

GROUND LEASE

BETWEEN

**COUNTY OF SAN MATEO
AS “LANDLORD”**

AND

**EASTMOOR MULTIFAMILY, L.P.
AS “TENANT”**

CONCERNING CERTAIN REAL PROPERTY LOCATED

IN THE

CITY OF DALY CITY, CA

GROUND LEASE

THIS GROUND LEASE (the “**Lease**” or “**Ground Lease**”) dated, for reference purposes only, as of _____, 2025, is entered into by and between the County of San Mateo, a political subdivision of the State of California, (“**Landlord**” or “**County**”) and Eastmoor Multifamily, L.P. and its successors and assigns (collectively, “**Tenant**”).

RECITALS

A. Tenant (“**Seller**”) was, just prior to the effectiveness of this Lease, the owner of real property located in the City of Daly City, County of San Mateo, California more particularly described in Exhibit A attached hereto and incorporated herein by this reference, with a street address of 493 Eastmoor Avenue, Daly City, California (the “**Real Property**”).

B. The County and Seller are parties to that certain Purchase and Sale Agreement, pursuant to which County has agreed, subject to certain conditions set forth in the Purchase and Sale Agreement dated as of _____ (“**PSA**”), to acquire the Real Property from Seller (but not any Seller Work as such term is defined in the PSA) and immediately thereafter enter into a ground lease with Tenant or its permitted assignee to allow Tenant or its permitted assignee to develop on the Real Property a new construction project consisting of street-level commercial or community-serving space, a second-floor parking garage providing thirty-two (32) automobile parking spaces, bike storage, and seventy-two (72) dwelling units on floors three through seven, including one unrestricted manager’s unit and seventy-one (71) income-restricted affordable rental studio units and one-bedroom units, together with various amenities for residents, including a podium courtyard, community room, reading room, fitness room, and laundry room (the “**Affordable Housing Project**” or the “**Project**”).

C. In order to facilitate the development of the Affordable Housing Project, Tenant shall admit one of more partners, affiliated with _____ (“**Tax Credit Investor**”) which shall contribute capital to the Tenant and in turn receive an allocation of low income housing tax credits (“**Tax Credits**”) available under Section 42 of the Internal Revenue Code of 1986, as amended (“**Code**”).

D. Pursuant to the Purchase and Sale Agreement, Landlord and Tenant have or will be entering into an amended and restated Loan Agreement 79000-23-R078476A and amended and restated associated Promissory Note, Deed of Trust and Regulatory Agreement, in connection with that certain loan by County to Tenant (the “**County Loan**”). Landlord and Tenant understand and agree that the Regulatory Agreement shall be recorded in the official records of the County of San Mateo against Tenant’s leasehold interest in the Real Property.

E. The County Board of Supervisors has determined that (i) this Lease will serve a public purpose by providing much needed affordable housing; (ii) the public benefit of this Lease is expected to be greater than the public benefit which would result from the sale or lease of the Real Property for other purposes; (iii) a reasonable expectation exists that future public need will justify retention of fee ownership of the Real Property leased hereunder; and (iv) this Lease will not interfere with the use or development of other County properties or operations in or near this Real Property.

F. In furtherance of the foregoing, the Lease shall require Tenant to comply with certain affordability covenants and restrictions with respect to the use of the Premises and the County and Tenant will be entering into the aforementioned Regulatory Agreement, on substantially the same date hereof (the “Regulatory Agreement”), whereby Tenant warrants, represents, and agrees to certain affordability restrictions for the Affordable Housing Project in connection with the County Loan.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, the parties hereby agree to the following:

ARTICLE 1

PREMISES

1.1 **Lease of Premises.** For and in consideration of the covenants, conditions and restrictions set forth herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises on the terms and conditions set forth herein. This Lease is effective and binds the parties as of the last date this Lease is signed by authorized representatives of all parties below (“**Effective Date**”), notwithstanding that the Term Commencement Date will occur on the date described in Section 2.1.

1.2 **Premises Definitions.**

1.2.1 **Premises.** “**Premises**” means the Real Property, together with all Project Improvements from time to time located on the Premises, and including such entitlements and permits thereto.

1.2.2 **Project Improvements.** “**Project Improvements**” means the Affordable Housing Project and all other buildings, structures, parking lots, on site utility installations, landscaping, amenities, fences and other improvements located from time to time on the Premises and installed by Tenant for the purposes authorized herein and in accordance with all applicable terms and conditions of this Lease. Project Improvements shall be constructed and maintained on the Premises substantially in accordance with the Site Plan approved by Landlord (as defined in Section 5.3.1) and in full compliance with the Regulatory Agreement, as each may be amended from time to time with Landlord’s consent.

ARTICLE 2

TERM OF LEASE AND OWNERSHIP DURING LEASE TERM

2.1 **Term.** The term of this Lease (the “**Term**”) commences on the date on which a memorandum of Ground Lease is recorded in accordance with Section 18.6.4 below (the “**Term Commencement Date**”) and expires on the last day of the month in which the fifty-fifth (55th) anniversary of the Term Commencement Date occurs, and is subject to earlier termination as provided elsewhere in this Lease. The expiration or sooner termination of the Term shall be referred to as “**Lease Termination.**” “**Term**” also shall include any extension of the initial term of this Lease provided in Section 2.2.

2.2 **Term Extension.** So long as Tenant is not in default under any of the provisions or covenants of this Lease, Tenant shall have one (1) option to extend the term of this Ground Lease for a period of forty-four (44) years from the initial Lease Termination date (“**Initial Termination Date**”). Not later than one hundred eighty (180) days prior to the Initial Termination Date, the Tenant may notify Landlord in writing that it wishes to exercise its option to extend the term of this Lease (an “**Extension Notice**”). Upon Tenant’s exercise of this option, the Term shall be extended for a period of up to forty-four (44) years from the Initial Termination Date for a total Term not to exceed ninety-nine (99) years, unless within sixty (60) days after receipt of the Extension Notice the Landlord delivers written objection to Tenant due to a material uncured Event of Default by Tenant existing as of the date of the Extension Notice.

2.3 **Lease Termination.** At Lease Termination, Tenant shall execute, acknowledge and deliver to Landlord within thirty (30) days, a valid and recordable quitclaim deed, or other document required by a reputable title company, conveying to Landlord all of the Premises, including the Project Improvements in good condition and repair, subject to reasonable wear and tear and casualty not caused by Tenant, free and clear of all liens, encumbrances, and deeds of trust, except those existing and created pursuant to the terms of this Lease or those remaining on title with the consent or at the request of the Landlord, and without further compensation therefor from Landlord to Tenant or any other person, (the “**Quitclaim Deed**”). Except for such title exceptions permitted or required during the Term with Landlord’s prior written consent, any and all encumbrances on the Real Property or the Project Improvements at the time of Lease Termination which are the result or consequence of Tenant entering into this Lease, constructing the Project Improvements, operating the Affordable Housing Project or any other actions or inactions of Tenant shall be cleared from title at Tenant’s sole cost, liability and expense. Tenant shall also remediate, at its sole cost, any hazardous materials and comply with all applicable environmental laws prior to surrender. If Tenant fails to clear such encumbrances at Lease Termination, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses, including, without limitation, any costs associated with removal of mechanics’ liens, judgment liens, or environmental liens, associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord demand for such payment together with interest at the Default Rate permitted by law from the date incurred until paid in full within thirty (30) days after demand. In addition, Tenant shall deliver to Landlord all property management files, warranties, operating manuals, maintenance records, and assignable service contracts relating to the Premises and Project Improvements.

2.3.1 **Delivery of Documents.** Contemporaneous with Lease Termination, Tenant shall immediately deliver to Landlord the following:

- (a) Such additional documents, instruments, and conveyances as Landlord may reasonably request to enable Landlord’s ownership of the Premises to be reflected of record.
- (b) If requested by Landlord, an owner’s policy of title insurance, surety bond, or other security reasonably acceptable to Landlord insuring against all claims and liens against the Premises that were incurred in

violation of the terms of this Lease, other than those incurred by Landlord or accepted by Landlord in writing.

- (c) All construction plans, surveys, permits, existing contracts for services, maintenance, operation, and any other documents relating to use, operation, management, and maintenance of the Improvements as may be in effect and/or in the possession of Tenant at the time and from time to time thereafter.
- (d) All documents and instruments required to be delivered by Tenant to Landlord pursuant to this Section shall be in form reasonably satisfactory to Landlord, including without limitation such documents and instruments shall be complete, originals or true copies, and legible.

2.4 **Ownership During Term.** During the Term of this Lease, the Improvements, including all buildings, structures, fixtures, additions and improvements located on the Property (other than personal property owned by Lessor or others) shall be owned in fee by Tenant. The parties hereto agree that Tenant shall bear all risk of loss with respect to the Improvements and that the benefits and burdens of ownership of the Improvements are vested in Tenant. It is the intention of the parties that the Tenant be treated as owner of the Improvements for federal and state income tax purposes and shall have all the rights incidental thereto including, without limitation, the right to claim tax credits and depreciation deductions with respect to the Improvements. During the Term, except as permitted under the Leasehold Mortgagee's loan documents, the Improvements shall not be conveyed, transferred or assigned unless such conveyance, transfer or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith, and at all such times the holder of the leasehold interest of Tenant under this Lease shall be the owner of the Improvements. Any attempted conveyance, transfer or assignment of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever except a conveyance, transfer or assignment to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions hereof. Notwithstanding the foregoing, Lessee may from time to time replace fixtures provided that the replacements for such items are of equivalent or better value and quality, and such items are free from any liens and encumbrances except as permitted hereunder.

ARTICLE 3

RENT

3.1 **Rent Definitions.**

3.1.1 **Annual Base Rent.** "Annual Base Rent" for any Lease Year means the amounts set out below:

<u>Lease Years</u>	<u>Annual Base Rent</u>
Term Commencement	
Date through the end of the Term	\$1.00

3.1.2 Additional Rent. “**Additional Rent**” means all sums, Impositions (as defined in Section 4.1 hereof), costs, expenses, and other payments for which Tenant is responsible pursuant to this Lease, including without limitation any amounts necessary to cure noncompliance with affordability covenants in Landlord’s regulatory agreement; and (b) annual payments equal to Landlord’s Pro Rata Share (as defined in the following sentence) of Residual Receipts (as defined in Section 3.1.5 below), to the extent such Residual Receipts are available, which payments shall not accrue if unpaid, in which Tenant’s share of Residual Receipts shall equal 33%. The remaining 66.67% of Residual Receipts shall be allocated to pay Landlord’s Pro Rata Share of Residual Receipts payable under this Ground Lease and the Pro Rata Share of Residual Receipts payable to public agencies as a result of a loan secured by a deed of trust on tenant’s leasehold interest in the Premises determined as of the Effective Date in accordance with the ratio of their respective outstanding original principal loan amounts and the Residual Rent as defined in Section 3.5 below. The allocation of the remaining 66.67% of Residual Receipts shall be as more specifically set forth in an Intercreditor Agreement between the County of San Mateo (principal loan amounts estimated to be \$17.6 m), the City of Daly City (principal loan amounts estimated to be \$7,716,687), and any other public sector lender providing a loan payable from Residual Receipts secured by a deed of trust in Tenant’s leasehold interest in the Premises. Payments of Residual Receipts shall be due no later than one hundred twenty (120) days after the end of each Fiscal Year for the Project, and Tenant shall deliver to Landlord a copy of its annual independent financial audit delineating the annual Residual Receipts. Within sixty (60) days after the Commencement Date, Tenant shall confirm in writing with County all fee and reserve amounts to be included in the calculation of Residual Receipts.

3.1.3 Rent. The Annual Base Rent and the Additional Rent are collectively referred to as “**Rent**.”

3.1.4 Lease Year. “**Lease Year**” means twelve (12) month periods, with the first Lease Year commencing on the Term Commencement Date, provided if the Term Commencement Date is other than the first day of a month, the first Lease Year shall also include the partial month during which the Term Commencement Date falls, and each subsequent Lease Year shall begin on the first day of the same month that is the first full month of the first Lease Year.

3.1.5 Residual Receipts. "Residual Receipts" means, with respect to the Tenant’s fiscal year, the amount by which Project’s "Gross Revenue" exceeds "Annual Operating Expenses" for any year after Project has been placed in service and the construction loan has been repaid and the permanent loan period has commenced, as defined below.

“Residual Rent” means an amount not to exceed the sum of \$4,440,000, subject to the terms of an Intercreditor Agreement between the County of San Mateo, the City of Daly City, and any other public sector lender providing a loan payable from Residual Receipts.

"Gross Revenue" means all rental and incidental income from the Project, but excluding tenant security deposits, loan proceeds and capital contributions and any interest earned on said deposits, amounts released from operating reserves or replacement reserves.

"Annual Operating Expenses" means reasonable costs actually incurred for operations and maintenance of the Project and the administration of the Tenant to the extent that

they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles. A copy of the audit will be delivered with payment as specified above. Costs associated with the Project operations and maintenance and the administration of the Tenant include the following:

- (i) property taxes and assessments imposed on the Project;
- (ii) premiums for property damage and liability insurance;
- (iii) utility services not paid for directly by the tenants, including, but not limited to water, sewer, trash collection, gas, and electricity; maintenance and repairs, including but not limited to, pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial supplies and services;
- (iv) any license or certificates of occupancy fees required for operation of the Project; general administrative expenses, including but not limited to advertising, marketing, security services and systems,
- (v) professional fees for legal, audit, accounting and tax returns, and other such services;
- (vi) property management fees and reimbursements, including on-site manager expenses, not to exceed fees and reimbursements which are customary in affordable housing developments with income and rent restrictions similar to those imposed on the Project, and pursuant to a management contract approved by County (which such approval will not be unreasonably withheld);
- (vii) resident services;
- (viii) annual cash deposited into a reserve for capital replacements of the Project improvements in an amount of \$300 per unit per year (increasing annually by three percent (3%)) or such higher amount as may be required for any mortgage holder, provided any lowering of amounts deposited into this replacement reserve will require County approval;
- (ix) cash deposited into an operating reserve for the Project and such other reserves as may be required by Borrower's senior lender or tax credit investor;
- (x) payments of any deferred developer fee (determined as of the amount outstanding after commencement of the permanent loan phase and payment of all capital contributions to be made by the Tax Credit Investor), with interest, not to exceed the maximum amount permitted as Developer Fee, defined as the maximum cumulative developer fee permitted by the California Tax Credit Allocation Committee. For avoidance of doubt, any deferred developer fee remaining after commencement of the permanent loan phase and payment of all capital contributions to be made by the Tax Credit Investor may be paid only from Tenant's share of Residual Receipts.

(xi) current and accrued general partnership management and asset management fee in an aggregate amount not to exceed Thirty-Nine Thousand Five Hundred Four Dollars (\$39,504), increasing annually by three and a half percent (3.5%); provided, however, following withdrawal of the investor limited partner from Borrower after the end of the tax credit compliance period, the limited partner asset management fee shall no longer be included as an Annual Operating Expense for purposes of calculating Residual Receipts);

(xii) tax credit adjusters owed to the Tax Credit Investor or repayment of operating deficit loans made to the Tenant by the Tenant's general partner or affiliated sponsor, and

(xiii) debt service payments currently due on a non-optional basis of loans in senior position to this loan, and repayment of any operating deficit loans or advance previously made by a partner or its affiliate to the limited partner.

