

Recording Requested by and
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

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

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Transfer tax pursuant to Revenue
and Taxation Code 11921

**SUBLEASE AGREEMENT
(833 Bryant)**

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

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 describe 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. The Project will utilize low income housing tax credits from the California Tax Credit Allocation Committee (“**TCAC**”), and other funding sources obtained by the Partnership. At all times during the Term of this Agreement, including without limitation for tax purposes, a legal leasehold estate in the Project as provided in the Ground Lease shall be owned by the Partnership and the Partnership alone shall be entitled to all of the tax attributes of ownership of the Project, including, without limitation, the right to claim depreciation or cost recovery deductions, amortization and the right to claim the low-

income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended.

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 Apartments) 2020 Issue N – Social Bonds (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 and to sublease real property when necessary and proper for public purposes.

F. The City has concurrently with the execution and delivery of this Sublease leased the Property from the Partnership pursuant to a Lease Agreement between the Partnership, as lessor, and the City, as lessee, dated as of the Effective Date (the “**Lease**”). Under the Ground Lease, the Landowner has approved the transfers contemplated by the Lease and this Sublease. Pursuant to this Sublease, the Partnership has control of the day-to-day operations of the Project. Upon termination of the Lease and resulting termination of this 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 the Lease and this 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 is to pay rent as provided in the Lease, and the City will not incur any other financial obligation, cost, or liability related to the Project or the Property under the Lease or this Sublease.

I. The Partnership and the City have entered into a separate contract (the “**Operating Subsidy Agreement**”) and the City and _____ have entered into a contract (the “**Tenant Services Subsidy Agreement**”) pursuant to which the City has agreed to provide an annual operating subsidy to the Partnership to support the increased operating costs 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 Sublease 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 Sublease.

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.
SUBLEASE OF THE PROPERTY; RENT; TERM

Section 1.1 Sublease of the Property; As-Is Condition. As of the Effective Date, the City hereby subleases to the Partnership, and the Partnership hereby subleases from the City, the Property. This Sublease is subject, and subordinate, to the Lease and the Ground Lease. Partnership acknowledges and agrees that the Property is being leased and accepted in its “as is” condition, without representation or warranty of any kind, and subject to all applicable Legal Requirements (as defined in Section 2.7 below) governing their use, occupancy, and possession. The Partnership acknowledges and agrees that neither City nor any of its Agents have made, and City disclaims, any representations or warranties, express or implied, concerning the rentable area of the premises, the physical or environmental condition of the Property, the present or future suitability of the Property for Partnership’s use, or any other matter whatsoever relating to the Property, including any implied warranties of merchantability or fitness for a particular purpose.

Section 1.2 Rent. As of the Effective Date, the Partnership has paid to the City, as and for rent of the Property for the entire term hereunder, the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged by the City. This Sublease is intended to be a triple net lease. The Partnership agrees that the rent provided for herein shall be an absolute net return to the City free and clear of any expenses, charges or set-offs whatsoever.

As additional consideration to the City under this Sublease:

(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 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; or

(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 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.

Section 1.3 Term. The term of this Sublease shall commence as of the Effective Date and shall remain in full force and effect from such date until [April 1, 2050] (the “**Term**”), unless such Term is sooner terminated as set forth in Section 1.4.

Section 1.4 Early Termination. If either the Ground Lease or the Lease Agreement is terminated at any time prior to [April 1, 2050] [Note: Date of final maturity for Bonds], this Sublease shall automatically terminate without further action of the Parties.

ARTICLE 2. QUIET ENJOYMENT; USE

Section 2.1 Quiet Enjoyment. Subject to the Lease, the Partnership shall have the quiet use and enjoyment of the Property throughout the Term. Subject to any rights that the City may have under the Lease (in the absence of an event of default under the Lease by the City) to possession and enjoyment of the Property, the City hereby covenants and agrees that it will not take any action to prevent the Partnership from having quiet and peaceable possession and enjoyment of the Property during the Term, and will, at the request of the Partnership and at the City’s cost, to the extent that it may lawfully do so, join in any legal action in which the Partnership asserts its right to such possession and enjoyment.

