

## FUNDING AGREEMENT

**THIS FUNDING AGREEMENT** (this “*Agreement*”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and among the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“*MOHCD*”), **BERNAL HEIGHTS HOUSING CORPORATION**, a California nonprofit public benefit corporation, with an address of [\_\_\_\_\_] (“*Bernal*”), **TABERNACLE COMMUNITY DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation, with an address of [\_\_\_\_\_] (“*Tabernacle*”) and **MITCHELVILLE HOLDINGS LLC**, a California limited liability company, with an address of [\_\_\_\_\_] (together with Bernal and Tabernacle, the “*Guarantor*” and “*Developer*”), for the benefit of **WINCOPIN CIRCLE LLLP**, a Maryland limited liability partnership (together with its successors and assigns, the “*Limited Partner*”), and **3300 MISSION PARTNERS L.P.**, a California limited partnership (the “*Partnership*”).

### WITNESSETH:

**WHEREAS**, the Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a thirty-five (35) unit residential project in one (1) building located in San Francisco, California (the “*Project*”);

**WHEREAS**, the Partnership is operating pursuant to a First Amended and Restated Agreement of Limited Partnership (the “*Partnership Agreement*”);

**WHEREAS**, the Limited Partner is simultaneously acquiring a limited partnership interest in the Partnership pursuant to the Partnership Agreement;

**WHEREAS**, Guarantor is also the guarantor under a certain Guaranty Agreement dated on or about even date with this Agreement by and between Guarantor and the Partnership for the benefit of the Limited Partner (the “*Partnership Guaranty*”), whereby Guarantor has agreed to guaranty for the benefit of the Limited Partner the due and punctual performance by Tabernal Alliance LLC and AJJLA Housing 2 LLC (collectively, the “*General Partner*”) of its obligations, as well as Guarantor’s obligations as the Developer, under (i) the First Amended and Restated Agreement of Limited Partnership for the Partnership, as the same may be amended from time to time (the “*Partnership Agreement*”); and (ii) the Development Services Agreement dated on or about even date herewith, as the same may be amended from time to time, by and between the Partnership and the Developer (the “*Developer Agreement*”), as further described in the Partnership Guaranty;

**WHEREAS**, the Developer will receive a substantial Development Fee pursuant to the Developer Agreement;

**WHEREAS**, MOHCD will derive a material benefit from the Limited Partner’s agreement to enter into the Partnership Agreement, to contribute equity to the Partnership, and to participate

in the Project, as MOHCD will be the owner of the real estate upon which the Project will be situated and will lease such real estate to the Partnership;

**WHEREAS**, MOHCD hereby acknowledges that the Limited Partner is acting in reliance on this Agreement, and it hereby enters into this Agreement to induce the Limited Partner to acquire an interest in the Partnership, to enter into the Partnership Agreement, to fund its equity investment in the Partnership, and to become the limited partner of the Partnership;

**WHEREAS**, MOHCD agrees that in the event General Partner or Guarantor becomes obligated to perform the Funded Obligations (as hereinafter defined), MOHCD will lend funds, without interest, to the Guarantor pursuant to a Demand Note controlled and governed by this Agreement and dated on or about even date herewith (the “**MOHCD Funds**”) up to a maximum aggregate amount of ONE MILLION DOLLARS (\$1,000,000) (the “**Funding Cap**”); and

**NOW, THEREFORE**, in consideration of the sum of ONE DOLLAR (\$1.00), and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound and with foregoing recitals being incorporated by reference, hereby agree as follows:

**1. Lending of MOHCD Funds.** Subject to the Funding Cap and Section 3, MOHCD hereby unconditionally agrees to lend to Guarantor the MOHCD Funds in accordance with the terms and conditions of this Agreement. The borrowing of any such MOHCD Funds shall subject the Guarantor to the repayment of the MOHCD Funds borrowed from MOHCD in accordance with the Demand Note dated on or about even date with this Agreement.