3.2 **Rent.** Tenant's obligation to pay Rent under this Lease shall consist of the obligation to pay (i) Annual Base Rent and (ii) Additional Rent.

3.2.1 Accrual of Annual Base Rent. Tenant's obligation to pay Annual Base Rent shall commence to accrue on the Term Commencement Date and shall continue to accrue throughout the Term. The parties agree and acknowledge that the cumulative Annual Base Rent for the initial Term of Fifty-Five Dollars (\$55) shall be paid to Landlord no later than the Term Commencement Date.

3.2.2 Additional Rent. Tenant's obligation to pay Additional Rent shall begin to accrue on the Term Commencement Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Lease.

3.2.3 Additional Consideration. In addition to the Rent and Additional Rent provided for herein, consideration for this Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Agreement and this Lease relating to the construction, operation and management of the Affordable Housing Project.

3.2.4 Use of Residential Units. If at any time any residential unit in the Premises is used for any purpose other than as an affordable housing unit as required under this Lease and/or the Regulatory Agreement, and any CTCAC or other funding restrictions, or in the event of an uncured material breach of the same, which causes an Event of Default under Section 16.1 of this Agreement, the County reserves the right, to pursue damages or specific performance.

3.3 **Method of Payment.** Tenant shall pay all Rent to Landlord in lawful money of the United States of America at County of San Mateo, Department of Housing, 264 Harbor Blvd., Building A Belmont CA 94002-401, Attention: HCD Director, unless Landlord instructs Tenant in writing to deliver payment to another address, or unless this Lease specifically provides another place for payment.

3.4 **No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Lease, the Rent payable under this Lease shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Annual Base Rent and the Additional Rent throughout the Term. Except as otherwise expressly provided in this Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, including during periods of noncompliance with Regulatory Agreements, CTCAC requirements, or funding restrictions.

ARTICLE 4

TAXES, ASSESSMENTS AND OTHER CHARGES

4.1 **Impositions.** Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Real Property which become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Real Property (collectively, “**Impositions**”). Tenant shall not permit any Impositions to become a defaulted lien on the Real Property or the Improvements thereon; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate and in which Landlord shall join at the request of Tenant, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. If at any time during the Term any governmental authority shall undertake to create an improvement or special assessment district the proposed boundaries of which shall include the Property, Tenant shall be entitled to appear in any proceeding relating thereto and to exercise all rights of a landowner to have the Property excluded from the proposed improvement or special assessment district or to determine the degree of benefit to the Property resulting therefrom. The party receiving any notice or other information relating to the proposed creation of any improvement or special assessment district, the proposed boundaries of which include the Property, shall promptly advise the other party in writing of such receipt. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Real Property, the Improvements or on Tenant’s interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Effective Date, including but not limited to any taxes, assessments, impositions, fees or other charges levied against the Real Property which are incurred prior to the Effective Date (except to the extent such Impositions were a responsibility of Tenant as a prior owner of the Real Property).

4.2 **Possessory Interest Tax.** In accordance with the requirements of California Revenue and Taxation Code Section 107.6, Tenant is hereby informed that this Ground Lease will create a possessory interest in Tenant in the Premises, that the possessory interest of Tenant may be subject to property taxation and that Tenant may be subject to the payment of property taxes

levied on Tenant's possessory interest in the Premises. Any possessory interest tax shall be included in the definition of "Imposition." Tenant shall, at its sole cost and expense, timely apply for, and shall use commercially reasonable efforts to obtain and maintain, all available real property or possessory interest tax exemptions associated with the Affordable Housing Project, including without limitation any exemption required or permitted under (i) Government Code Section 214, (ii) any Regulatory Agreement recorded against the Premises, and (iii) any regulatory agreement associated with the CTCAC. Any failure by Tenant to obtain or maintain such exemption shall constitute an Imposition for purposes of this Section and shall be the sole financial responsibility of Tenant. If possessory interest taxes are assessed, Tenant agrees it is responsible for payment or securing the exemption thereof and Landlord has no obligation or liability of any kind or nature relating to payment of such taxes.

4.3 **Services.** Tenant shall pay before delinquency all charges for gas, water, electricity, light, heat or power, telephone or other communication or internet service, sewer, trash removal, cable and all other services or utilities used during the Term in, upon or about the Premises by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenant or assignees. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service to and upon the Premises. Landlord has no obligation regarding provision of or payment for services or utilities serving the Premises.

4.4 **Personal Property.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Property or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the Real Property.

ARTICLE 5

DEVELOPMENT OF THE PREMISES

5.1 **Construction of Project Improvements.** Tenant plans to construct the Project Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in this Article 5. As provided in Article 5, Tenant shall be permitted to use the Property for the construction, rehabilitation, development, management and operation of the Affordable Housing Project, and related accessory uses. For the entire Term, all improvements now or hereafter constructed on the Property shall belong solely to the Tenant and the Tenant shall have the right to construct, rehabilitate, alter, improve, modify, restore and rebuild the improvements on the Land without the Lessor's consent except as otherwise provided in this Article 5.

5.1.1 **Construction Schedule.** Tenant agrees to use commercially reasonable efforts to cause the construction of the Project Improvements to be commenced promptly after issuance of building permit(s) and financing/funding is fully committed and to pursue construction diligently to completion in accordance with the schedule attached hereto as Schedule 1, subject to Unavoidable Delays. Tenant's failure to diligently pursue and complete construction in accordance with the approved schedule (as extended only by written approval of Landlord due to Unavoidable Delays) shall constitute an Event of Default.

5.1.2 General Construction Contractor Selection Procedures. Tenant shall select the general construction contractor (the “**General Contractor**”) and the General Contractor must have demonstrable experience constructing projects financed with Tax Credits. The Tenant’s contract with the General Contractor will require the General Contractor to carry insurance acceptable to Landlord, and the General Contractor must comply with Landlord insurance requirements prior to the commencement of work on the Premises. Landlord’s review of Tenant’s selection of a General Contractor shall not constitute an approval of the contractor or of the contractor’s work, or constitute a waiver by Landlord of any claims that may accrue to Landlord against a contractor or subcontractor. Any review by Landlord is for Landlord’s internal purposes only and cannot be relied upon by, or deemed for the benefit of, Tenant or any third party.

5.2 Construction Standards.

5.2.1 General Construction Standards. The General Contractor shall be licensed. Tenant shall require the General Contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant’s work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant’s construction of the Project Improvements, or of any subsequent alterations or improvements on the Premises, as the case may be, and the performance of Tenant’s work. Dust, noise and other effects of Tenant’s work shall be controlled by Tenant as required by the conditions of approval of the Project and applicable laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant’s expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant’s construction.

5.2.2 Public Safety. Without limiting the generality of the above Section 5.2.1, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

5.2.3 Prevailing Wages. As material consideration to Landlord for entering into this Lease, Tenant agrees that Tenant’s construction contract with the General Contractor for the Project Improvements or new construction on the Premises shall require the General Contractor (and all subcontractors) to pay the then general prevailing rate of per diem wages, in the locality where said work is being performed, as ascertained by the California Department of Industrial Relations.

5.2.4 Delivery of Bonds. Prior to commencement of construction and as a condition to commencing construction, Tenant shall deliver to Landlord for Landlord’s review and approval the original payment, performance and completion bonds, naming Landlord as an obligee, as described below. The payment and performance bonds may be obtained by Tenant’s General Contractor and name Tenant and County as co-obligees. Each such bond shall be issued by a surety licensed to do business in the State of California and having a current A.M. Best general policyholders’ rating of not less than ‘A-/VIII’ (meaning an A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VIII or higher). Any replacement or substitute surety or completion guarantor shall be subject to Landlord’s prior written approval.

5.2.4.1 Labor and Materials Payment Bond. A labor and materials payment bond, in form substantially similar to **Exhibit E**, issued by a surety licensed in California with an A.M. Best rating of at least A-/VIII, in an amount not less than one hundred percent (100%) of the total general contract amount for the construction of the Project Improvements, which bond by its terms shall remain in full force and effect and Tenant shall maintain it in full force and effect until the entire cost for the Project Improvements shall have been paid in full, the Project Improvements are satisfactorily completed in accordance with the provisions of this Ground Lease, all claims for labor, materials, equipment or power have been paid, and all periods during which stop notices or claims of lien(s) of any kind may attach to the Premises have expired. The bond shall contain provisions as required by Landlord, including the following: (i) that it shall secure the completion of the proposed construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and material suppliers; and (ii) that the construction work shall be completed by the General Contractor, or on its default, the surety.

5.2.4.2 Performance Bond. A performance bond, in form substantially similar to **Exhibit E**, issued by a surety licensed in California with an A.M. Best rating of at least A-/VIII, in the amount of the construction contract between Tenant and the General Contractor (the “**Construction Contract**”) insuring completion of the Project Improvements for the amount stated in the Construction Contract, with provision for increases in the bonded amount equal to increases under the Construction Contract resulting from change orders so that the amount of the bond will, at all times, be at least equal to the Construction Contract amount, as increased from time to time. The bond shall contain provisions as required by Landlord including a provision that the construction work shall be completed by the General Contractor, or on its default, the surety. The bond shall insure the replacing of, or making acceptable, any defective materials or faulty workmanship.

5.2.4.3 Completion Guaranty. In lieu of the bonds required pursuant to Sections 5.2.4.1 and 5.2.4.2, Tenant may deliver to Landlord, prior to commencement of construction a Completion Guaranty, in customary form reasonably acceptable to Landlord, guaranteeing completion of the work described in the Construction Contract. The Completion Guaranty shall be made by a person or entity, with financial capability reasonably acceptable to Landlord, as established by financial statements of the proposed guarantor which shall be subject to Landlord’s reasonable approval.

5.2.5 Submission of Cost Projections and General Contract. Prior to commencement of construction, Tenant shall have delivered to Landlord:

5.2.6 Cost Estimates. Tenant’s reasonable estimate of the total hard costs and total soft costs for construction of the Project Improvements plus an amount estimated by Tenant to be a reasonable contingency (i.e. allowance for unpredicted changes); and a copy of a construction contract for construction of the Project Improvements within Tenant’s budgeted amount signed by the General Contractor.

5.2.7 Financial Information. Financial information, in form and content reasonably satisfactory to Landlord, evidencing sources of capital sufficient to demonstrate that Tenant has adequate financing or resources to pay for the total hard and soft costs of construction of the Project Improvements, and will be able to complete the Project Improvements pursuant to

the terms of the Ground Lease. Tenant shall also submit a preliminary sources and uses schedule reflecting all anticipated construction financing sources, including Tax Credit equity. As part of such submission, Tenant shall provide a copy of the executed limited partnership agreement (or other equity closing documents), equity investor commitment letter, or other reasonably satisfactory evidence of Tenant's receipt of a binding commitment for the equity investment from the Tax Credit Investor relating to the Project's Tax Credits.

5.3 Approval of Tenant's Plans.

5.3.1 Approval of Development Plans and Specifications. Prior to commencement of construction, Tenant shall submit and Landlord shall approve or disapprove the Site Plan, Design Development Documents and Construction Documents (as hereinafter defined, and collectively, the "**Development Plans**") for the Project Improvements. Once Landlord approves any Development Plans, Tenant may make material changes to the Development Plans only with the prior written consent of Landlord.

5.3.2 Site Plan. Tenant shall prepare and deliver to Landlord a site plan and exterior elevations ("**Site Plan**") for the proposed use of the Premises. The Site Plan shall delineate Tenant's exterior elevations, building layout and the location of building facilities, parking and internal driveways, inventory storage and display, onsite landscaping and signage, drainage, curbs, gutters and driveways. The Site Plan exterior elevations shall clearly reflect Tenant's exterior building design, including exterior wall and roofing materials and colors. Landlord shall have 30 days to approve or disapprove the Site Plan, which approval Landlord may withhold in Landlord's reasonable discretion. If Landlord reasonably disapproves the Site Plan, Landlord shall deliver to Tenant a written notice of disapproval within the prescribed review period setting out the reasons for the disapproval and the changes required to gain Landlord's approval, all in reasonable detail. Tenant and Landlord shall meet promptly thereafter to discuss possible remedies to Landlord's disapproval and Tenant shall resubmit a revised Site Plan to Landlord for Landlord's approval, and Landlord shall have thirty (30) business days to review and to approve, or disapprove, the resubmittal. The process described above shall be followed until Landlord and Tenant agree on the Site Plan. If Landlord fails to approve or disapprove the Site Plan (or any required resubmittal) within the applicable time period, the submittals shall be deemed approved. Once the Site Plan is approved (or deemed approved), Landlord and Tenant shall indicate their approval in writing, describing with specificity the plans so approved. The parties acknowledge and agree that as Landlord approves of changes to the Site Plan, the term "**Site Plan**" shall mean those submittals last approved by Landlord.

5.3.3 Design and Construction Documents. Following Landlord's approval of the Site Plan, Tenant shall submit for Landlord's approval, the plans and specifications, including the architectural/structural plans and drawings, and related design documents (the "**Design Development Documents**") and the construction documents for the construction of the Project ("**Construction Documents**") that are consistent with the approved Site Plan.

5.3.4 No Landlord Duty. Tenant understands and agrees that Landlord is entering into this Lease as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Landlord's approval, review or modification of any Development Plans (or any other work by Tenant) is limited to determination of their compliance

with this Lease. Any Landlord review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and Landlord shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction, or installation of the improvements on the Premises. Likewise, Landlord's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. Nothing in this Lease shall limit Tenant's obligations to obtain any required approvals from County officials, departments, boards or commissions having jurisdiction over the Premises. By approving, reviewing, modifying or otherwise commenting on any of Tenant's plans, specification or other construction documents, Landlord shall not be deemed to make any express or implied warranty of the reviewed matters for any intended use or purpose. The scope and breadth of any review by Landlord is at Landlord's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

5.4 **Landlord's Cooperation.** Landlord shall reasonably cooperate with and assist Tenant in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease, including Landlord's joinder in any application for any such consent, approval, permit or variance where joinder therein by the fee owner of the Premises is required by law. Landlord's cooperation shall be at no cost to Landlord. The foregoing notwithstanding, Landlord shall not be required to join in any request or application for any change in the general plan designation or a rezoning of the Premises. In no event shall Landlord be required to join in any application, agree to any condition or sign any document which, in any way, will bind Landlord to perform, or agree not to perform, any act, expend any sums, dedicate any property or otherwise make any commitment with regard to Landlord's fee interest in the Real Property. Nothing contained in this Section or elsewhere in this Lease shall be deemed to limit Landlord's right (to the extent it could do so if it were not the Landlord), acting in its role as a governmental agency, to impose such restrictions or requirements on the issuance of consents, approvals, permits or variances, to make comment on applications and reports or otherwise to exercise its governmental authority.