Section 2.2 Use. Throughout the Term, the Property shall only be used solely for the construction and operation of the Project. Throughout the Term, the Partnership shall have sole responsibility and right to develop, own and operate the Project including, but not limited to:

(a) using the Project only to provide proper housing facilities and, if the City is making the full operating subsidy payments under the Operating Subsidy Agreement and the full tenant services subsidy payments under the Tenant Services Subsidy Agreement, ancillary uses to chronically homeless individuals, and to maintain the character of the Project as required by this Sublease, the Lease, TCAC regulations, the Bond Regulatory Agreement (as defined in the Lease) and the Project financing documents for so long as such agreements remain in effect; and

(b) managing all daily functions of the Project, including without limitation, the selection of residents, certification and recertification of the tenants’ household income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility or control over management of the Project. The Partnership shall retain Mercy Housing Management Group, Inc., or another professional property management company reasonably acceptable to the City to perform its management duties.

Section 2.3 Repairs and Maintenance. At no expense to the City, Partnership will maintain (and replace, if necessary) the Property (including the floors, interior plumbing, electrical wiring, fixtures, and equipment) in good repair and working order and in a clean, secure, safe, and sanitary condition. Partnership will promptly make all repairs and replacements: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by the City, (c) so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation, and (d) in accordance with all applicable

Legal Requirements. Partnership hereby waives all rights to make repairs at the City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar Legal Requirements.

Section 2.4 Utilities. At no cost to the City, Partnership will be solely responsible for furnishing any utilities or services that Partnership may need for its use of the Property. If any Legal Requirements impose mandatory or voluntary controls on the City or any part of the Property relating to the use or conservation of energy, water, gas, light, or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Sublease, or if the City is required to make alterations to any part of the Property to comply with mandatory controls or guidelines, then that compliance and making of any related alterations will not entitle Partnership to any damages, relieve Partnership of the obligation to pay the full rent or to perform each of its other covenants under this Sublease, or constitute or be construed as a constructive or other eviction of Partnership. At any time, the City may install a water meter in the Property or to otherwise measure the amount of water consumed on the Property, and Partnership will pay for the cost of the meter or other means of measurement and its installation and maintenance.

Section 2.5 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 2.6 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.

(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 Sublease by written notice to the City within thirty (30) days of such determination. If the Partnership does not elect to terminate this Sublease as provided in this paragraph (b), this Sublease shall remain in full force and effect.

(c) The parties intend that the provisions of this Section 2.6 govern fully their rights and obligations in the event of damage or destruction, and Partnership and City each hereby waives and releases any right to terminate this Sublease 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 2.7 Compliance with Legal Requirements and Risk Management Requirements.

2.7.1 Compliance with Legal Requirements. At no cost to the City, Partnership will promptly comply with all present or future federal, state, local, and administrative laws, ordinance, resolution, regulation, requirement, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity (now or later in effect, collectively “**Legal Requirements**”) relating to the Property or the use or occupancy of the Property, including the City’s “Government Requirements” set forth in Exhibit B, and with any and all recorded covenants, conditions, and restrictions affecting all or any portion of the Property, whether in effect at the time of the execution of this Sublease or adopted or recorded at any time later and whether or not they were considered by the parties in negotiating this Sublease. It is Partnership’s obligation, at no cost to the City, to cause the Property and Partnership’s uses thereof to be conducted in compliance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access Legal Requirements. Any alteration or improvement to the Property made by or on behalf of Partnership under the provisions of this Section 2.7.1 will comply with the provisions of Section 2.3 above. Partnership’s obligation to comply with all Legal Requirements is a material part of the bargained-for consideration under this Sublease. Partnership’s obligation under this Section 2.7.1 includes its responsibility to make substantial or structural repairs and alterations to the Property, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Sublease, the length of the then remaining Term, the relative benefit of the repairs to Partnership or the City, the degree to which the curative action may interfere with Partnership’s use or enjoyment of the Property, the likelihood that the parties contemplated the particular Legal Requirements involved, and whether the Legal Requirements involved are related to Partnership’s particular use of the Property.