**2. Preliminary Notice to MOHCD of Imminent Obligations.** Guarantor shall notify MOHCD in writing promptly upon its reasonable belief that it may be called upon to satisfy the Funded Obligations (as defined below), which may require the Guarantor to submit a Request for Funds (as defined below) to MOHCD. This preliminary notice shall include written explanation as to the anticipated specific Funded Obligations (as defined below) that the Guarantor intends to satisfy with the MOHCD Funds and the anticipated amount of the Request for Funds (as defined below).

**3. Guarantor to First Look to Guarantor’s Own Funds; Funded Obligations.** Upon written demand by the Partnership or the Limited Partner pursuant to Section 4, to the extent required under the terms of the Partnership Agreement and the Partnership Guaranty, MOHCD shall transmit MOHCD funds to Guarantor (via the account described in Section 4 below) as necessary for the Guarantor to perform the Obligations (as defined in the Partnership Guaranty) (the “**Funded Obligations**”); provided that, the Guarantor shall, if possible, first satisfy the Funded Obligations from its own funds.

**4. Procedure for Borrowing of MOHCD Funds.** If the General Partner or the Guarantor has not fully funded the Funded Obligations as required under the Partnership Agreement and the Partnership Guaranty within five (5) calendar days of demand for such funds by the Partnership or the Limited Partner (“**Failure to Perform**”), Guarantor or the Limited Partner shall request in writing funds from MOHCD (“**Request for Funds**”) in the amount necessary for

Guarantor to fully satisfy the Funded Obligations (“**Required Funds**”); provided, that the amount of funds requested in the Request for Funds shall not cause the aggregate amount funded under the Demand Note to exceed the Funding Cap. The Request for Funds shall include a written explanation as to the specific Funded Obligations that the Guarantor will satisfy with the MOHCD Funds and the wiring instructions for the transfer of the MOHCD Funds. Guarantor shall simultaneously send a copy of the Request for Funds to the Limited Partner. Upon receipt of the Request for Funds, MOHCD shall have ten (10) business days to deposit MOHCD Funds in an amount equal to the amount of the Required Funds, but in no event in a maximum aggregate amount exceeding the Funding Cap, into an account designated by the Limited Partner, which funds shall be deemed to have been provided to Guarantor pursuant to this Agreement. Notwithstanding anything to the contrary herein, upon MOHCD’s deposit of the MOHCD Funds into the account as described above, MOHCD’s obligations with respect to that Request for Funds shall be deemed to be satisfied in full. Once the Funding Cap has been met, MOHCD’s obligations under this Agreement shall be deemed to be satisfied in full.

**5. Limited Partner’s Right to Request Funds.** If the Guarantor does not submit a Request for Funds to MOHCD and provide a copy to the Limited Partner within ten (10) days of a Failure to Perform, the Limited Partner, as an intended third-party beneficiary to this Agreement, shall have the right (i) to immediately submit a Request for Funds to MOHCD related to such Failure to Perform in accordance with the procedure described in Section 4; and (ii) to exercise all rights of the Guarantor under this Agreement.

**6. Covenant Regarding Use of MOHCD Funds.** Guarantor and the Partnership hereby covenant and agree that, upon receipt of MOHCD Funds, they shall immediately use the MOHCD Funds for the sole and limited purpose of satisfying the Funded Obligations with respect to which the MOHCD Funds were borrowed from MOHCD. Guarantor and the Partnership agree and covenant that the MOHCD Funds shall not be used for any other purpose.

**7. Remedies in Event of Default.** Upon the occurrence of a default by the MOHCD under this Agreement, the Guarantor, the Partnership, or the Limited Partner (as a third-party beneficiary to this Agreement), at such party’s option, may (a) enforce the specific performance of this Agreement; or (b) pursue any legal or equitable remedy available to such party as a result of such default.

**8. Term.** The term of this Agreement as to the Obligations under the Partnership Guaranty shall begin on the date hereof and shall terminate on the earlier of: (i) the date of Loan Conversion (as such term is defined in the Partnership Agreement) and (ii) the third (3<sup>rd</sup>) anniversary of the date of this Agreement.

**9. Books and Records.** Guarantor shall keep and maintain books, accounts, reports, files, records and other documents relating directly the MOHCD Funds. Any duly authorized agent or representative of MOHCD shall, during regular business hours, have access to and the right to inspection, copy, audit and examine such books, records and other documents of such parties related to the MOHCD Funds.

