hazardous Materials.

2.8.1 Definitions. As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of

the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) “Release” when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into, inside, in, on, under or about the Property.

2.8.2 Partnership’s Representations and Covenants. Partnership represents and warrants to the City that, to the best of Partnership’s knowledge, and except as previously disclosed in writing to the City, as of the Effective Date the following statements are true and correct: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Property does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. The Partnership shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of the Property’s residents or City’s use of the Property for their intended purposes.

2.8.3 Partnership’s Environmental Indemnity. Without limiting Partnership’s Indemnity in Section 2.7.1, above, Partnership shall Indemnify the City and its agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Partnership’s representations, warranties or covenants in the preceding Section 2.8.2, or (b) in connection with any presence or Release of Hazardous Material in, on, under or about the Property.

ARTICLE 3.
SPECIAL COVENANTS AND PROVISIONS

Section 3.1 Waste. The City agrees that at all times that it is in possession of the Property (subject to the Sublease), it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

Section 3.2 Further Assurances and Corrective Instruments. The Parties agree that each Party will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional documents, and such further instruments, as may reasonably necessary for correcting any inadequate or incorrect description of the Property

hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Sublease, including, but not limited to, any document reasonably requested by a Party to evidence the termination of this Lease in accordance with Section 1.7, above.

Section 3.3 Waiver of Personal Liability. All liabilities under this Lease on the part of a Party shall be solely liabilities of the Party, itself, and each Party hereby releases each and every director, officer and employee of the other Party of and from any personal or individual liability under this Lease. No director, officer or employee of a Party shall at any time or under any circumstances be individually or personally liable under this Lease to the other Party, or to any other party whomsoever for anything done or omitted to be done by the Party.

Section 3.4 Representations of the Partnership. The Partnership represents and warrants to the City as follows:

- (a) the Partnership has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease;
- (b) except for the Ground Lease, the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property for purposes as contemplated by the Partnership;
- (c) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes (if any), have been paid in full;
- (d) the Ground Lease is in full force and effect and the Landowner has not declared any default;
- (e) the physical structure, fixtures and permanent improvements of the Property are, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, “**Disabilities Laws**”);
- (f) the Property is in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, “**Seismic Safety Laws**”);
- (g) the Property is in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, “**Life Safety Laws**”);
- (h) the Property is in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and

(i) there are no material physical or mechanical defects in the Property that would materially adversely affect City's intended use of the Property.

Section 3.5 Representations of the City. The City represents and warrants to the Partnership that the City has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Lease.

Section 3.6 Tax Matters. In order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds, the City covenants that it will, within the power of the City in its capacity as lessee under this Lease or as lessor under the Sublease, not knowingly take or cause to be taken any action or actions, or fail to take, upon the written request of the Bond Trustee, any action or actions, if the taking of such action or actions or the failure to take such action or actions, as the case may be, would cause interest on the Bonds to be included in gross income for federal income tax purposes.

Section 3.7 Continuing Disclosure. The City hereby covenants and agrees that it will comply with the provisions of the Continuing Disclosure Certificate. Failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default hereunder; however, the Bond Trustee, any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or any holder or Beneficial Owner (as defined in the Continuing Disclosure Certificate) may take such actions as may be necessary and appropriate to cause the City to comply with the provisions of the Continuing Disclosure Certificate.

Section 3.8 [Reserved].

Section 3.9 City Contracting Provisions. The Partnership covenants and agrees to comply with the provisions set forth in Exhibit D to this Lease, which is incorporated in and made a part of this Lease by this reference.

Section 3.10 Compliance with Lease. The City and the Partnership hereby agree faithfully to observe and perform their respective covenants, conditions and requirements herein. The City shall not suffer or permit any default to occur hereunder, nor do or permit to be done in, upon or about the Property or any part thereof, anything that might in any way impair the obligation of the City to make Rent Payments hereunder. The City shall not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of this Lease.

ARTICLE 4.

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 4.1 Assignment and Subleasing. This Lease may not be sold or assigned and the Property subleased, as a whole or in part, by the City without the prior written consent of the Partnership. Concurrently with the execution of this Agreement, the City and the Partnership have entered into the Sublease. Notwithstanding the foregoing, any single unit in the Project may be leased to an income-eligible occupant in compliance with the Ground Lease.

Section 4.2 Restrictions on the Partnership. The Partnership agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Property or any portion thereof during the Term without the prior written consent of the City, which shall not be unreasonably withheld, delayed or conditioned; except for any Permitted Encumbrances (as such term is defined in the Bond Regulatory Agreement).