5.4.1 **Landlord Access.** Representatives of Landlord shall have the right of reasonable access to the Premises without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Lease. Landlord may, at its option, be accompanied by construction inspectors or third-party consultants during such access. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules of the Tenant.

5.4.2 **California Environmental Quality Act.** If the construction or operation (or both) of the Project Improvements constitutes a "project" under the California Environmental Quality Act ("CEQA"), then Tenant shall pay for all costs associated with CEQA compliance, including but not limited to all Landlord costs associated with such compliance and liability.

5.4.2.1 **CEQA Litigation.** If any third party commences litigation objecting to or otherwise challenging any action or omission under CEQA with respect to the Premises, any of Landlord's approvals, or the Project Improvements thereon or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense

counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

5.5 **Protection of Landlord.** Nothing in this Lease shall be construed as constituting the request of the Landlord, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Project or any part thereof for Landlord's account or benefit by any contractor, subcontractor, laborer or materialman. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and of the Premises and the Project Improvements thereon from mechanics' liens or other claims. Tenant shall give Landlord ten (10) days' prior written notice of the commencement of any work to be done on the Premises to enable Landlord to post such notices. In addition, Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Premises and the improvements thereon.

5.6 **Mechanics Liens.** Tenant shall keep the Premises and the Project Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded and is not removed or discharged within thirty (30) days, without reference to its validity Tenant shall, upon demand, furnish the bond described in California Civil Code Section 3143, or any other applicable or successor statute, which results in the removal of such lien from the Premises.

5.7 **Notice of Completion.** Promptly upon completion of construction of any Project Improvement, Tenant shall file or cause to be filed in the Official Records of the County of San Mateo a Notice of Completion (the "**Notice of Completion**") with respect to that Project Improvement.

5.8 **As Is.** Except for any express representations by Landlord set forth herein in writing, there are no warranties or representations, express or implied, by Landlord to Tenant and Tenant acknowledges that the execution of this Lease is and will be based solely upon Tenant's inspection and investigation of the Premises. Tenant acknowledges that Landlord has not made any representations or warranties other than as contained herein as to any matters concerning the Premises. Tenant independently has satisfied itself regarding the suitability of the Premises for Tenant's purposes including the suitability of the following characteristics of the Premises: topography, availability of utilities, general plan designation, zoning, soil, subsoil, presence or absence of fill, presence or absence of hazardous materials, the purposes for which the Premises or any part thereof may be used, drainage, flood zone designation, access to public roads, and applicable Environmental Laws, rules, or regulations. The failure on the part of the Tenant to procure in writing express warranties or representations regarding Premises characteristics shall constitute a conclusive admission that Tenant has relied on its investigation and judgment as to all matters relating to the Premises. Tenant represents that it has, prior to the execution of this Lease,

made investigations and tests of the Premises, including inquiry from governmental agencies and quasigovernmental agencies having jurisdiction over the Premises, soils testing, tests and inspection for presence of hazardous materials and such other examination of the Premises as Tenant has deemed necessary to determine the condition of the Premises and that Tenant, except as specifically set out in this Lease, by execution hereof accepts the Premises in the condition and state in which they are, “as is.”

5.9 **Subdivision of Premises.** Tenant shall not subdivide, by parcel map, subdivision map, or otherwise, the Premises or any portion thereof without the prior written consent of Landlord, which Landlord may grant or withhold in the exercise of its reasonable discretion.

5.10 **As Built Plans.** Within sixty (60) days following completion of construction of any construction, changes, alteration or repair on the Premises for which architectural drawings are required, Tenant shall deliver to Landlord three sets of “As Built” drawings (including one electronic copy in PDF format, if available) for such work.

5.11 **Guarantee of Workmanship and Materials.** Landlord’s acceptance, review or approval of any, the design or the work contemplated by the Project Improvements shall not relieve Tenant of the responsibility for faulty materials or workmanship. Tenant warrants and represents that the materials or workmanship incorporated into the work contemplated by the Project from the date of installation or construction through the termination or expiration of this Lease shall be free from defects, excepting normal wear and tear. Tenant shall repair and replace all defective work together with any other work affected by the repair or replacement arising out of Tenant’s construction of the Project Improvements at Tenant’s sole cost, liability and expense, normal wear and tear excepted. Tenant shall insure that any transferable manufacturer or contractor warranties are transferred to Landlord upon expiration or sooner termination of this Lease.

ARTICLE 6

USE OF PREMISES

6.1 **Permitted Uses.** Tenant shall use the Premises for the sole and exclusive purpose of managing, operating, fulfilling, carrying out and implementing the Affordable Housing Project as permitted under the terms of the Regulatory Agreement (regardless of whether the Regulatory Agreement is recorded in the public records) and for no other purpose without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. As a material condition of this Lease and the County Loan, Tenant shall comply and shall at all times be in compliance with the Regulatory Agreement in the form attached hereto and incorporated herein by this reference as Exhibit F. Tenant acknowledges that Landlord has entered into this Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord’s overall governmental purposes and Tenant understands that Landlord has no obligation to consent to any other use of all or any part of the Premises.

6.2 **Continuous Use.** Landlord has agreed to accept a fixed Annual Base Rent entered into this Lease in reliance on Tenant's continued operation of the Project for the Permitted Use. Tenant's failure to operate the Project as required for more than thirty continuous days, or for more than forty-five days in any twelve-month period shall be an Event of Default; provided that Tenant shall be excused from operating the Project during any Unavoidable Delay (as defined in Section 18.5). A failure to operate the Project in accordance with the Regulatory Agreement or the CTCAC regulations shall be deemed a failure to operate for purposes of this Section.

6.3 **Compliance by Tenant with Laws and Governmental Regulations.** Tenant, at its sole cost and expense, promptly shall comply with all present and future laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards, and offices ("**Applicable Laws**") which are applicable to the Premises or to the use or manner of use of the Project and the Premises by the owners, tenants or occupants thereof, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Premises, or onto or over other property contiguous or adjacent thereto.

6.4 **Tenant Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any Applicable Law. If compliance with any Applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

6.5 **Compliance with Recorded Documents.** Tenant shall comply with all recorded documents encumbering the Premises including any reciprocal easement agreements or covenants, conditions and restrictions relating to the on-site drainage system and common driveways.

6.6 **Nuisance.** Tenant shall not use the Premises or the Project Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Project Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State of California, County of San Mateo and/or applicable City ordinances (including the Regulatory Agreement) and all agencies thereof as the same may be now or hereafter in force and effect.

6.7 **Management and Operation of the Project.** Tenant covenants and agrees to manage and operate, or cause the Project and the Premises to be managed and operated, in a diligent and business-like manner and to the standard of skill and care expected of a service provider qualified, competent and experienced in the management and operation of affordable housing projects in the County of San Mateo.

6.8 **Mismanagement.** In the event of an action set forth below, Landlord shall provide Tenant with notice of such event and an opportunity to cure. In the event that Tenant has not cured such event timely, Landlord may declare that such event constitutes Mismanagement and is an Event of Default, which such Event of Default is subject to the notice and cure provisions in this Lease. For purposes of this Ground Lease, the term "Mismanagement" shall mean Tenant's

(including Tenant's property manager or subcontractors) management or operation of the Project and/or the Premises in a manner which violates Tenant's covenants in this Lease regarding management and operation of the Project and Property, and shall include, but is not limited to, any one or more of the following:

6.8.1 Leasing to residential tenants in violation of the terms of the Regulatory Agreement;

6.8.2 Allowing residential tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

6.8.3 Failing to timely maintain the Project in accordance with the property management and maintenance standards required under this Lease;

6.8.4 Failing to submit timely and accurate reports to Landlord as may be required herein;

6.8.5 Permitting an individual residential unit to remain vacant for more than 60 days and/or having an average vacancy rate greater than 5% during any twelve-month period without substantial justification;

6.8.6 Failing to provide timely communication to Landlord regarding material incidents involving health and safety conditions of the Project;

6.8.7 Failing to cooperate with local law enforcement agency(ies) with jurisdiction over the Premises, including without limitation the code enforcement division, or other local health and safety enforcement agency(ies) in maintaining a decent, safe and sanitary environment for residents;

6.8.8 Failure to operate the Project as required by this Ground Lease for more than thirty continuous days, or for more than forty-five days in any twelve-month period other than for Unavoidable Delays and similar events outside the control of Tenant; or

6.8.9 Negligent or fraudulent fiscal management of the Project, including without limitation mishandling Project funds, or providing inadequate oversight over Project funds.

6.8.10 Notwithstanding the requirements to correct any condition of Mismanagement as described above, Tenant is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Management Agent as necessary to correct such Mismanagement.

ARTICLE 7

HAZARDOUS MATERIALS.

7.1 Definitions.

7.2 **Hazardous Material.** “**Hazardous Material**” means any hazardous, explosive or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “**Hazardous Material**” includes any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 15122.7, or is listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 30; (viii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C., § 1317); (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. § 9601 et seq.

7.3 **Environmental Law.** “**Environmental Law**” means any present or future federal, state or local law, whether common law, statute, rule, regulation or ordinance, judgment, order, or other governmental restriction, guideline, listing or requirement, relating to the environment or any Hazardous Material, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., and applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter may be amended from time to time. Tenant further acknowledges that Landlord makes no representations regarding the environmental condition of the Premises and that Tenant’s agreement to assume responsibility for environmental conditions is a material consideration in Landlord’s willingness to enter this Lease.

7.4 **Tenant’s Independent Investigation.** Tenant has undertaken investigations of the Premises in an attempt to determine if any Hazardous Material (as defined below) is present on the Premises. Except as disclosed in the Risk Management Plan prepared by AEI Consultants, dated February 14, 2022 (AEI Project No. 454373), no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises.

7.5 **As-Is Release of Landlord.** NOTWITHSTANDING ANYTHING TO CONTRARY IN THIS LEASE, AS A MATERIAL PART OF THE CONSIDERATION FOR LANDLORD’S AGREEMENT TO LEASE THE PREMISES TO TENANT, TENANT AGREES TO ACCEPT THE PROPERTY “AS IS” AND “WHERE IS”, WITH ALL FAULTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN AND SUBJECT TO APPLICABLE CALIFORNIA LAW, NO WARRANTY OR REPRESENTATION IS MADE BY LANDLORD WITH RESPECT TO THE PROPERTY AS TO (I) FITNESS FOR ANY PARTICULAR

PURPOSE, (II) MERCHANTABILITY, (III) CONDITION, (IV) ABSENCE OF DEFECTS OR FAULTS, (V) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (VI) FLOODING, OR (VII) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT, AS THEY MAY APPLY TO THE CURRENT CONDITION OF THE PROPERTY OR TENANT'S INTENDED DEVELOPMENT, CONSTRUCTION OR USE, OR FOR ANY OTHER PURPOSE. TENANT ACKNOWLEDGES THAT TENANT WILL BE RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE AND LEGAL CONDITION OF THE PROPERTY.

Tenant hereby releases Landlord from all claims, liability, damages or costs, that Tenant may have at any time arising, directly or indirectly, from the presence, or alleged presence of Hazardous Material in, on or under the Premises, whether known or unknown as of the Effective Date; provided, however, that this release excludes and shall not apply to Hazardous Material that is generated or caused by Landlord's acts or omissions after the Term Commencement Date. In connection herewith, Tenant waives the provisions of Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Initials of Tenant _____

7.6 **Tenant to Comply with Environmental Laws.** Tenant shall comply, at its sole cost, with all Environmental Laws relating to any Hazardous Material in, on or under the Premises. Tenant shall become aware of the content of such Environmental Laws and all other laws regulating Hazardous Materials as enforced by, but not limited to, applicable City ordinances, the Bay Area Air Quality Management District, San Mateo County Health Department, the City of Daly City Water and Wastewater Services, California Regional Water Quality Control Board, California Environmental Protection Agency, Department of Toxic Substances Control and all state and Federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Tenant to obtain any permits and approvals required pursuant to the Environmental Laws.

7.7 **Delivery of Hazardous Materials Disclosure Certificate.** Before the Term Commencement Date and during the month of January of each year through and including the year following Lease Termination, Tenant shall complete, sign and deliver to Landlord a Hazardous Materials Disclosure Certificate in the form required by Landlord at Exhibit H. Tenant shall not be required to disclose any Hazardous Materials that are used in ordinary office operations and are not present on the Premises in sufficient quantities to subject Tenant to reporting requirements.

7.8 **Landlord's Consent Required.** Except for, and to the extent of, the type and quantities of Hazardous Materials specified in the Hazardous Materials Disclosure Certificate

approved by Landlord before the Term Commencement Date and any substances used in the ordinary course of, and in reasonable quantities with respect to, construction, development, maintenance or operation of the Premises, Tenant shall not be entitled to use or store any Hazardous Materials on, in or about the Premises without obtaining Landlord's prior written consent. If Landlord consents to any other usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary to Tenant's business to the extent disclosed in the then applicable Hazardous Materials Disclosure Certificate, as amended if applicable, and then only to the extent expressly approved by Landlord in writing. Tenant's usage and storage shall be in compliance with Environmental Laws. Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent Hazardous Materials Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at any time during the Term (i) to inspect the Premises; (ii) to conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section; and (iii) to request lists of all Hazardous Materials used, stored or otherwise located on, under or about the Premises. If Landlord requests a list of Tenant's Hazardous Materials, Tenant shall provide a complete list within fifteen days. The costs of such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably believes they are necessary. The rights granted to Landlord herein shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises and the activities of Tenant with respect to Hazardous Materials, including Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. No consent requested of, and given by, Landlord pursuant to this Section shall be deemed to make Landlord a "controlling" party nor shall any Landlord consent result in Landlord assuming any responsibility for Hazardous Materials on the Premises.

7.9 **Tenant's Business Plan.** Prior to occupying the Premises, Tenant shall comply with the provisions of California Health and Safety Code Section 25500, et seq., and shall deliver to Landlord a copy of the business plan relating to the handling and release or threatened release of Hazardous Materials. So long as Tenant's operations on the Premises require the establishment and implementation of such a business plan under the California Health and Safety Code, Tenant shall deliver to Landlord, within thirty (30) days following the filing thereof, a copy of any amendment to the plan. A copy of any amendment to Tenant's hazardous material inventory statement shall also be submitted to Landlord within the ten (10) days of submittal to the applicable governmental agency.

7.10 **Tenant Indemnity.** Tenant shall be solely responsible for and shall indemnify, protect, defend (by counsel reasonably acceptable to Landlord) and hold harmless Landlord including but not limited to its boards, departments, agents, officials and employees (collectively the "**Landlord Indemnitees**") from and against any and all claims, costs, penalties, fines, losses which arise during or after the Term or during Tenant's prior ownership of the Property, as a result of the presence of Hazardous Materials in, on, under or about the Premises, including any resulting from receipt, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, or disposal of Hazardous Materials in, upon or about the Premises including (i)

diminution in value of the Premises; (ii) damages from the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iii) damages arising from any adverse impact on marketing of the Premises; and (iv) sums paid in settlement of claims, attorneys' fees, consultants' fees, costs of investigation, damages, injuries, causes of action, judgments and expenses. This indemnification of the Landlord Indemnitees by Tenant includes any and all costs incurred in connection with any investigation of site conditions and any clean up, remediation, removal or restoration work required by and federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil, sub-soils, groundwater, equipment or elsewhere in, on, under or about the Premises. Tenant's obligations under this Section shall survive the termination or expiration of this Lease.

