

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this “**Amendment**”) is entered into as of [_____], 2023, in San Francisco, California, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”), represented by the Mayor, acting through its Real Estate Division and the Mayor's Office of Housing and Community Development (“**MOHCD**”), and 681 FLORIDA HOUSING ASSOCIATES, L.P., a California limited partnership (“**Tenant**”).

RECITALS

This Amendment is made with reference to the following facts and circumstances:

A. City and Tenant previously entered into that certain Ground Lease, dated as of October 15, 2020 (the “**Lease**”), and that certain Memorandum of Ground Lease dated as of October 15, 2020, and recorded in the Official Records on October 15, 2020 as Document Number 2020031158, for the lease of the real property located at 681 Florida Street in San Francisco, California, Assessor’s Parcel Block 4022, Lots 239, 240, and 241 (the “**Premises**”). Block 4022, Lot 239 shall be referred to herein as the “**Residential Parcel**” and Block 4022, Lots 240 and 241 shall be referred to herein as the “**Commercial Parcels**.”

B. Tenant has developed the Premises with 130 units of affordable housing for low-income persons consisting of 44 studios, 31 one-bedroom units (including one manager’s unit), 41 two-bedroom units, and 14 three-bedroom units (the “**Residential Project**”), and two ground floor commercial spaces (the “**Commercial Project**”).

C. Section 14.03 of the Lease states that upon construction completion of the Residential Project and prior to Tenant’s conversion of construction financing to permanent financing, Tenant will convey the Commercial Parcels to an affiliate of Tenant. As part of such conveyance, City intends to enter into a Commercial Ground Lease with 681 Florida Street Commercial LLC for the Commercial Parcels, in accordance with all applicable approvals and MOHCD’s Commercial Underwriting Guidelines and intends to amend the Lease to remove the Commercial Parcels from the Tenant’s leasehold under the Lease.

D. The parties now desire to modify the Lease on the terms and conditions as set forth herein.

AGREEMENT

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. **Lease Amendments**. The Lease is hereby amended as follows:
 - a. Attachment 1 (Legal Description of the Site) of the Lease is hereby deleted and replaced in its entirety with the attached Attachment 1.

- b. Recital C of the Lease is hereby amended and restated in its entirety to read as follows:

“Mission Economic Development Agency, a California nonprofit public benefit corporation (“**MEDA**”), and Tenderloin Neighborhood Development Corporation, a California nonprofit public benefit corporation (“**TNDC**” and, together with MEDA, the “**Developer**”), were selected as joint venture partners by the City to develop the Site under a Request for Proposals issued by the City on October 13, 2016. MEDA and TNDC have formed Tenant to undertake the development of the Site with 130 units of affordable housing for low-income persons consisting of 44 studios, 31 one-bedroom units (including one manager’s unit), 41 two-bedroom units, and 14 three-bedroom units (the “**Project**”).

- c. Section 9.01 (Permitted Uses and Occupancy Restrictions) of the Lease is hereby amended and restated in its entirety to read as follows:

“The permitted uses of the Project are limited to 130 units of affordable rental housing including one manager’s unit (collectively, the “**Residential Units**”) and common areas. Upon the completion of construction, one hundred percent (100%) of the Residential Units, with the exception of the manager’s unit, in the Project will be leased to households certified as Qualified Households, as set forth in MOHCD’s Declaration of Restrictions and any amendments thereto mutually agreed upon by the parties; provided, however that the maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of AMI and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease and by Lenders for so long as the restrictions are required by the applicable Lender. In addition, Tenant will enter into a Local Operating Subsidy Program (“**LOSP**”) grant agreement with MOHCD, applicable to thirty-nine (39) Residential Units, and such Residential Units will be subject to the terms of the LOSP grant agreement and applicable Laws.”

- d. Section 4.05 (Commercial Revenue Sharing) of the Lease is hereby deleted in its entirety.

2. No Joint Venture. This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

3. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

4. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

5. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

6. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

7. **Effective Date.** The date of which this Amendment shall become effective is as of the date this Amendment is duly executed and exchanged by the parties hereto.

8. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[signatures follow]

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: 681 FLORIDA HOUSING ASSOCIATES, L.P.,
a California limited partnership

By: 681 Florida TNDC LLC,
a California limited liability company
its managing general partner

By: Tenderloin Neighborhood
Development Corporation,
a California nonprofit public benefit
corporation,
its manager

By: _____
Name: Maurilio Leon
Its: Chief Executive Officer

By: MEDA 681 Florida LLC,
a California limited liability company
its administrative general partner

By: Mission Economic Development
Agency,
a California nonprofit public benefit
corporation,
its sole member/manager

By: _____
Name: Luis Granados
Its: Chief Executive Officer

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Eric D. Shaw
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU,
City Attorney

By: _____
Deputy City Attorney

Attachment 1

LEGAL DESCRIPTION OF THE SITE

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

TRACT A:

Parcel 1 as shown on that certain map entitled "Parcel Map 9907", filed for Record December 6, 2019, in Book 50 of Parcel Maps, Pages 11 through 14, inclusive, San Francisco County Records.

Assessor's Lot 239 (formerly Lot 028); Block 4022

TRACT B:

Non-exclusive easements for the benefit of Tract A above as created in that certain "Declaration Establishing Reciprocal Easements and Covenants Running with the Land for the Mixed Use Development Located at 681 Florida Street, San Francisco, California" recorded October 15, 2020, in Official Records under Recorder's Serial Number 2020031160, as more particularly defined in Article 3 therein.