2.7.2 Regulatory Approvals.

(a) Responsible Party. Partnership’s use of the Premises and construction of any alterations or improvements may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Property. Partnership is solely responsible for obtaining all regulatory approvals. Partnership will bear all costs associated with applying for and obtaining any regulatory approval and is solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any condition that could affect use or occupancy of the Property or the City’s interest in the Property will first be approved by the City. Partnership will immediately pay and discharge any fines or penalties levied as a result of Partnership’s failure to comply with the terms and conditions of any regulatory approval, and the City will have no liability, monetary or otherwise, for any fines or penalties. Partnership will Indemnify the City and the other Indemnified Parties (defined below) against all Claims (defined below) arising in connection with Partnership’s failure to obtain or failure by Partnership, its agents, or its invitees to comply with the terms and conditions of any regulatory approval.

(b) The City Acting in its Proprietary Interest. The City is entering into this Sublease in its proprietary interest in the Property and not as a regulatory agency with police powers. Nothing in this Sublease will limit in any way Partnership's obligation to obtain any required approvals from City officials, departments, boards, agencies, commissions, or other body having jurisdiction over the Property. By entering into this Sublease, the City is not modifying or limiting Partnership's obligation to cause the Property to be used and occupied in accordance with all applicable Legal Requirements.

2.7.3 Compliance with the City's Risk Management Requirements. Partnership will not do anything, or permit anything to be done, in or about the Property that would be prohibited by or increase rates under a standard form fire insurance policy or subject the City to potential liability. At no cost to the City, Partnership will faithfully observe any and all requirements of the City's Risk Manager with respect to Partnership's use and occupancy of the Property.

ARTICLE 3. SPECIAL COVENANTS AND PROVISIONS

Section 3.1 Waste. The Partnership agrees that at all times that it is in possession of the Property, 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 be 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 Sublease and the Lease, including, but not limited to, any document reasonably requested by a Party to evidence the termination of this Sublease in accordance with Section 1.4 above.

Section 3.3 Waiver of Personal Liability. All liabilities under this Sublease 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 Sublease. No director, officer or employee of a Party shall at any time or under any circumstances be individually or personally liable under this Sublease 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 Sublease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Sublease;

(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; and

(d) the Ground Lease is in full force and effect and the Landowner has not declared any default.

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 Sublease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Sublease.

Section 3.6 Waiver of Claims; Indemnification.

3.6.1 Limitation on the City's Liability; Waiver of Claims. The City will not be responsible for, or liable to, Partnership, and Partnership hereby assumes the risk of, and waives and releases the City and its Agents from all Claims for any injury, loss, or damage to any person or property in or about the Property by or from any cause whatsoever including: (a) any act or omission of persons occupying any part of the Property; (b) theft; (c) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination; (d) stopped, leaking, or defective building systems; (e) Property defects; and (f) any other acts, omissions, or causes. Nothing in this Section 3.6 will relieve the City from liability caused solely and directly by the active gross negligence or willful misconduct of the City or its Agents, but the City will not be liable under any circumstances for any consequential, incidental, or punitive damages.