7.11 **Tenant Remediation.** If contamination or deterioration exists of air, water or soil in, on, under or above the Premises resulting in a level of contamination greater than the maximum levels established from time to time during the Term by any governmental authority having jurisdiction over such contamination, then Tenant shall promptly take any and all action necessary to clean up such contamination in the manner as required by law. Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying the Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto. If Tenant fails to take such action, Landlord may, but shall not be obligated to, take such action. In such event, all costs incurred by Landlord with respect to such clean up activities shall be for the account of Tenant.

7.12 **Tenant Notice to Landlord.** Tenant shall immediately provide Landlord with telephonic notice, which shall later be confirmed by written notice, of any and all accumulation, spillage, discharge, and disposal of Hazardous Materials onto or within the Premises, and any injuries or damages resulting directly or indirectly there from. Further, Tenant shall deliver to Landlord a copy of each and every notice or order received from governmental agencies concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. In addition, Tenant shall immediately notify Landlord in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any local, state or federal environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises, including any complaints, notices, warnings, or asserted violations relating in any way to the Premises, or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises. Landlord shall have the right to enter on the Premises upon twenty-four (24) hours oral notice to Tenant for the purpose of inspecting the Premises for compliance with all environmental requirements.

7.13 **Storage of Hazardous Materials.** Tenant shall store in appropriate leak-proof containers, or in any other manner approved or prescribed by law, any and all Hazardous Materials permitted within the Premises pursuant to this Agreement, which if discharged or emitted into the

atmosphere, upon the ground or into or on any body of water will or may (i) pollute or contaminate the same, or (ii) adversely affect (a) the health, safety or welfare of persons, whether on the Premises, or elsewhere, or (b) the condition, use or enjoyment of the Premises, or any real or personal property whether on the Premises or anywhere else, or (c) the Premises or any of the improvements thereto or thereon. There shall be no ponding or surface storage whatsoever of Hazardous Materials on the Premises. The following substances may not from be brought onto the Premises: Arsines, Etching, Asbestos, Fluorocarbons, Chlorocarbons, Dioxins, (including dioxin precursors and intermediates) or anything contained in the California List of Extremely Hazardous Chemicals.

7.14 **Tenant's Disposal of Hazardous Materials.** Notwithstanding anything to the contrary contained in this Section 7.12, Tenant shall not dispose of any Hazardous Materials, regardless of the quantity of concentration, within the drains and plumbing facilities within the Premises or other property of Landlord. The disposal of Hazardous Materials shall be in approved containers and removed from the Premises only duly licensed carriers. If Tenant becomes aware of or suspects the presence of any Hazardous Materials existing within or coming onto the Premises, Tenant shall immediately give written notice of such condition to Landlord as required by California Health and Safety Code Section 25359.7.

7.15 **Information/Fines.** Tenant shall maintain a Material Safety Data Sheet for each and every Hazardous Material brought into the Premises, except for those substances used in the ordinary course of construction, development, maintenance or operation of the Premises unless otherwise required by applicable law. Such information shall be kept current at all times and shall be kept in a place accessible to Landlord at any time for inspection and in the event of an emergency. Tenant shall pay, prior to delinquency, and all fees, taxes (including excise taxes) and fines that are charged upon or incident to Tenant's activities related to Hazardous Materials, and shall not allow such obligations to become a lien or charge against the Premises or upon Landlord. Tenant shall deliver to Landlord true and correct copies of the following documents related to the handling, storage, transportation, disposal and emission of Hazardous Materials, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals, reports and correspondence; storage and management plans, notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Premises; and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks installed in, or under the Premises.

7.16 **Closure on Lease Termination.** On or before the expiration of this Lease, Tenant shall take any and all action required to be taken under Environmental Laws in order (i) to surrender the Premises to Landlord in a condition which would be completely free of any and all Hazardous Materials brought in, on or under the Premises by Tenant or Tenant's Parties; and (ii) close and remove any storage tanks installed with Landlord's prior written consent in, on or under the Premises as required by Environmental Laws. Tenant shall submit to Landlord any and all closure plans required by law. Tenant shall complete its closure within a reasonable time after the delivery of its closure plan to Landlord, and in all events Tenant shall complete its closure and/or removal before Lease Termination. Tenant shall submit to Landlord prior to Lease Termination copies of

appropriate documentation evidencing that all requirements of agencies with jurisdiction over Tenant's closure have been satisfactorily met.

7.17 **Landlord's Right of Termination.** Should Tenant breach any promise or fail to timely satisfy any of the conditions contained in this Article, Landlord may, for no additional cause, terminate this Lease upon ten (10) days written notice to Tenant.

ARTICLE 8

SURRENDER AND RIGHT TO REMOVE

8.1 **Ownership During Term.**

8.1.1 **Project Improvements.** All Project Improvements constructed or caused to be constructed on the Premises by Tenant, subject to the terms of this Lease, shall be and remain the property of Tenant during the Term.

8.1.2 **Personal Property.** Tenant shall provide all personal property reasonably required for normal operation of the Premises to the standard required in this Lease. During the Term, all personal property, furnishings, fixtures and equipment installed by Tenant in, on or around the Project which are attached to the Project and can be removed without substantial damage to the Project Improvements or the Premises shall be the personal property of Tenant (the "**Personal Property**"). At any time during the Term, Tenant shall have the right to remove the Personal Property, provided Tenant shall repair any damage caused by the removal of Personal Property and shall replace the removed Personal Property with property of equal or better quality as and to the extent required for the continued operation of the Project to the standard required in this Lease. Personal Property shall exclude any portion or part of major building components or fixtures necessary for the operation of the basic building systems for the Project (such as floor covering, window coverings, elevators, escalators, chillers, boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems), which items shall be deemed part of the Project Improvements.

8.2 **Ownership at Lease Termination.**

8.2.1 **Project Improvements.** Upon Lease Termination, the leasehold estate shall be forfeited and shall revert to Landlord and the Project Improvements shall unconditionally be and become the property solely of Landlord, without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof. Upon Lease Termination, Tenant shall peaceably surrender to Landlord the Premises and the Project Improvements in reasonably good condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances not described on Exhibit B, and other than other matters consented to by Landlord in writing. Tenant shall deliver the Quitclaim Deed as provided in Section 2.3. "**Reasonable wear and tear**", when used in this Lease, shall mean wear and tear caused by aging, use and other conditions which occurs notwithstanding the application of standards for maintenance, repair and replacement typical of other similar affordable housing projects in the Project area of comparable age. Reasonable wear and tear is not intended, nor shall it be construed, to include items of neglected or deferred maintenance which would have or should have been attended to during the Term had

the required standards for maintenance, repair and replacement had been applied. Such surrender shall also comply with any use, occupancy and affordability requirements under the Regulatory Agreement and any applicable CTCAC regulatory agreement.

8.2.2 Personal Property. Any Personal Property of Tenant which remains on the Premises for thirty (30) days after the Lease Termination shall unconditionally be and become the property solely of Landlord without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof.

8.3 Condition of Project Improvements.

8.3.1 Condition of Project at Lease Termination. Landlord has entered this Lease in reliance on the fact that, at Lease Termination, Landlord will receive from Tenant the Project Improvements in the condition required by Section 8.2. At any time during the Term upon forty-eight (48) hours notice, Landlord may inspect the Project Improvements to confirm that the Project Improvements are being properly maintained as required herein. If Landlord identifies deficiencies, Tenant shall complete all corrective work within such reasonable period of time as Landlord may prescribe, but in no event later than the Lease Termination Date. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Project Improvements which Landlord has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of Landlord to inspect or to notify Tenant of any default hereunder shall not be a waiver of Landlord's right to enforce Tenant's maintenance and repair obligations hereunder.

8.3.2 Environmental Report. Prior to the expiration of the Term, Landlord shall have the right, at its sole cost, to have an environmental report of the Premises prepared that assesses the existence on the Premises of Hazardous Material. If such report identifies the presence of Hazardous Materials, Tenant shall promptly perform all remediation necessary to return the Premises to the condition required under this Lease at Tenant's sole cost and expense.

8.4 Removal. Tenant shall not be required or permitted to remove the Project Improvements, or any of them, upon Lease Termination; provided, however, that, except as otherwise provided herein, within thirty (30) days following the expiration or sooner termination of the Term, Tenant may remove all personal property, furniture, and equipment.

8.5 Survival. The provisions of this Article 8 shall survive Lease Termination.

ARTICLE 9

INSURANCE

9.1 Tenant's Insurance Requirements. Without limiting Tenant's indemnity obligations under this Lease, Tenant shall secure and maintain insurance coverage as set forth in this Article 9.

9.1.1 Construction Period. During the period from the Term Commencement Date until all initial Project Improvements for the Affordable Housing Project shall be complete and a certificate(s) of occupancy shall be issued with respect to all initial Project Improvements

(“**Construction Period**”), Tenant, at its sole cost and expense shall provide and maintain the policies of insurance in the requirements set forth as Exhibit C attached hereto and incorporated herein.

9.1.2 Remaining Ground Lease Term. Except for the Construction Period, at all times during the Term of the Ground Lease, Tenant at its sole cost and expense shall provide and maintain the following policies of insurance:

9.1.2.1 Property Insurance. Property damage insurance covering all the Project Improvements and Personal Property owned by Tenant located on or in, or constituting a part of, the Premises, insuring against all risks of direct physical harm except those excluded by the broadest form of property insurance coverage in general use, from time to time. The property insurance shall cover, at a minimum, the perils of fire, extended coverage, vandalism and malicious mischief, flood (but only if the Premises is in a flood zone), demolition and debris removal costs and increased costs that maybe required by code or ordinance upgrades. The insurance coverage amount shall be equal to one hundred percent (100%) of the full replacement cost of the building improvements and Tenant’s Personal Property. The insurance shall (a) be provided on an all risk property coverage form as may be customary and commercially available on reasonable terms for like properties in San Mateo County from time to time during the term of this Lease and (b) cover explosion of steam and pressure boilers and similar apparatus located on the Premises. The insurance required hereunder shall be in amounts sufficient to prevent Tenant from becoming a co-insurer under the terms of the applicable policies, and any deductibles or self-insurance retentions for insurance required to be carried by Tenant pursuant to this Section shall be subject to Landlord’s prior written approval, which approval shall not be unreasonably withheld. The policies of insurance carried in accordance with this Section shall contain a “replacement cost endorsement” and an “increased cost of construction endorsement” and such other endorsements as may be required by any Leasehold Lender and shall name any holder of any Leasehold Mortgage (each as defined in Article 17, below). In addition, such property coverage shall include (i) business interruption and extra-expense insurance for a period of not less than twelve (12) months, and (ii) boiler and machinery (equipment breakdown) coverage in an amount equal to the full replacement cost of the covered equipment.

9.1.2.2 Full Replacement Cost. Full replacement cost shall be determined from time to time, but not more frequently than once in any twelve (12) consecutive calendar months (except in the event of substantial changes, alterations or additions to the Project Improvements), upon the written request of Landlord, by written agreement of Landlord and Tenant, or if they cannot agree within thirty (30) days of such request, by one of the insurers, or at the option of Landlord, by an appraiser, architect or contractor reasonably acceptable to Landlord, Tenant and the insurer(s). A copy of any such determination shall promptly be sent to Landlord, Tenant and the insurer(s) upon receipt thereof, and the insurance maintained in this Section 9.1.2.2 shall be adjusted to 100% of the new full replacement cost.

9.1.2.3 Automatic Increase. On any anniversary of the Term Commencement Date, if Landlord has not requested and obtained an adjustment in the full replacement cost with the prior twelve (12) month period, then the full replacement cost shall be deemed to have increased by the percentage increase in construction costs in the region for the previous 12 month period as reflected in the Marshall & Swift West Coast Cost Index (or a

successor index reasonably acceptable to Landlord and Tenant) using the Trend Multiplier for the San Francisco Area (the “**Deemed Increase**”) and Tenant shall cause the insurance coverage required by this Section to be increased in an amount equal to the Deemed Increase multiplied by the full replacement cost in effect immediately prior to the relevant anniversary date. Tenant shall notify Landlord promptly of each insurance coverage increase hereunder.

9.1.2.4 Commercial General Liability Insurance. General liability or commercial general insurance on an “occurrence basis” covering at a minimum liability for bodily injury (including death), physical damage to property, products and completed operations, independent contractors, owner’s broad form property damage, severability of interest, cross liability, explosion, collapse and underground hazards, other personal and business torts and contractual liability on, in or about the Premises or the Project Improvements or any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways. At all times during the Term, Tenant shall maintain limits of liability of not less than Three Million Dollars (\$3,000,000) per occurrence (including personal and advertising injury) and not less than Ten Million Dollars (\$10,000,000) general aggregate, which limits may be satisfied through a combination of primary and umbrella/excess coverage. All general or excess liability insurance required under this Section shall provide for a separate aggregate limit for this Project. General liability coverage shall be at least as broad as insurance “Services Office form CG 00 01”, and such policy shall contain no endorsements limiting coverage, such as limitations on explosion, collapse or underground hazards, products and completed operations, and contractual liability, except those basic policy endorsements reasonably approved by Landlord. General liability coverage shall include an additional insured endorsement for, “County of San Mateo, and members of the Board of Supervisors of the County of San Mateo, and the officers, agents, and employees of the County of San Mateo, individually and collectively, as additional insureds, on a primary and non-contributory basis, with a waiver of subrogation in favor of Landlord.”

9.1.2.5 Automobile Liability. Tenant shall maintain a policy of comprehensive automobile liability insurance covering owned, non-owned and hired vehicles with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence.

9.1.2.6 Workers’ Compensation/Employers Liability. Tenant shall maintain workers’ compensation insurance as required by the laws of the State of California and which shall indemnify, insure, and provide legal defense for Landlord and Tenant against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of carrying out the work or services contemplated in this Ground Lease, and employers liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per accident or occupational disease. Such coverage shall include a waiver of subrogation in favor of Landlord and Landlord Personnel.

9.1.2.7 Builder’s Risk Insurance. For any Alterations, Tenant shall maintain in a form and content satisfactory to the Director, Builder’s Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of such Alterations. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Alterations until such time as the County of San Mateo issues a final Notice of Completion or equivalent document for the Alterations, and storage and transportation risks. Such insurance shall protect/insure the interests of Tenant/owner and all of Tenant’s contractor(s),

and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for “design error,” such exclusion shall only be for the object or portion which failed. Landlord shall be a loss payee under such policy or policies.

9.2 **Contractor Insurance Requirements.** Tenant shall require any general contractor performing work on the Premises to maintain insurance satisfying all requirements of Sections 9.1 and 9.2; provided, however, that if the total contract value is less than Ten Million Dollars (\$10,000,000), the contractor’s general liability limits may be reduced to Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.