Section 4.3 Assignment of Rent Payments. The Partnership has assigned all of its right, title and interest in Rent Payments necessary to pay debt service then due and payable under the Bonds and related fees to the Bond Issuer to secure its obligations under the Loan Agreement and the Bond Issuer has assigned all of its right, title and interest in such payments to the Bond Trustee to secure the Bonds, and the City hereby acknowledges such assignments. Accordingly, so long as any Bonds are outstanding (in an amount equal to cover any debt service payments then due and payable under the Bonds), the City shall make such payments by remitting such amounts directly to the Bond Trustee upon receiving written instructions from the Partnership or Bond Trustee.

ARTICLE 5. DEFAULT

Section 5.1 City Events of Default. Each of the following shall constitute a “Default” by the City:

(a) Payment Default; Breach of Covenants. (i) Failure by the City to make any Rent Payment when due and payable hereunder or (ii) failure by the City to duly perform, comply with, or observe any other of the conditions, terms, or covenants of this Lease and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Partnership to the City, or, if the breach cannot be cured within thirty (30) days, the City shall not be in breach so long as the City is diligently undertaking to cure such breach and such breach is cured within ninety (90) days.

(b) Partnership’s Remedies. On the occurrence of any Default by the City, the Partnership shall be entitled to any remedy available under applicable law, including: (i) terminating the Lease; or (ii) recovering money damages. In addition, to the extent applicable, the Partnership shall specifically be entitled to the remedies set forth in California Civil Code Sections 1951.2 and 1951.4, each of which are hereby incorporated into this Lease by this reference. Notwithstanding any other provision of this Lease, in no event shall the Partnership have the right to accelerate the payment of any Rent Payment hereunder.

Each and every remedy of the Partnership or any assignee of the rights of the Partnership hereunder is cumulative and the exercise of one remedy shall not impair the right of the Partnership or its assignee to any or all other remedies. If any statute or rule validly shall limit the remedies given to the Partnership or any assignee of the rights of the Partnership, the Partnership or its assignee nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

Section 5.2 Partnership Event of Default. Each of the following shall constitute a “Default” by the Partnership.

(a) Breach of Covenants. Failure by the Partnership to duly perform, comply with, or observe any other of the conditions, terms, or covenants of this Lease and such failure having continued uncured for sixty (60) days after receipt of written notice thereof from the City to the Partnership, or, if the breach cannot be cured within sixty (60) days, the Partnership shall not be in breach so long as the Partnership is diligently undertaking to cure such breach to the reasonable satisfaction of the City.

(b) City's Remedies. On the occurrence of any Default by the Partnership that extends beyond the applicable notice and cure periods set forth herein, the City shall be entitled to any remedy available under applicable law, including: (i) specific performance; or (ii) recovery of money damages. In addition, to the extent applicable, the City shall specifically be entitled to the remedies set forth in California Civil Code Sections 1951.2 and 1951.4, each of which are hereby incorporated into this Lease by this reference. Notwithstanding any other provisions of this Lease, in no event shall the City have the right to terminate this Lease.

Each and every remedy of the City is cumulative and the exercise of one remedy shall not impair the right of the City to any or all other remedies. If any statute or rule validly shall limit the remedies given to the City, the City nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

Section 5.3 Waiver. The waiver by the Partnership of any breach by the City, and the waiver by the City of any breach by the Partnership, of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Notices, Demands and Communications. Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

Partnership: 833 Bryant, L.P.
c/o 833 Bryant LLC
1256 Market Street
San Francisco, CA 94102
Attn: Doug Shoemaker
E-mail: dshoemaker@mercyhousing.org

with copies to: Citibank N.A.
388 Greenwich Street, 6th Floor
New York, New York 10013
Attention: Mark Sherman

Nixon Peabody LLP
779 9th Street, NW, Suite 500
Washington, DC 20001-4501
Attention: Matthew W. Mullen

City: City and County of San Francisco
Department of Homelessness and Supportive Housing
440 Turk Street
San Francisco, California 94102
Attn: Director

with copy to: San Francisco Homes for the Homeless No. 1 LLC
c/o The San Francisco Housing Accelerator Fund
25 Taylor Street
San Francisco, CA 94102
Attn: Rebecca Foster
E-mail: rebecca@sfhaf.org

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section.

Section 6.2 Binding Effect. Subject to the limitations set forth above, this Lease shall inure to the benefit of and shall be binding upon the Partnership, the City and their respective successors and assigns.

Section 6.3 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence, but subject to all express extension, and notice and cure rights in this Lease.