3.6.2 Partnership's Indemnity. Partnership, on behalf of itself and its successors and assigns, will indemnify, defend, and hold harmless ("**Indemnify**") the City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person (including Partnership's employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Property; (b) any default by Partnership in the observation or performance of any of the terms, covenants, or conditions of this Sublease to be observed or performed on Partnership's part; (c) the use or occupancy or manner of use or occupancy of the Property by Partnership, its Agents, its Invitees, or any person or entity claiming through or under any of them; (d) the condition of the Property; (e) any construction or other work undertaken by Partnership on the Property whether before or during the Term; or (f) any acts, omissions, or negligence of Partnership, its Agents, or its Invitees, in, on, or about the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable Legal Requirements and further except only those Claims as are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and the City's costs of investigating any Claim. Partnership expressly acknowledges that Partnership has an

immediate and independent obligation to defend the City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the Claim is tendered to Partnership by the City and continues at all times thereafter. Partnership's obligations under this Section 3.6 will survive the expiration or termination of this Sublease.

Section 3.7 Insurance.

3.7.1 Partnership's Insurance.

(a) At no cost to the City, Partnership will procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU).

(ii) Umbrella Liability coverage in amount of not less than Ten Million Dollars (\$10,000,000).

(iii) Commercial Automobile Liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable.

(iv) Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident, if applicable.

(v) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Partnership uses automobiles in connection with its use of the Property.

(vi) (vi) Business interruption insurance ("Business Interruption Insurance") covering an abatement of the City's obligation to make the Rent Payments as a result of a loss, total or partial, covered by the Casualty Insurance impairing the Borrower's ability to operate its business at the Property in an amount equal to the annual Rent Payments for a period of at least one (1) year (for two (2) years if available on the open market from reputable insurance companies at a reasonable cost, as determined by the Borrower). [Business Interruption Insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.] Business Interruption Insurance shall name the Bond Trustee as a beneficiary.

(vii) Rental interruption insurance, throughout the term of this Sublease commencing at substantial completion of the Project, to cover the City's loss, total or partial, of Rent Payments resulting from the loss, total or partial, of the use of any part of the Property as a

result of any of hazards in an amount equal to the amount sufficient at all times to pay an amount not less than the product of two times the maximum amount of Rent Payments scheduled to be paid during any rental period set forth in Exhibit B to the Lease.

(viii) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) will provide professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Sublease or to the Property.

(ix) (A) Property insurance, excluding earthquake and flood, in the amount no less than one hundred percent (100%) of the replacement value of all completed improvements and property in the care, custody and control of the Partnership or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, tenants must obtain property insurance by the date that the project receives a certificate of substantial completion; and (B) boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Development that is used by the Partnership for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss.

(ix) Other insurance as is generally required by commercial owners of buildings similar in size, character, age, and location as the Property, as may change from time to time, and insurance that is required pursuant to Exhibit D of the Ground Lease.

(b) If any of the required insurance is provided under a claims-made form, Partnership will maintain the coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, if occurrences during the Term give rise to claims made after expiration or termination of this Sublease, those claims will be covered by the claims-made policies. Partnership's obligations under this Section will survive the expiration or termination of this Sublease.

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

(d) All liability insurance policies will be endorsed to provide the following:

(i) Name as additional insured the City and County of San Francisco, its officers, agents, and employees.

(ii) That the policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(e) Each insurance policy required under Section 3.7.1(a) above will be issued by an insurance company licensed in the State of California and with a general policyholders'

rating of “A-” or better and a financial size ranking of “Class VIII” or higher in the most recent edition of Best’s Insurance Guide.

(f) All insurance policies required to be maintained by Partnership will be endorsed to provide thirty (30) days’ prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Partnership and the City. If Partnership’s insurer refuses to offer this endorsement, Partnership will promptly provide the thirty (30) day’s prior written notice of cancellation, intended non-renewal, or reduction in coverage to the City. Notice to the City will be mailed to the addresses for the City set forth in Section 6.1.

(g) On or before the Effective Date, Partnership will deliver to the City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to the City, evidencing the coverage required under this Sublease, together with complete copies of the policies and at any other time promptly after the City’s request. During the Term, Partnership will provide the City with certificates or policies at least thirty (30) days before the expiration dates of expiring policies. If Partnership fails to procure the required insurance, or to deliver the policies or certificates, then at its option and without waiving any rights or remedies that the City may have for Partnership’s default, the City may procure the insurance for Partnership’s account, and Partnership will pay the cost to the City within five (5) days after delivery to Partnership of invoices therefor.