9.3 **County Right to Modify Insurance Requirements.** Notwithstanding anything in this Article to the contrary, Landlord shall have the right, in its sole and absolute discretion, to increase, reduce or otherwise modify any insurance requirements set forth in this Article 9 (including limits of liability, scope of coverage, and required endorsements) if Landlord determines that such modification is warranted by changes in construction costs, the nature or scale of the Project, inflationary changes, or in order to remain consistent with reasonable commercial practices for similar affordable housing projects in San Mateo County. Tenant shall comply with any such modified insurance requirements within thirty (30) days following written notice from Landlord.

9.4 **General Insurance Provisions.**

9.4.1 **Qualifying Insurers.** All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-/VIII (A.M. Best), according to the current Best's Key Rating Guide or a company that is approved by the Landlord.

9.4.2 **Evidence of Coverage.** Prior to the Term Commencement Date, Tenant shall provide to Landlord certificates of insurance together with the endorsements naming Landlord as additional insured certifying that all coverage as required herein has been obtained. Any endorsements required by this Lease must accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Tenant upon request. This approval of insurance shall neither relieve nor decrease the liability of the Tenant. Tenant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum requirements. Any insurance in excess of the limits and coverage required in this agreement and applicable to a loss involving the activities contemplated under this Lease will be available to Landlord.

9.4.3 **Notice of Cancellation.** No coverage as required herein shall be canceled or changed so as to no longer meet the specified insurance requirements without 30 days' prior written notice (including for non-payment of premium) of such cancellation or change being delivered to Landlord or its designated agent.

9.4.4 **Blanket and Umbrella Policies.** Any insurance provided for in this Article 9 may be placed by a policy or policies of blanket and/or excess liability (or umbrella) insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Premises shall be such as to furnish protection the equivalent of separate policies

in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Lease.

9.5 **Miscellaneous.**

9.5.1 The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Tenant pursuant to this Lease, including but not limited to the provisions concerning indemnification.

9.5.2 All of the above policies of insurance shall be primary insurance and, except the Worker's Compensation, Employer Liability insurance, and automobile liability insurance, shall name all of Landlord and Landlord Personnel as additional insureds on an ISO Form CG 20:10 (current version) or substantially similar form and not an ISO Form CG 20:09. The insurer shall waive all rights of subrogation and contribution it may have against Landlord and Landlord Personnel and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to Landlord. In the event any of said policies of insurance are cancelled, Tenant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Director. Not later than the Term Commencement Date, Tenant shall provide the Director with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders shall be subject to the reasonable approval of the Director.

9.5.3 No liability insurance coverage provided to comply with this Lease shall prohibit Tenant, or Tenant's employees, or agents, from waiving the right of recovery prior to a loss. Any such limitations must be removed by endorsement or policy shall be endorsed to waive any insurer right of subrogation against Landlord or other indemnitees. Tenant waives its right of recovery against Landlord. Tenant shall assure that all contracts with its contractor or subcontractors or other parties performing work related to this Lease include similar waivers in favor of Landlord.

9.5.4 In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, Landlord has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Landlord shall be promptly reimbursed by Tenant together with interest thereon at the Default Rate from the date paid until reimbursed.

9.5.5 Tenant acknowledges and agrees that any actual or alleged failure on the part of Landlord to inform Tenant of non-compliance with any requirement imposes no additional obligations on Landlord nor does it waive any rights hereunder.

9.6 **Landlord Disclaimer.** Landlord makes no warranty or representation that the forms or limits of coverage required hereunder are adequate to protect Tenant's property or to cover Tenant's obligations under this Lease. Tenant's obligations hereunder shall not be limited to the amount of insurance that Tenant is required to provide by this Article 9. Tenant's failure to deliver any insurance certificate or policy to Landlord, or Landlord's failure to request delivery of any

certificate or policy, in no way be construed as a waiver of Tenant's obligation to provide the insurance coverage specified herein.

9.7 **Remedies for Defaults Re: Insurance.** In addition to any other remedies Landlord may have if Tenant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Landlord may, at its sole option, after fifteen (15) days' Notice to Tenant:

- (A) Obtain such insurance and charge Tenant the amount of the premium for such insurance, in which event Tenant shall promptly remit such sum to Landlord;
- (B) Withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof; and
- (C) Declare Tenant has committed an Event of Default and exercise its rights and remedies under this Lease.

Exercise of any of the above remedies, however, is an alternative to other remedies Landlord may have and is not the exclusive remedy for Tenant's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which Tenant may be held responsible for payment of damages to persons or property resulting from Tenant's contractors or any subcontractor's performance under this Lease.

ARTICLE 10

INDEMNIFICATION BY TENANT

10.1 **Indemnification by Tenant.** Excluding loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by Landlord, Tenant shall indemnify, defend and hold harmless Landlord, its Board of Supervisors, officers, agents and employees (collectively, the "Indemnitees") from and against any and all claims, liability, loss, injury or damage by or on behalf of any person, firm or corporation arising during the Term to the extent arising from any conduct by any party on, management of or any work or thing whatsoever done in or on the Premises or Project Improvements. Further, Tenant shall indemnify and save the Indemnitees harmless against and from any and all claims, liability, loss, injury or damage by or on behalf of any person, firm, or corporation to the extent arising during the Term from (i) any condition of any building, structure or improvement on the Premises, or of any passageways or spaces therein or appurtenant thereto; (ii) Tenant's breach or default in the performance of any of its covenants or agreements under this Lease; (iii) any negligence of Tenant, or any of its agents, contractors, subcontractors, or employees; (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term in or on the Premises or the Project Improvements or any passageways or spaces therein or appurtenant thereto; or (v) from the furnishing of labor or materials by Tenant or any of its agents, contractors, subcontractors or

employees. Tenant's indemnification obligation shall include all costs, attorney's fees, expenses and liabilities incurred in defending Landlord against any such claim, action or proceeding, which defense Tenant shall provide with counsel reasonably satisfactory to Landlord. Landlord shall have the right to approve legal counsel providing Landlord's defense and such approval shall not be unreasonably withheld. If an insurer under insurance required to be maintained by Tenant hereunder shall undertake to defend the Landlord under a reservation of rights with respect to ultimate coverage and Landlord shall reasonably deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. If Landlord elects under such circumstances to use its County Counsel's office to defend an indemnified claim, the billing rates of attorneys in the County Counsel office shall be deemed to be the same as then charged by private business litigation law firms of similar size in San Mateo County that provide similar legal services. Tenant shall reimburse Landlord for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Tenant contests its obligation to indemnify, defend and hold harmless Landlord under this Lease and does not prevail in that contest. It is the intent of the parties to this Lease to provide the broadest possible coverage for the Landlord. Tenant's obligations under this Section shall survive the termination or expiration of this Lease.

ARTICLE 11

REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

11.1 **Repairs and Maintenance.** Subject to the other provisions of this Lease, Tenant shall keep the Premises at all times in a habitable condition, and in good, safe and healthy operating order and living conditions, free of debris, waste, and graffiti, and in compliance with all applicable laws and regulations, , reasonable wear and tear excepted. The standard for maintenance and repair of the Premises shall be the same as for other similar affordable housing projects in San Mateo County of similar size, and of comparable age and in accordance with all applicable local, state and federal laws. Such maintenance standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Premises. To accomplish the maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease. Failure to maintain the Premises in accordance with this standard shall constitute an Event of Default (subject to applicable notice and cure periods). Tenant shall make all necessary repairs and perform all maintenance, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of signing of this Lease, to keep the Premises to the standard described above in a well maintained, safe, habitable, clean and sanitary condition. The term "**repairs**" shall include replacements or renewals when reasonably necessary to satisfy the above standard, and all repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Premises at Landlord's expense. From time to time during the Term, Landlord may enter the Premises during regular business hours upon not less than 24 hours prior notice from Landlord to determine if Tenant is in compliance with the requirements of this Article. If, following any such inspection by Landlord, Landlord delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to Landlord Tenant's proposed plan for remedying the indicated deficiencies. Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to Tenant, shall not be deemed to be Landlord's

approval of the then condition of the Premises, nor Landlord's waiver of any default by Tenant under this Article 11.

11.1.1 Tenant and its maintenance staff, contractors or subcontractors shall further comply with the following as part of the maintenance standards described above:

- (A) The Premises shall be maintained in conformance and in compliance with the approved plans and permits, and reasonable maintenance standards for similar, neighboring structures, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private Improvements and public Improvements to the curb line.
- (B) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- (C) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all graffiti, trash, litter, and other debris from Improvements; removal of all trash, litter, and other debris from landscaping prior to mowing; and clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves, and other debris are properly disposed of by maintenance workers.
- (D) Pest control maintenance shall be performed monthly, by inspections of every unit, office space, common area, and storage in the Project and should include representatives from property management, supportive services and a pest control technician, and during which inspections smoke detectors and other safety equipment should also be conducted.

11.1.2 Upon Landlord's written notification to Tenant of any maintenance deficiency, Tenant shall have three (3) business days within which to correct, remedy, or cure the deficiency, or such longer period as is reasonably necessary to complete the cure, provided such correction, remedy, or cure is commenced within such three (3) day period and diligently prosecuted to completion. If the written notification states the problem is urgent relating to the public health and safety of Landlord, then Tenant shall have one (1) day to rectify the problem, or such longer period as is reasonably necessary to complete the cure. In the event Tenant does not maintain the Property in the manner set forth herein and in accordance with the maintenance standards, Landlord shall have, in addition to any other rights and remedies hereunder, the right to maintain the Property, or to contract for the correction of such deficiencies, after Notice to Tenant, and Tenant shall be responsible for the payment of all such costs incurred by Landlord.

11.2 **Changes and Alterations.** Except as permitted by Section 11.3, Tenant shall not make any changes, alterations, replacements or additions in, to or of the Project Improvements (“Alterations”) without the prior written consent of Landlord, which Landlord shall not unreasonably withhold or delay so long as all the following are complied with by Tenant:

- (a) Tenant shall pay all costs and expenses related to the Alterations;
- (b) The Alteration shall not result in a decrease in the value of the structural improvement to which it is being made;
- (c) The Alteration shall be for a use which is permitted hereunder and shall not be materially and adversely inconsistent with the Site Plan;
- (d) Tenant shall obtain and pay for, all required permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. Landlord shall join in the application for permits or authorizations whenever necessary. Landlord shall incur no liability or expense in connection with its cooperation and Tenant shall reimburse Landlord for Landlord’s related reasonable attorneys’ fees;
- (e) Any Alteration shall be made in a good and workmanlike manner and in accordance with all applicable permits and authorizations and building and zoning laws and with all other Applicable Laws;
- (f) During the period of construction of any Alterations, Tenant shall maintain or cause to be maintained applicable insurance described in Article 9 which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Premises (including excavations, foundations and footings) under a broad form (or equivalent) builders’ risk form, naming Landlord as loss payee; and
- (g) The provisions of Section 5.2.1 through Section 5.2.4 shall be met.

11.3 **Exceptions to Consent Requirement.** The foregoing notwithstanding, Tenant shall not be required to obtain Landlord’s prior written consent to any Alterations so long as all the following requirements are met:

- (a) The Alteration is non-structural;
- (b) The Alteration is not visible from the exterior of any building on the Premises;
- (c) The Alteration has a cost of less than \$50,000;
- (d) All the provisions of Section 5.2.1, Section 5.2.3 and Section 5.2.4 shall be met; and

- (e) For any Alterations having a cost in excess of \$500,000, the provisions of Section 5.1.2 shall be met.

Notwithstanding the foregoing, Tenant shall deliver to Landlord at least fifteen (15) days before commencement of any Alteration written notice of the proposed work (whether or not Landlord's consent is required), a general description of the proposed work and sufficient information to permit Landlord to post a notice of non-responsibility on the Premises. Tenant shall deliver to Landlord within sixty (60) days following completion of the work, three sets of "As Built" plans for all work for which architectural drawings are required.

11.4 **No Right to Demolish.** Notwithstanding any other provisions of this Article 11 and except as otherwise permitted in this Lease, Tenant shall have no right to demolish any Project Improvement, once built, unless Tenant shall have received the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion, it being agreed that Landlord has entered into this Lease in material reliance on Tenant's covenants to construct the initial Project Improvements in accordance with the Site Plan and to operate and maintain the Project Improvements in accordance with the provisions of this Lease.

Any approved demolition and reconstruction shall be done in conformity with Sections 5.2 and 5.3 of this Lease.

ARTICLE 12

REPORTING

12.1 **Record Keeping; Reporting.** Tenant shall keep and maintain full and complete books of account and other records reflecting the results of operations of the Project in accordance with accounting practices and principles acceptable to Landlord and consistently applied, and shall furnish or cause to be furnished to Landlord, in addition to any items required to be provided under the Regulatory Agreement, (a) within 120 days after the close of each fiscal year-end, the annual audited financial statements for Tenant and an annual operating statement for the preceding operating year for the Project and (b) within thirty (30) days of written request by Landlord, a current rent roll. Tenant shall deliver to Landlord copies of any operating and financial reports provided to any Leasehold Lenders promptly after submittal. Such books of account, records, and other pertinent data shall be kept for a period of five (5) years after the end of each Lease Year.

12.2 Landlord shall be entitled within three (3) years after the end of each Lease Year to inspect and examine all of Tenant's books of account, records, and other pertinent data. Tenant shall cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within three (3) years after the end of each Rental Period, to an independent audit of Tenant's books of account, records, and other pertinent data.

ARTICLE 13

DAMAGE AND DESTRUCTION

13.1 **Damage or Destruction.** If the Project Improvements are damaged or destroyed, then except as otherwise provided in this Article 13, Tenant shall promptly restore and rebuild the

Project Improvements as nearly as practicable to their value, condition and character immediately prior to such damage or destruction (or to such updated condition as may be required to comply with Applicable Laws and the Regulatory Agreement). To the extent insurance proceeds are available therefor and subject to the terms of any Leasehold Mortgage, following any damage or destruction, all insurance proceeds paid in respect of the damage or destruction shall be applied first to the payment of the costs of the restoration required to be performed by Tenant pursuant to this Lease. Tenant shall not delay restoration pending resolution of any insurance claim dispute. Any insurance proceeds made available to Tenant shall be held in trust by a financial institution agreed upon by Landlord and Tenant or, if required by a Leasehold Lender, by any Leasehold Lender at the election of the Leasehold Lender with the most senior Leasehold Mortgage (the “**Senior Lender**”) (as applicable, the “**Insurance Trustee**”), with the costs of such trust to be a first charge against the insurance proceeds. After completion of the restoration of the Project Improvements, and expiration of all lien periods without any lien being filed, any remaining insurance proceeds shall be paid to the Senior Lender to be applied as provided in the Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and, upon payment in full of the Leasehold Mortgages, the balance shall be payable to Tenant.