Section 6.4 Interpretation. Where the context requires herein, the singular shall be construed as the plural, and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. References in this Lease to days shall be to calendar days. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a day of the week on which the City and County of San Francisco is open to the public for carrying on substantially all business functions (a “**Business Day**”), then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. In no event shall a Saturday or Sunday be considered a Business Day. The use in this Lease of the words “including”, “such as” or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as “and limited to” or words of similar import are used with reference thereto.

Section 6.5 Validity and Severability. If for any reason this Lease or any part thereof shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Partnership or the City, all of the remaining terms hereof shall nonetheless continue in full force

and effect. If for any reason it is held by such a court that any of the agreements, conditions, covenants or terms required to be observed or performed by the City hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Lease is and shall be deemed to be a lease from year to year under which the rentals are to be paid by the City annually in consideration of the right of the City to use and occupancy of the Property, and all the other agreements, conditions, covenants and terms are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 6.6 Amendments, Changes and Modifications. This Lease may be amended, changed, modified, altered or terminated only in writing by the Parties.

Section 6.7 Applicable Law; Venue. This Lease shall be governed by and construed in accordance with the laws of the State of California. In the event any legal action is commenced to interpret or to enforce the terms of this Lease or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the City and County of San Francisco.

Section 6.8 Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 6.9 Landowner and Limited Partner as Third-Party Beneficiaries. The Landowner is an express third-party beneficiary of this Lease, with a direct right of enforcement against the Parties.

Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Limited Partner shall be deemed a third-party beneficiary of the provisions of this Lease that reference the Limited Partner, and the Limited Partner shall have rights to enforce such terms (as applicable). The foregoing rights of the Limited Partner to be a third-party beneficiary under this Lease shall be the only rights (express or implied) of the Limited Partner, to be a third-party beneficiary under this Lease and all such rights shall cease if the Limited Partner is no longer a partner in the Partnership.

Other than the Landowner and the Limited Partner, no other party is, or may be considered, a third-party beneficiary of this Lease.

Section 6.10 Incorporation of Recitals and Exhibits. All recitals set forth above, and all exhibits attached to this Agreement, are incorporated herein by this reference.

Section 6.11 No Merger. If both the Partnership's and the City's estate under this or any other lease relating to the Property or any portion thereof shall at any time for any reason become vested in one owner, this Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City so elects, the City shall continue to have and enjoy all of its rights and privileges as to the separate estates. The City hereby covenants not to permit or consent to any such merger as long as any Bonds are outstanding.

Section 6.12 Complete Understanding of the Parties. This Agreement, in conjunction with the Sublease, constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Lease, and this Lease supersedes all prior negotiations, discussions, undertakings, or agreements between the Parties. This Lease shall not be construed as if it had been prepared by one of the Parties, but rather as if all of the Parties had prepared it. The Parties to this Lease have read and reviewed this Lease and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement (including but not limited to Civil Code Section 1654 as may be amended from time to time).

Section 6.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 6.14 Counterparts; Multiple Originals. This Lease may be simultaneously executed in counterparts and multiple originals, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.15 Parties and their Agents; Approvals. The words “City” and “Partnership” include the plural as well as the singular. If there is more than one entity that comprises Partnership, Partnership’s obligations and liabilities under this Lease are joint and several. The term “Limited Partner” shall mean _____ or any successor limited partner of the Partnership. The term “Agents” when used with respect to either party includes the agents, employees, officers, contractors, and representatives of the party. All approvals, consents, or other determinations permitted or required by the City will be made by or through the City’s Director of Property unless otherwise provided in this Lease, subject to applicable legal requirements.

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IN WITNESS WHEREOF, the Partnership and the City have executed this Lease as of the Effective Date.

PARTNERSHIP:

833 BRYANT, L.P., a California limited partnership

By: 833 Bryant LLC, a California limited liability company, its general partner

By: Mercy Housing Calwest, a California nonprofit public benefit corporation, its sole member/manager

By: _____
Name: _____
Its: _____

Signatures Continue on the Following Page

CITY:

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Andrico Q. Penick, Director of Property

By: _____
~~Jeff Kositsky~~ Abigail Stewart-Kahn,
Acting Director of the Department of
Homelessness and Supportive Housing

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

SCHEDULE OF RENT PAYMENTS

[Payments on March 15 and September 15 equal to 1.15x debt service payments due on April 1 and October 1, respectively.]

EXHIBIT C
[RESERVED]

EXHIBIT D

**CITY AND COUNTY OF SAN FRANCISCO
MANDATORY CONTRACTING PROVISIONS**