(h) On the City’s request, Partnership and the City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Partnership for risks comparable to those associated with the Property, then, at the City’s request, Partnership will increase the amounts or coverage carried by Partnership to conform to the general commercial practice.

(i) Partnership’s compliance with the provisions of this Section 3.7.1 will in no way relieve or decrease Partnership’s liability under Section 3.6.2, or any of Partnership’s other obligations under this Sublease.

3.7.2 Partnership’s Personal Property. At no cost to the City, Partnership is responsible for separately insuring Partnership’s personal property.

3.7.3 No Insurance Obligation by the City. Partnership acknowledges and agrees that the City has no obligation under this Sublease to carry any third party insurance coverage for the Property or otherwise.

3.7.4 Waiver of Subrogation. Notwithstanding anything to the contrary in this Sublease, the City and Partnership (each a “**Waiving Party**”) each waives any right of recovery against the other party for any loss or damage relating to the Property or any operations or contents, whether or not the loss is caused by the fault or negligence of the other party, to the extent the loss or damage is covered by third-party insurance that is required to be purchased by the Waiving Party under this Sublease or is actually covered by insurance held by the Waiving Party or its Agents. Each Waiving Party will obtain a waiver of subrogation rights endorsements

from applicable insurance carriers issuing policies relating to the Property; provided, the failure to obtain the endorsement will not affect the above waiver.

Section 3.8 Hazardous Materials.

3.8.1 Definitions. As used in this Sublease:

(a) “Environmental Laws” means all present or future Legal Requirements relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, or storage), or to health and safety, industrial hygiene, or the environment, including soil, air, and groundwater conditions.

(b) “Hazardous Material” means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time, now or later, deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25316 of the California Health & Safety Code; any “hazardous waste” listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

(c) “Investigate” and “Investigation” means undertaking any activities to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Property or that has been, are being or threaten to be Released into the environment; “Remediate” and “Remediation” means to clean up, remove, contain, treat, stabilize, monitor, or otherwise control the Hazardous Material.

(d) “Release” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under, or about any other part of the Property or into the environment.

3.8.2 No Hazardous Materials. Neither Partnership nor any of its Agents or Invitees will cause or permit any Hazardous Material to be brought on, kept, used, stored, generated or disposed of in, on, or about the Property, or transported to or from the Property. Partnership will give the City immediate written notice of: (a) any action, proceeding, or inquiry by any governmental authority (including the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management District, or any local governmental entity) against Partnership with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Partnership or the Property relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Property that has occurred and may require any Investigation or Remediation; and (d) all matters of which Partnership is required to give notice under Section 25359.7 of the California Health and Safety Code.

3.8.3 Partnership's Environmental Indemnity. If Partnership breaches any of its obligations contained in this Section, or, if any act or omission of Partnership, its Agents, or its Invitees results in any Release of Hazardous Material in, on, under, or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Partnership's Indemnity contained in Section 3.6.2, on behalf of itself and its successors and assigns, Partnership will Indemnify the Indemnified Parties, and each of them, from and against all Claims (including damages for decrease in value of the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Property, and sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees and costs) arising during or after the Term and relating to the Release except only those Claims resulting exclusively from the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Partnership or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under, or about the Premises or any other part of the Property, Partnership will immediately and at no expense to the City take all appropriate actions to return the Property affected by the Release to the condition existing before the Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Partnership expressly acknowledges that Partnership has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, and this obligation arises at the time the claim is tendered to Partnership by the City and continues at all times thereafter. Partnership will afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

3.8.4 Survival of Obligation. Partnership's obligations under this Section 3.8 will survive the expiration or earlier termination of this Sublease.

Section 3.9 [Reserved].

Section 3.10 Right of Entry and Inspection. The City shall have the right to enter the Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the City's rights or obligations hereunder and for all other lawful purposes.