Notwithstanding the foregoing, in the event there is any damage or destruction to any portion of the Project Improvements such that: (a) more than fifty percent (50%) of the Project Improvements are damaged or destroyed, (b) there are not sufficient proceeds to pay for ten percent (10%) or more of the costs to restore the Project Improvements, (c) in the reasonable opinion of Tenant, the undamaged portion of the Project Improvements cannot be completed or operated on an economically feasible basis, and (d) no feasible source of third party financing for restoration reasonably acceptable to Tenant is available; then Tenant may, with the prior written consent of all Leasehold Lenders, terminate this Lease as of a date that is not less than ninety (90) days after the date of such notice. In the event the Lease is terminated in accordance with the preceding sentence, Tenant shall, at Tenant’s sole cost, either raze the Project Improvements and remove any debris relating thereto, or repair the Project Improvements in a manner sufficient to cause the Project Improvements to be in a safe condition in compliance with applicable laws and other applicable governmental requirements, and following the completion thereof, Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord (or, if same has already been received by Tenant, pay to Landlord) the balance of the proceeds from Tenant’s insurance upon the Premises not used to raze or repair the Project Improvements, subject to the prior rights of any Leasehold Mortgage therein, as referenced in Section 13.2.2 below.

In the event that insurance proceeds are not applied to restoration of the Project Improvements, the insurance proceeds received as the result of such damage or destruction shall be distributed to the Senior Lender to be applied in accordance with its Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and if no Leasehold Mortgage is in effect, then in accordance with Section 13.1 hereof.

13.2 **Restoration.** Tenant shall commence and carry out the restoration in a diligent and continuous manner, in good faith, to full completion as soon as practicable. Tenant shall commence work on the restoration of any damage or destruction no later than the later of: (a) one hundred twenty (120) days following the damage or destruction and (b) the date on which all applicable

approvals have been obtained to commence the restoration work. In all cases, Tenant shall provide Landlord with a restoration schedule and monthly progress updates upon request.

13.2.1 **Construction.** The restoration by Tenant following any damage or destruction shall be in accordance with the provisions of Article 5.

13.2.2 **Disbursement of Funds.** The Insurance Trustee shall disburse funds only on a periodic basis approved by Landlord and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, evidencing satisfactory completion of the work for which payment is requested ("**Payment Request**"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (i) signed conditional waiver and release on progress payment in form complying with California law relating to all labor and materials described in the Payment Request and (ii) signed unconditional waiver and release upon progress payment in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

13.3 **Notice Required.** In the event of material damage to or destruction of the Project Improvements, Tenant shall promptly give Landlord notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article 13, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds \$25,000.

13.4 **Right to Participate in Settlement.** Landlord and Tenant shall both have the right to participate in the negotiation, settlement or compromise of any insurance claims made against Tenant's insurance policies. In the event of any dispute or disagreement, subject to the rights of any Leasehold Lenders, Landlord shall be the ultimate decision maker on all negotiation, settlement and compromise of any insurance claims.

13.5 **Survival.** Landlord's and Tenant's rights and obligations under this Article 13, including their rights to receive proceeds, shall survive any termination of this Lease. In the event this Lease is terminated pursuant to this Article, following damage or destruction, Tenant shall fully cooperate in transferring to Landlord (or Landlord's designee) any insurance proceeds or settlement rights necessary to complete restoration of the Affordable Housing Project, or if required, to the Senior Lender for the benefit of Landlord, any insurance proceeds not used for restoration, so that such proceeds may be applied to restore or replace the Affordable Housing Project for continued public benefit.

13.6 **Leasehold Mortgage Rights.** In the event of a conflict between the terms of this Article 13 and the rights of the Leasehold Mortgagee under the Leasehold Mortgage, the terms of the Leasehold Mortgage shall control.

ARTICLE 14

EMINENT DOMAIN

14.1 Eminent Domain.

14.1.1 Definitions. The following definitions shall apply in construing the provisions of this Article 14:

14.1.1.1 Award. “**Award**” means all compensation, damages or interest, or any combination thereof, paid or awarded for the Taking, whether pursuant to judgment, by agreement, or otherwise.

14.1.1.2 Notice of Intended Taking. “**Notice of Intended Taking**” means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

14.1.1.3 Partial Taking. “**Partial Taking**” means any Taking that is neither a Total Taking nor a Substantial Taking.

14.1.1.4 Substantial Taking. “**Substantial Taking**” means the Taking of so much of the Premises that the remaining portion thereof would not be economically and feasibly usable by Tenant for the then existing uses and purposes of the Premises, but shall exclude a Temporary Taking.

14.1.1.5 Taking. “**Taking**” means any taking of or damage to, including severance damage, all or any part of the Premises or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

14.1.1.6 Temporary Taking. “**Temporary Taking**” means the Taking of any interest in the Premises for a period of less than five (5) years.

14.1.1.7 Total Taking. “**Total Taking**” means the Taking of the fee title to all, or substantially all, of the Real Property and the Premises.

14.1.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party written notice and a copy of any:

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of all or any portion of the Premises;

- (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

Landlord and Tenant, and any of their respective secured lenders, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Landlord and Tenant and their secured lenders. Landlord and Tenant each agree to sign, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

14.2 **Total or Substantial Taking.** In the event of a Total Taking or Substantial Taking, this Lease shall terminate, and Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease, as of the first to occur of (i) the date of the vesting of title in the condemning authority or (ii) the date actual physical possession of all or part of the Premises is taken by the condemning authority prior to the date of vesting of title. Tenant's obligations to pay Annual Base Rent and Additional Rent shall terminate as of such date.

14.3 **Partial Taking.** In the event of a Partial Taking, this Lease shall remain in full force and effect, covering the remainder of the Premises, except that this Lease shall be deemed amended such that the definition of the "Premises" shall include only that portion of the land described in Exhibit A attached that is not taken. There shall be no adjustment to Annual Base Rent or the Term.

In the event of a Partial Taking, Tenant, at its sole cost and expense subject to (and only to the extent of) receipt of an award by Tenant from the Taking agency specifically earmarked for severance damages, and Tenant's offset against such specific award of all costs incurred in procuring such award, shall either (i) restore the Project Improvements to a complete architectural unit, consistent with the requirements of this Lease, to the maximum extent feasible, or (ii) demolish and remove all or a portion of the Project Improvements situated on the portion of the Premises not taken and restore such portion to a clean and neat condition.

14.4 **Participation in Settlement Negotiations.** Landlord and Tenant shall both have the right to participate in the negotiation, settlement or compromise of all awards, except for Temporary Taking awards. In the event of a dispute or disagreement, Landlord's decision or determination shall control.

14.5 **Survival.** Landlord's, Tenant's rights and obligations under this Article 14, including their rights to receive proceeds, shall survive any termination of this Lease.

14.6 **Award.** Subject to the rights of Leasehold Lenders (as defined in Article 17 below), if there is a Taking, whether a Temporary Taking, Substantial Taking, Total Taking or Partial Taking, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Landlord's

interest in the Premises is limited to the fee interest in the Real Property (exclusive of the Project Improvements), as encumbered by this Lease, and, upon the expiration of the Term, a reversionary interest in the Premises and the Project Improvements. If the Premises shall be restored as is contemplated in Section 14.3, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Award. Thereafter, if the condemning authority does not make separate Awards, Landlord and Tenant agree that any Award will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to amounts that are to be allocated to the respective interests of each party, then each party, at its sole expense, shall select an independent M.A.I. real estate appraiser (an “**Appraiser**”). Each Appraiser shall separately determine the amount of the balance of the Award that is to be allocated to the interests of each party. If the percentage of the balance of the Award each Appraiser allocates to Landlord (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged, and such average shall be the final allocation of the Award, or (b) are not within ten percent (10%) of each other, the two (2) Appraisers shall then select a third Appraiser, who shall independently allocate the Award between Landlord and Tenant, and the middle of such three allocations shall be the final allocation of the Award. Notwithstanding the foregoing, if required by a Leasehold Lender, Tenant’s proportionate share of the Award shall be distributed to the Senior Lender to be disbursed in accordance with its Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and, upon payment in full of the Leasehold Mortgages, the balance shall be payable to Tenant.

14.7 Leasehold Mortgage Rights. In the event of a conflict between the terms of this Article 14 and the rights of the Leasehold Mortgagee under the Leasehold Mortgage, the terms of the Leasehold Mortgage shall control.

ARTICLE 15
ASSIGNMENT, TRANSFER, SUBLETTING

15.1 **Restrictions on Transfer by Tenant.** Tenant acknowledges that the qualifications and identity of Tenant are of particular concern to Landlord (i) in view of the importance of the development of the Premises to Landlord and the general welfare of the community; (ii) because of Landlord's desire that the Project be operated by a Tenant with demonstrated successful experience and success in constructing, managing and operating affordable housing in San Mateo County; (iii) because of the County's desire for the Project to be a first class affordable housing project; and (iv) in light of the County's desire for the operation on the Premises to be compatible with planned adjacent residential uses and County's affordable housing goals and objectives. Tenant further recognizes that it is because of Tenant's (and/or Tenant's general partners') qualifications, reputation, experience and identity that Landlord has entered into this Lease with Tenant. Tenant acknowledges that the restrictions on Transfer contained in this Article 15 are reasonable. Tenant further acknowledges that uninterrupted operation of the Affordable Housing Project and preservation of the public benefits associated therewith are material considerations in Landlord's willingness to enter into this Lease. Accordingly, Landlord may withhold its consent to any Transfer if Landlord reasonably determines that the proposed transferee does not have the experience, financial strength, or operational capacity to ensure continued compliance of the Project with the Regulatory Agreement and other applicable affordability requirements. Tenant's right to grant security interests for the benefit of Leasehold Lenders securing loans for the Project is subject to Landlord's consent pursuant to Article 17.

15.2 **Definition of Transfer.** "Transfer" means any of the events described below, whether the same occur voluntarily, involuntarily, by operation of law, or otherwise:

15.2.1 **Transfer of Interest in the Premises or Project.** Tenant's assignment, sublease, transfer, or conveyance of all, or any portion, of its interest in the Premises, the Project or this Lease.

15.2.2 **Transfer of Interest in Tenant's Partners/Members.** If Tenant is a partnership or a limited liability company, the transfer of any controlling interest in any general partner (but not any limited partner) or managing member (but not any other member) of Tenant.

15.3 **No Transfer Without Consent; Notices.** Except as otherwise provided in Section 15.4.3, Tenant shall not make or permit any Transfer except with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Landlord's consent to any Transfer may be conditioned upon the proposed transferee's express written assumption of the Regulatory Agreement and all applicable affordability covenants and upon evidence reasonably satisfactory to Landlord of the transferee's ability to comply with such covenants.

15.4 **Procedure.**

15.4.1 **Transfer Request.** With respect to each Transfer as to which Landlord's approval is required hereby, Tenant shall send to Landlord written request for Landlord's approval of the Transfer (a "**Transfer Request**") specifying the name and address of the proposed transferee

and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

- (a) An audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a nationally or regionally recognized certified public accounting firm, certified as true and correct by the proposed transferee, sufficiently current and detailed to permit evaluation of the proposed transferee's assets, liabilities and net worth;
- (b) A description of the nature of the interest proposed to be transferred, the portion or portions of the Premises affected by the Transfer, and the proposed effective date of such Transfer;
- (c) A true and complete copy of the proposed Assumption Agreement described in Section 15.8;
- (d) A complete history of the proposed transferee describing its background, its current business operations and the background of the principals or personnel to be involved in the day to day operation of the Premises and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;
- (e) A description of any substantial litigation in which the transferee has been involved within the preceding sixty (60) months;
- (f) A description of all consideration to be given on account of the Transfer; and
- (g) Any such other information as reasonably requested by Landlord within ten (10) days following the receipt of the above information, in order for Landlord to make an informed decision whether or not to approve or disapprove the Transfer.

15.4.2 Approval of Landlord. Within forty-five (45) days following receipt of all the information referred to in Section 15.4.1, Landlord shall approve or disapprove a Transfer Request. If Landlord fails to give Tenant written notice of its approval or disapproval within the forty-five (45) day period, Tenant may provide Landlord a second request for approval. If the second request for approval clearly states that under this Section Landlord's failure to respond in writing to Tenant on or before ten (10) days after Landlord's receipt of the second notice will be deemed approval of the Transfer Request, then if Landlord again fails to respond to Tenant in writing on or before the tenth (10th) day after Landlord's receipt of the second notice, Landlord will be deemed to have approved the Transfer Request. Tenant shall pay the reasonable fees and charges of any accountants, attorneys and other consultants hired by Landlord to review and assess any proposed transferee.

15.4.3 Exceptions to Consent Requirement. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to obtain Landlord's prior consent (a) to enter into leases, subleases or occupancy agreements with occupants of residential units in the Affordable Housing Project, provided the same otherwise comply with this Lease; (b) to a Transfer to an entity which is a wholly owned subsidiary of Tenant, or to a limited partnership formed for the tax credit syndication of the Project, where Tenant and/or its affiliated nonprofit public benefit corporation is the general partner of that entity, and following the Transfer, the assignee will comply with all requirements of this Lease; (c) a transfer of Tenant's Tax Credit Investor's interests to an affiliate pursuant to Tenant's partnership agreement or the withdrawal of the Tax Credit Partnership pursuant to the Tenant's partnership agreement; (d) a transfer of Tenant's Tax Credit Investor's interests to a third party pursuant to Tenant's partnership agreement with the consent of the Landlord which will not be unreasonably delayed or withheld; (e) removal of a general partner or manager of the Tenant for cause under the terms of the Tenant's partnership and replacement thereof by Tenant's Tax Credit Investor or its affiliate or, another entity reasonably acceptable to Landlord, so long as at least one general partner is an organization that meets the requirements of Revenue and Taxation Code Section 214 for purposes of the welfare exemption; (f) a transfer of a general partnership interest to an affiliate pursuant to Tenant's partnership agreement or transfers of the general partnership interest in Tenant pursuant to the Tenant's partnership agreement to a party approved in advance by Landlord; (g) execution and delivery of a purchase option and right of first refusal to acquire Tenant's interest in the Property in favor of Tenant's general partner or an affiliate thereof in connection with the tax credit syndication of the Project where such agreement has been previously approved by Landlord in writing (h) a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person; (i) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, (j) the grant of an easement, servitude, or restrictive covenant if the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Project, or (k) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Landlord's satisfaction within 90 days after Tenant has actual or constructive notice of the existence of such lien. In order for any Transfer described in this Section to be exempt from the requirement for Landlord's consent, at least thirty (30) days before the effective Transfer date: (i) Tenant shall notify Landlord of the pending Transfer; (ii) Tenant shall provide Landlord with all information Landlord reasonably requests regarding the transferee; (iii) Tenant shall deliver to Landlord a copy of the proposed transfer documents in substantially final form; and (iv) Tenant shall deliver to Landlord for reasonable approval the proposed Assumption Agreement described in Section 15.8. Within five (5) business days after the Transfer date, Tenant shall deliver to Landlord fully executed copies of all transfer documents and the Assumption Agreement. Notwithstanding the foregoing, no Transfer (including those described in this Section 15.4.3) shall be permitted if such Transfer would result in a loss or impairment of the Affordable Housing Project or any failure to comply with the Regulatory Agreement.