**10. Notices.** All Notices to be given under this Agreement shall be sent to the Persons shown below. Any party may change its Notice address by providing Notice thereof to all other parties.

**If to Guarantor:** [ \_\_\_\_\_ ]

**If to Partnership:** [ \_\_\_\_\_ ]

**If to MOHCD:** City and County of San Francisco  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attn: Director

**If to Limited Partner:** Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044  
Telephone: (410) 964-0552  
Attention: Asset Management

**11. Miscellaneous.** This Agreement (a) may be amended only by a writing signed by all of the parties, with the prior consent of the Limited Partner; (b) may be executed in several counterparts, each of which is deemed an original but all of which constitute one and the same instrument; (c) is governed by, and will construed and enforced in accordance with, the laws of the State of California without giving effect to any conflict of laws rules; and (d) is binding upon and will insure to the benefit of, the parties and their respective successors and assigns.

**12. Fully Integrated.** This Agreement contains a full and complete expression of the terms of the agreements between the parties and supersedes any prior oral or written agreements or understandings, which shall have a bearing on this Agreement.

**13. Modification.** This Agreement may not be modified, except by a writing signed by all of the parties with the same formalities as this Agreement. The waiver by a party of any breach or violation of any provision of this Agreement must be in writing, and any such waiver will not operate as, or be construed to be, a waiver of any subsequent breach or violation.

**14. No Right to Offset or Counterclaim.** MOHCD agrees that no portion of the MOHCD Funds due from MOHCD to the Guarantor or the Partnership shall be offset or reduced by a counterclaim or amounts that may be owed by the Guarantor, the General Partner, the Partnership or any other affiliate of MOHCD to MOHCD, now or hereafter.

**15. Removal of General Partner.** Subject to Section 8 hereof, the parties acknowledge that, notwithstanding any removal of the General Partner in accordance with the terms of the Partnership Agreement, or voluntary or involuntary withdrawal of the General Partner from the

Partnership, the obligation of MOHCD, as set forth in this Agreement and the Demand Note, shall remain in full force and effect with respect to the Guarantor under the Partnership Guaranty during the term of this Agreement.

**16. Waiver.** The obligations of MOHCD shall remain in full force and effect without regard to, and shall not be affected or impaired by, (i) any amendment or modification of or addition or supplement to the Partnership Guaranty or the Partnership Agreement; (ii) any extension, indulgence or other action or inaction in respect of the Partnership Guaranty, or any exercise or non-exercise of any right, remedy, power or privilege in respect of the Partnership Guaranty; (iii) any default by the Guaranty or the Partnership under, or any illegality or unenforceability of, or any irregularity or defect in, the Partnership Guaranty, or any provision of this Agreement; (iv) any event of bankruptcy, insolvency, reorganization or similar proceeding involving or affecting the Guarantor, the General Partner or the Partnership; or (v) any other circumstances, whether or not MOHCD shall have actual or constructive notice or knowledge thereof. MOHCD hereby waives to the fullest extent permitted by law, any and all notices and defenses to which it may be entitled by law to its funding obligations hereunder, including, without limitation, notice of acceptance of this Agreement by Guarantor, the Partnership, the General Partner, or the Limited Partner or any requirement of diligence on the part of a Guarantor, the Partnership, the General Partner, or the Limited Partner.

**17. Intended Beneficiary.** The parties intend that the Limited Partner and its successors, assigns or transferees, shall be a direct third-party beneficiary of this Agreement.

**18. Source of Funds.** Notwithstanding anything to the contrary contained herein or contained in the Demand Note or Pledge Agreement – Demand Note, MOHCD agrees that the MOHCD Funds shall not be sourced from tax-exempt bond proceeds or federal grants, or require affordability or occupancy restrictions that are more stringent than the restrictions applicable to the Project as of the date of this Agreement.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound hereby, have executed this Agreement, under seal, the day and year first above written.

**{Signatures of the Parties on the Following Page}**

**PARTNERSHIP**

[Signature block]

**GUARANTOR/DEVELOPER**

[Signature block]

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

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

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

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