Section 3.11 Liens. The Partnership shall keep the Property free of all liens and encumbrances except Permitted Encumbrances (as such term is defined in the Bond Regulatory Agreement). In the event the Partnership shall at any time during the term hereof cause any improvements to the Property to be constructed or materials to be supplied in or upon or attached to the Property, the Partnership shall pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the Partnership in, upon, about or relating to the Property or the Partnership's interest therein, except for the Property or the Partnership's interest therein, the Partnership shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due,

except that if the Partnership desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the Partnership shall forthwith pay or cause to be paid and discharged such judgment.

ARTICLE 4.
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

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

Section 4.2 Restrictions on the City. The City agrees that it will not mortgage, sell, encumber, assign, transfer or convey its interest in the Property or any portion thereof during the Term without the prior written consent of the Partnership, which shall not be unreasonably withheld, delayed, or conditioned.

ARTICLE 5.
DEFAULT

Section 5.1 Event of Default. Each of the following shall constitute a “Default” by a Party:

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

(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 Limited Partner shall propose a replacement general partner of the Partnership (subject to the reasonable approval of the City). In the event that the Limited Partner fails to propose an acceptable replacement general partner of the Partnership, the City shall be entitled to: (A) select a replacement general partner to the partnership (subject to the reasonable approval of the Limited Partner); or (B) any remedy available under applicable law (other than termination of the Sublease), including: (i) specific performance; or (ii) recovering 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 Sublease by this reference. Notwithstanding any other provision in this Sublease, in no event shall the City have the right to terminate this Sublease.

Section 5.2 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, NY 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 Sublease 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 Agreement.

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 Agreement 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 Agreement 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 Severability. In the event that any provision of this Sublease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.6 Amendments, Changes and Modifications. This Sublease may be amended, changed, modified, altered or terminated only in writing by the Parties. Whenever this Sublease requires or permits City’s consent or approval, the Director of Property or his or her designee will be authorized to provide the consent or approval, except as otherwise provided by applicable Legal Requirements, including the Charter. Any amendments or modifications to this Sublease, including amendments to or modifications to the exhibits to this Sublease, are subject to the mutual written agreement of City and Partnership, and City’s agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, (a) changing the legal description of the Property, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under this Sublease, and (e) any other amendment or modification that materially increases City’s liabilities or financial obligations under this Sublease may also require the approval of City’s Board of Supervisors.

Section 6.7 Applicable Law; Venue. This Sublease 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 Agreement 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 Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Sublease.

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

Notwithstanding anything to the contrary set forth elsewhere in this Sublease, the Limited Partner shall be deemed a third-party beneficiary of the provisions of this Sublease 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 Sublease shall be the only rights (express or implied) of the Limited Partner, to be a third-party beneficiary under this Sublease 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 Sublease.

Section 6.10 Incorporation of Recitals and Exhibits. All recitals set forth above, and all exhibits attached to this Sublease, 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 Sublease 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 Sublease, in conjunction with the Lease, constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Sublease, and this Sublease supersedes all prior negotiations, discussions, undertakings, or agreements between the Parties. This Sublease 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 Sublease have read and reviewed this Sublease 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 Sublease (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 Sublease 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 Sublease are joint and several. The term “Limited Partner” shall mean Citibank, N.A. 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, and the term “Invitees” when used with respect to Partnership includes the clients, customers, invitees, guests, licensees, assignees, or subtenants of Partnership. All approvals, consents, or other determinations permitted or required by City will be made by or through City’s Director of Property unless otherwise provided in this Sublease, subject to applicable Legal Requirements.

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

CITY:

CITY AND COUNTY OF SAN
FRANCISCO

By: _____
Andrico Q. Penick
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Keith Nagayama, Deputy City Attorney

Signatures Continue on the Following Page

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: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

EXHIBIT B

LAWS APPLICABLE TO THE PROPERTY AND THE PROJECT