15.5 Limitations.

15.5.1 Non Transfer Period. In no event shall Tenant request Landlord to approve any Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in the Premises, the Project or this Lease prior to the date that all of the following shall have occurred:

- (a) All initial Project Improvements for the Affordable Housing Project shall be complete and a certificate(s) of occupancy shall be issued with respect to all initial Project Improvements; and
- (b) All costs and expenses with regard to the initial Project Improvements shall be paid in full, all lien periods shall have expired and there shall be no liens on the Premises, the initial Project Improvements, the Real Property or any portion of Landlord's estate.

15.5.2 No Relief from Liability. If Landlord consents to a Transfer, Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease. If Tenant makes a Transfer for which Landlord's consent is not required, Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease.

15.5.3 No Consent If Bankruptcy. In no event shall Landlord be required to consent, or be deemed to consent, to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

15.5.4 Consent Not a Waiver. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Article 15 with regard to any subsequent Transfer.

15.5.5 Threshold Criteria for Transfer. Although Landlord may withhold its consent to a proposed Transfer on any reasonable basis, Landlord shall be deemed to be reasonable in withholding its consent to a proposed Transfer if any of the following are not satisfied:

- (a) In the case of any proposed Transfer (i) involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in the Premises, the Project or this Lease, or (ii) involving the replacement of the Tenant's general partner or managing member, as the case may be, Tenant delivers to Landlord an audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting principles by a nationally or regionally recognized certified accounting firm demonstrating that the proposed transferee is a viable, going concern with sufficient financial ability to own, operate and manage the Project;
- (b) In the case of any proposed Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in the Premises, the Project or this Lease, the proposed transferee shall have a reputation and experience comparable to the transferor's reputation and experience constructing, operating and managing affordable housing projects in San Mateo County; and
- (c) The use of the Premises after the Transfer shall remain unchanged.

15.6 **Indemnity.** Tenant hereby agrees to indemnify and defend Landlord Indemnitees against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) in connection with a claim or action by a transferee or other party which arises out of Tenant's actions or failure to act with respect to a Transfer including Tenant's breach or default under any agreement relating to the Transfer. Tenant also hereby agrees to indemnify and defend Landlord Indemnitees against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) arising out of a claim or action by a subtenant or otherwise arising in connection with subletting. These indemnities shall not apply to any loss caused by Landlord's default under this Lease or Landlord's gross negligence or willful misconduct.

15.7 **Involuntary and Other Transfers.** Without limiting any other restrictions on Transfer contained in this Lease, no interest of Tenant in this Lease, the Premises or the Project Improvements shall be assignable in the following manner:

- (a) Under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or under the laws of the State of California, whereby any interest in this Lease, the Premises or the Project Improvements is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within forty five days after the date such order is filed or such plan is confirmed;
- (b) If Tenant assigns substantially all of its assets for the benefit of its creditors;
- (c) If an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Premises or the Project Improvements or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within forty five days after the date it is issued; or
- (d) If a lien against any interest of Tenant in this Lease, the Premises or the Project Improvements, is foreclosed so that such interest is vested in a party other than Tenant.

15.8 **Assumption Agreement.** No Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in this Lease, whether an Approved Transfer or one to which Landlord has consented, shall be effective until Landlord shall have received an assignment and assumption agreement, executed by the transferor and the proposed transferee, in form reasonably acceptable to Landlord ("**Assumption Agreement**").

ARTICLE 16

BREACHES, REMEDIES AND TERMINATION

16.1 **Event of Default**. Tenant shall be in default under this Lease on the occurrence of any of the following which have not been remedied or cured within any period provided for the making of such cure (“**Events of Default**”):

16.1.1 **Monetary Obligation**. Tenant fails to pay any monetary obligation when due, and such failure shall continue for five (5) business days after Tenant receives Notice of Breach (as defined in Section 16.4.1); or

16.1.2 **Failure to Commence Construction**. Tenant fails to commence construction on the Project Improvements in accordance with Schedule 1, subject to extension for Unavoidable Delays (as defined in Section 18.5); or

16.1.3 **Failure to Diligently Pursue Construction**. Tenant fails to diligently and continuously pursue construction of the Project Improvements to completion, subject to extension for Unavoidable Delays (as defined in Section 18.5) and such failure continues for thirty days after Tenant receives Notice of Breach; provided, however, that if such failure to pursue construction cannot be cured within thirty (30) days, then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence; or

16.1.4 **Bankruptcy**. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or Tenant admits in writing its inability to pay its debts generally as they become due; or

16.1.5 **Reorganization**. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless the order, judgment or decree is vacated within forty five (45) days after the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof shall be appointed without the consent or acquiescence of Tenant, unless such appointment is vacated within forty five (45) days after the first date of entry thereof, (which forty five (45) day period shall be extended in all cases during any period Tenant is diligently pursuing a bona fide appeal); or

16.1.6 Attachment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of the interest of Tenant in the Premises, unless the execution, attachment or similar process is released, bonded, satisfied, or vacated or stayed within forty five days after its entry or levy, (which forty-five (45) day period shall be extended during any period in which Tenant is diligently pursuing a bona fide appeal); or

16.1.7 Continuous Operation. Tenant fails to continuously maintain sufficient inventory and personnel on the Premises to operate the facility in accordance with Section 6.2, and other additional permitted uses in accordance with Section 6.2; or

16.1.8 Failure to Carry Insurance. Tenant fails to continuously maintain insurance coverage in accordance with Article 9 or fails to deliver a copy of a policy of insurance complying with the requirements of Article 9, and Tenant fails to remedy the default within fifteen days after Tenant receives Notice of Breach; or

16.1.9 Transfer. Tenant Transfers all or any portion of Tenant's interest in the Premises, the Project Improvements or in this Lease in violation of the provisions of Article 15; or

16.1.10 Liens; Encumbrances. Tenant fails to pay real estate taxes or assessments on the Premises prior to delinquency, or places thereon any encumbrance or lien unauthorized by this Lease, including without limitation any Leasehold Mortgage; or

16.1.11 Regulatory Agreement. Tenant fails to comply with the terms and conditions of the Regulatory Agreement provided, however, that if such failure cannot be immediately cured then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. Tenant's failure to operate the Affordable Housing Project in accordance with the Regulatory Agreement or any other applicable affordable housing covenants shall constitute a material Event of Default under this Lease provided, however, that if such failure cannot be immediately cured then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence; or

16.1.12 Non-Monetary Obligations. Subject to Unavoidable Delays, Tenant is in default of any other terms, provisions and covenants contained herein, and Tenant shall have failed to cure such default within thirty days after Tenant receives Notice of Breach; provided, however, that if such a default with due diligence cannot be cured within thirty (30) days, then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. Notwithstanding the foregoing, any failure by Tenant to timely complete construction of the Project Improvements (unless caused by Unavoidable Delay and subject to an extension granted in writing by Landlord), or any failure to timely comply with reporting, prevailing wage, or other developer accountability requirements, shall constitute an Event of Default hereunder; or

16.1.13 Mismanagement. Tenant commits Mismanagement which has not been remedied as specified in Section 6.8.

16.2 Dangerous Condition. Notwithstanding any other provision contained in this Lease, in the event that the condition of the Premises endangers the health or safety of persons on or near the Premises, Tenant shall cause the vacation of that portion of the Premises upon which such dangerous condition exists and shall take such other actions as are reasonably necessary to protect the health and safety of such persons until the danger is eliminated. All costs incurred in taking such actions shall be the responsibility of Tenant. Such actions shall not relieve Tenant of the responsibility of making full repairs within thirty (30) days of such damage, or within a reasonable time thereafter. Tenant shall be fully responsible for complying and shall comply with all landlord-tenant laws in the State of California, including the requirement for providing and paying for relocation expenses and alternative housing accommodations for all displaced residents of the Affordable Housing Project.

16.3 Entry and Inspection. Landlord reserves and shall have the right upon reasonable advance written notice, or at any time in the case of emergency, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Premises, or to inspect the operations and management conducted thereon. In the event that the entry or inspection of Landlord discloses that the Premises are not in a safe, habitable or health condition for the purposes intended by this Lease, Landlord may, at its sole option, in addition to any other remedies available to Landlord, act to eliminate such condition or require the vacation of the area on which the dangerous condition exists, or both, and Tenant agrees to pay promptly all costs incurred by Landlord relating thereto. The rights reserved in this Section shall not create any obligation of any kind upon Landlord.

16.4 Notice and Opportunity to Cure.

16.4.1 Notice of Breach. If required by another section of this Lease, a party shall deliver to the nonperforming party a written request to perform or remedy (the “**Notice of Breach**”), stating clearly the nature of the obligation which such nonperforming party has failed to perform. If Tenant is afforded a cure period for such failure, the Notice of Breach shall state the applicable cure period, if any, provided hereunder.

16.4.2 Failure to Give Notice of Breach. The failure of a party to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any actions or proceedings which it may deem appropriate to protect, assert or enforce its rights or remedies.

16.4.3 Notice to Tax Credit Investor. Landlord hereby agrees to deliver a copy of any notice to delivered to Tenant hereunder to Tax Credit Investor at the address provided in Section 18.4. Landlord further agrees that any cure of any default made or tendered by Tax Credit Investors shall be accepted or rejected on the same basis as if made by Tenant.

16.5 Remedies Upon Default.

16.5.1 Landlord's Remedies. If an Event of Default occurs, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease to which Landlord may resort cumulatively or in the alternative:

16.5.1.1 Landlord Right to Continue Lease. Landlord may elect to keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover Rent as it comes due by appropriate legal action, and (ii) the right to make payments required of Tenant or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest as provided in Section 16.9. For so long as this Lease continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all Rent as it becomes due hereunder.

16.5.1.2 Terminate. Landlord may terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination under Article 16 shall not relieve Tenant from its obligation to pay sums then due Landlord or from any claim against Tenant for damage or rent previously accrued or then accruing. Upon Lease Termination hereunder, in accordance with applicable law Landlord may re-enter the Premises and take possession thereof, and, except as otherwise provided herein, remove all persons and property therefrom, and store such property at Tenant's risk and for Tenant's account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord's option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease. Notwithstanding any other provision hereof, Landlord shall not terminate the Lease prior to the expiration of the Compliance Period (as such term is defined in the Lessee's Amended and Restated Agreement of Limited Partnership, dated as _____ 2026 (the "**Partnership Agreement**")) without first providing the Tax Credit Investor written notice of Landlord's intention to terminate the Lease concurrently with such written notice to Tenant.

16.5.1.3 No Deemed Termination. This Lease shall not terminate unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any written notice (including any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (i) acts of maintenance or preservation or efforts to relet the Premises; or (ii) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease; or (iii) any other action by Landlord intended to mitigate the adverse effects of any breach of this Lease by Tenant.

16.5.1.4 Landlord Right to Perform. Upon the occurrence and continuance of an Event of Default, and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to) make such payment or perform such act on Tenant's part to be made or performed under this Lease, or pay for and maintain such insurance coverage required under Article 9, and Landlord may enter the Premises for such purpose and take all such action thereon as may be reasonably necessary therefor. All sums paid

by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act (together with interest thereon at the Default Rate (as defined below) from the respective dates of Landlord's making of each such payment until paid) shall constitute Additional Rent which Tenant shall pay to Landlord within thirty (30) days after receipt of Landlord's demand therefor and documentation of costs incurred.

16.5.1.5 Public Benefit. Tenant acknowledges that the provision of affordable housing on the Premises is a material inducement for this Lease. Accordingly, in exercising any remedies under this Article 16 following an Event of Default, Landlord may consider the impact on the continued availability of affordable housing within the County and may enforce this Lease in a manner that prioritizes uninterrupted operation of the Affordable Housing Project. Any such consideration shall not limit Landlord's right to pursue all remedies available under this Lease or applicable law.

16.5.2 Damages Upon Termination. If Landlord terminates this Lease, Landlord may recover from Tenant damages in an amount as set forth in California Civil Code Section 1951.2 ("**CC 1951.2**") as in effect on the Term Commencement Date. For purposes of computing damages pursuant to CC 1951.2, the term "rent" means the Annual Base Rent and Additional Rent. Landlord's CC 1951.2 damages shall include:

- (a) The worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to Landlord at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;
- (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and
- (d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including (i) expenses for cleaning, repairing and restoring the Premises for re-letting; (ii) and all costs (including attorneys' fees) of repossession; and (iii) all costs of removing persons or property from the Premises.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at the Default Rate. For purposes of this Lease, the "**Default Rate**" shall equal the rate of interest most recently announced by Bank of America, N.T. & S.A., (or any successor bank) at its principal office in San Francisco as its "reference rate" serving as the basis upon which effective rates of interest are

calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law.

Notwithstanding any other provision of this Lease: (i) all obligations of Tenant under this Agreement shall be obligations of the Tenant, payable solely and only from the assets of the Tenant; (ii) no partner, owner, officer, agent, employee, attorney or consultant of the Tenant, including any person executing this Agreement on behalf of the Tenant, shall be liable personally under this Agreement; and (iii) no recourse shall be had against any Partner, owner, officer, employee or agent, as such, of the Tenant or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise.

16.5.3 **Injunction**. Upon the occurrence of an Event of Default, Landlord shall have the right to petition a court of competent jurisdiction for injunctive relief. Tenant's failure for any reason to comply with an injunction ordered by a court shall constitute an Event of Default under this Lease.

16.5.4 **Right to Specific Performance**. Upon the occurrence of an Event of Default, Landlord shall have the right to commence an action against Tenant for specific performance. Tenant's failure, for any reason, to comply with specific performance ordered by a court shall constitute an Event of Default under this Lease.

16.5.5 **Right to Receiver**. Following the occurrence of an Event of Default, if Tenant fails after receipt of a Notice of Breach to cure the default within any cure period set forth in the Notice of Breach, Landlord, at its option, may have a receiver appointed to take possession of Tenant's interest in the Premises, the Project Improvements and the Project with power in the receiver (i) to administer Tenant's interest in the Premises, the Project Improvements and the Project; (ii) to collect all funds available in connection with the operation of the Premises, the Project Improvements and the Project; (iii) to perform all other acts consistent with Tenant's obligations under this Lease, as the court deems proper; (iv) to apply the rents and any other sums received (less costs and expenses of operation and collection) to Rents due hereunder (and Landlord shall not be responsible to any person for the collection or non collection of any such rents or income); (v) to take possession of the Tenant's leasehold estate and the Project, manage and operate the Project and Tenant's business thereon, and take possession of and use a Tenant's books of accounts and financial records and its property managers or representatives related to the Project; and (vi) otherwise take any and all actions with respect to the Project and the Gross Revenue of the Project as may be permitted under applicable law or this Lease.

16.6 **No Election of Remedies**. The rights given in this Article 16 to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder, shall not in any way affect or impair or toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any Event of Default.

16.7 **Survival of Obligations**. All rights of indemnification in this Lease shall survive Lease Termination. All obligations that accrue prior to Lease Termination likewise shall survive Lease Termination.

16.8 **No Cure After Termination; No Waiver of Default.** No receipt of money by Landlord from Tenant after the commencement of any suit or after final judgment for possession of the Project, shall renew, reinstate, continue or extend the right of Tenant to remain in possession of the Premises. Further, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power, or remedy consequent upon a default under this Lease, and no acceptance of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. Not by way of limitation of the foregoing, the receipt by Landlord of the Rent or Additional Rent or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the Rent, Additional Rent or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease.

16.9 **Interest on Past Due Obligations; Late Charge.** Any amount due from Tenant to Landlord hereunder which is not paid within five (5) business days after receipt of a Notice of Breach shall bear interest at the Default Rate unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. In addition, Tenant acknowledges that late payment by Tenant to Landlord of Annual Base Rent or any other amount due Landlord from Tenant will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges. Further, Tenant acknowledges that Landlord intends to make commitments to third parties based on the timely payment by Tenant of sums due hereunder. Therefore, if any payment due from Tenant is not received by Landlord within five (5) business days after receipt of a Notice of Breach, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

16.10 **Landlord's Default.** If Landlord fails to timely and properly perform any of its material obligations under this Lease, and such failure continues for thirty (30) days after Landlord receives a Notice of Breach, Landlord shall be in default under this Lease ("**Landlord Default**"). If a default with due diligence cannot be cured within thirty (30) days, then there shall be a Landlord Default only if Landlord fails to commence within thirty days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. In the event of a Landlord Default, Tenant shall be entitled to seek monetary damages against Landlord.

ARTICLE 17

LEASEHOLD MORTGAGES, LEASEHOLD MORTGAGEE AND INVESTOR RIGHTS

17.1 **Consents to Leasehold Mortgages.** Tenant shall have the right during the Term to procure loans in connection with the Project (each, a “**Loan**”) from a leasehold lender (each, a “**Leasehold Lender**”) and to encumber Tenant’s right, title and interest in the Premises and in the Project Improvements with one or more deeds of trust as a leasehold mortgage lien and any related regulatory agreements (each deed of trust and related regulatory agreement, collectively, a “**Leasehold Mortgage**”); provided, however, that any such Loans and Leasehold Mortgages shall require Landlord’s prior written consent and shall not encumber Landlord’s fee interest in the Property or Landlord’s reversionary interest in the Project Improvements and such Leasehold Mortgages shall be subject to all the rights and obligations of Tenant contained in the Lease except as otherwise provided herein. Notwithstanding the foregoing, Landlord hereby consents to the Loans identified in Exhibit G and all Leasehold Mortgages securing such Loans. Landlord also consents to any loan (and the related Leasehold Mortgage) obtained by the tenant after foreclosure under the Senior Lender’s Leasehold Mortgage or deed in lieu thereof, provided the loan is made by a commercial, governmental or institutional lender with prior written notice to Landlord, and such loan shall also constitute a “Loan” for all purposes hereunder. In granting any such consent, Landlord may require reasonable evidence that the proposed Leasehold Mortgage will not negatively affect the long-term affordability covenants or compromise Landlord’s ability to enforce its rights and remedies under this Lease.

17.2 **Preservation of Leasehold Benefits.** For purposes of this Lease, “**Compliance Period**” shall mean the Project’s “compliance period”, as defined in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended from time to time, which is expected to be for a period of 15 taxable years. For purposes of this Lease, After the recordation of the approved Leasehold Mortgages identified in Section 17.1, during the term of such Loans and during the Compliance Period, and in order to preserve uninterrupted delivery of affordable housing as contemplated by this Lease and the County’s loan commitments, the provisions in this Article 17 shall be interpreted to ensure that (i) any successor Tenant (including a Leasehold Lender or its designee) continues operation of the Project in full compliance with the Regulatory Agreement and (ii) no foreclosure or assignment of the Lease shall relieve the Tenant or any successor of such obligations, Landlord agrees as follows:

17.2.1 **Voluntary Leasehold Termination.** Landlord will not voluntarily terminate, cancel or surrender the Lease or agree to the Tenant's cancellation or surrender of the Lease, or materially amend the Lease without the prior written consent of the Leasehold Lenders and Tax Credit Investor; provided, however, that Landlord may condition such consent on confirmation that the Affordable Housing Project will continue to be operated in accordance with the Regulatory Agreement and the County’s affordable housing objectives.

17.2.2 **Effect of Tenant Waiver.** Landlord will not enforce against any Leasehold Lender any waiver or election made by Tenant under the Lease which has a material adverse effect on the value of the Premises without the prior written consent of the Leasehold Lenders;

17.2.3 **Notice to Lender/Limited Partner.** Landlord will send to each Leasehold Lender and Tax Credit Investor a copy of any notice given by Landlord to Tenant under the Lease at such address or addresses that have been provided to Landlord in writing in accordance with Section 18.3; and

17.2.4 Recognition of New Tenant. Following foreclosure of a Leasehold Mortgage, or assignment in lieu thereof, Landlord will recognize the purchaser or assignee of the Lease as the Tenant under the Lease at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, subject to the following:

17.2.4.1 Obligations of New Tenant. That, following any foreclosure or assignment described in Section 17.10, the new Tenant shall be personally obligated only for performance of obligations under the Lease for the period commencing as of the date of such foreclosure or assignment and ending as of the date of any assignment of the Lease to a successor Tenant, and, for the avoidance of doubt, such new Tenant shall assume and comply with all covenants relating to affordability, tenant income restrictions and rent limits.

17.2.4.2 Assignment by New Tenant. That, following any foreclosure or assignment described in Section 17.10, or the execution of a new lease pursuant to Section 17.9, the new Tenant and any successor Tenant shall have the right to assign the Lease; provided, however, that any such assignment shall be subject to Landlord's prior written approval (which shall not be unreasonably withheld or delayed), and may be conditioned on continued compliance with the Regulatory Agreement.

17.3 Right of Leasehold Lender and Tax Credit Investor to Cure.

17.3.1 Notwithstanding any default by Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given each Leasehold Lender and Tax Credit Investor written notice of such default, at such address or addresses that have been provided to Landlord in writing in accordance with Section 18.3, and such Leasehold Lenders and/or Tax Credit Investor shall have failed to remedy such default, remove the Tenant's general partner(s), acquire Tenant's leasehold estate created by this Lease, or commence foreclosure or commence other appropriate proceedings, in each case as set forth in, and within the time specified by, this Section. Landlord's notice of default shall expressly state that continued cure efforts by any Leasehold Lender or Tax Credit Investor must include assurances of ongoing compliance with the Regulatory Agreement.

17.3.2 All payments so made by a Leasehold Lender or Tax Credit Investor and all things so done by a Leasehold Lender or Tax Credit Investor shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Tenant.

17.3.3 A Leasehold Lender shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Tenant by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of default. A Leasehold Lender shall have a right to enter the Property upon prior written notice reasonably delivered to the Landlord for purposes of accomplishing the foregoing, so long as such Leasehold Lender indemnifies and holds Landlord harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from Landlord's active negligence or willful misconduct). Each Leasehold Lender shall have sixty (60) days after receipt of notice from Landlord describing such Default to cure the default; provided, however, that if it is not reasonably possible to effect a cure within sixty (60) days, no

Event of Default shall occur under this Lease so long as the Leasehold Lender shall give notice to the Landlord thereof, commence such cure within the sixty (60) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to Landlord and further provided, if it is necessary for the Leasehold Lender to obtain possession of the Property in order to effect a cure, the period within which the Leasehold Lender is permitted to effect a cure shall be extended by the time that is required for Leasehold Lender to obtain such possession, provided the Leasehold Lender (1) diligently prosecutes such possession, (2) cures such defaults that do not require possession, subject to Section 17.8, and (3) after gaining title to the Property or entering into a new lease pursuant to Section 17.9, the Leasehold Lender or its transferee cures all non-monetary Events of Default of Tenant hereunder capable of cure by such Leasehold Lender.

17.3.4 If a Leasehold Lender is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant, a partner of Tenant, or a Leasehold Lender from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure, or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Lender shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Lease.

17.3.5 Tax Credit Investor shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required by Tenant by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of default. Tax Credit Investor shall have a right to enter the Property upon prior written notice reasonably delivered to the Landlord for purposes of accomplishing the foregoing, so long as Tax Credit Investor indemnifies and holds Landlord harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from Landlord's active negligence or willful misconduct). Tax Credit Investor shall have sixty (60) days after receipt of notice from Landlord describing such Default to cure the default; provided, however, that if it is not reasonably possible to effect a cure within sixty (60) days, no Event of Default shall occur under this Lease so long as Tax Credit Investor shall give notice to the Landlord thereof, commence such cure within the sixty (60) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to Landlord and further provided, if it is necessary for Tax Credit Investor to remove the general partner(s) in order to effect a cure, the period within which the Tax Credit Investor is permitted to effect a cure shall be extended by the time that is required for Tax Credit Investor to complete such removal, provided the Tax Credit Investor (1) diligently prosecutes such removal, (2) cures such Defaults that do not require removal of the general partner(s), subject to Section 17.8, and (3) after removing the general partner(s), the Tax Credit Investor causes Tenant to cure all non-monetary Events of Default of Tenant hereunder capable of cure.

17.3.6 If Tax Credit Investor is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant, a partner of Tenant, or a Leasehold Lender from commencing or prosecuting the removal of Tenant's general partner(s), the times

specified for commencing or prosecuting such removal shall be extended for the period of such prohibition.

17.3.7 The Tax Credit Investor shall have all rights to cure defaults hereunder that are otherwise granted to the Tenant. Landlord shall accept a cure of a default made or tendered by the Tax Credit Investor hereunder on the same basis as if made or tendered by Tenant.

17.4 **Limitation on Liability of Leasehold Lender after Foreclosure**. No assumption of obligations by a Leasehold Lender shall be inferred from or result from foreclosure or as the result of any other action or remedy for default provided for by such Leasehold Mortgage or other instrument. No Leasehold Lender or its designee or transferee shall be or become liable to Landlord under such circumstances unless it assumes liability under another written instrument executed by Landlord and Leasehold Lender or its designee or transferee.

17.5 **Notice to Landlord of Leasehold Mortgages**. Tenant shall provide written notice to Landlord of the name and address of each Leasehold Lender, and the Tax Credit Investor, prior to the execution of this Lease and written notice of any changes in such parties and their addresses within 10 days of Tenant's receipt thereof in accordance with Section 18.3.

17.6 **No Modifications**. Landlord and Tenant shall not amend or modify this Lease in any material respect nor shall Tenant exercise any option or make any election by the Tenant without the prior written consent of the Leasehold Lenders and Tax Credit Investor.

17.7 **Loss Payee Endorsement**. Landlord agrees that Tenant may add the names of each Leasehold Lender to the "Loss Payable Endorsement" of any insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are applied in the manner specified in the applicable Leasehold Mortgage; provided further that any such proceeds shall continue to be applied in accordance with the requirements of Article 13 (Damage and Destruction) and, to the extent permitted under Applicable Law, in a manner that preserves the affordability requirements applicable to the Project.

17.8 **Cures**. No Leasehold Lender shall be required to perform any act which is not susceptible to performance by a lender, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which arises from Tenant's failure to pay any lien, charge or encumbrance which is junior in priority to the Leasehold Lender's encumbrance or, to pay any amount owed by Tenant, based on an event which occurred before the Leasehold Lender or its designee or transferee took title to the Property, accepted an assignment of this Lease or entered into a new lease for the Property. Tax Credit Investor shall not be required to perform any act which is not susceptible to performance by a limited partner, such as to cure a filing or condition of bankruptcy or insolvency.

17.9 **New Lease After Tenant Default**. Landlord agrees that in the event of termination of this Lease by reason of any Event of Default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, or by any other reason Landlord will enter into a new lease with the Senior Lender or its designee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any,

of any parties then in possession of any part of the Property, provided, however, that any new lease entered into pursuant to this Section shall include, without limitation, all affordability covenants and compliance obligations of this Lease and the Regulatory Agreement.

17.9.1 The Senior Lender shall make written request upon Landlord for the new lease at any time prior to the date that is thirty (30) days following the delivery to Senior Lender of written notice of termination of this Lease;

17.9.2 The Senior Lender shall perform and observe all covenants herein contained on Tenant's part that accrue, become due, or are to be performed as of the effective date of the new lease;

17.9.3 The Tenant under the new lease shall have the same right, title and interest in and to all improvements located on the Property as Tenant had under the terminated Lease immediately prior to its termination. Landlord shall by grant deed or by the terms of the new lease convey to the Lender or its designee, title to the improvements, if any, which become vested in Landlord as a result of the termination of the Lease; and

17.9.4 The rights granted any Leasehold Lender to a new lease shall survive any termination of this Lease for a period of thirty (30) days following receipt by the Senior Lender of the notice described in Section 17.9.1. Nothing herein contained shall require any Lender to enter into a new lease pursuant to this Section 17.9.

17.10 **Recognition of Transferee.** Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Leasehold Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant hereunder so long as such purchaser or other transferee shall assume in writing all outstanding obligations of Tenant under this Lease.

17.11 **No Cancellation.** Unless and until Landlord has received notice from all Leasehold Lenders that the Leasehold Lenders elect not to demand a new lease as provided in Section 17.9, or until the thirty (30) day period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Leasehold Lenders.

17.12 **Insurance Proceeds.** The proceeds from any insurance policies available to Tenant or arising from a condemnation if such condemnation proceeds would be payable to Tenant shall be paid to and held by the Senior Lender and distributed pursuant to the provisions of Article 13 and Article 14 of this Lease.

17.13 **Notices of Proceedings.** Tenant shall give all Leasehold Lenders and Landlord notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Property, and any Leasehold Lender shall have the right to intervene therein and shall be made a party to such proceedings. If any Leasehold Lender shall

not elect to intervene or become a party to the proceedings, Tenant shall provide such Leasehold Lender with notice of such proceeding and a copy of any award or decision made in connection with such proceeding.

17.14 At the request of a Leasehold Lender or Tax Credit Investor, the Director of the County's Department of Housing is authorized but not obligated to modify the provisions of Article 17 in a commercially reasonable manner necessary to obtain financing from a Leasehold Lender or Tax Credit Investor.

ARTICLE 18

GENERAL PROVISIONS

18.1 **Dispute Resolution.** The dispute resolution provisions set forth in this Section shall apply to all disputes between the parties relating in any way to this Lease, the Project or the Premises.

18.1.1 **Meet and Confer.** The parties shall endeavor to resolve any disputes relating to this Lease through reasonable business-like dispute resolution procedures without resort to litigation. Accordingly, if any dispute arises, either party may call a special meeting of the parties by written request specifying the nature of the matter to be addressed. The meeting shall be held at the offices of Landlord, and shall be attended by representatives of Landlord and Tenant who have authority to resolve the dispute. The representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both parties concludes that the dispute will not be resolved through additional meetings.

18.1.2 **Mediation.** If a matter in dispute is not resolved through the special meeting process, either party may voluntarily initiate mediation by delivering written notice to the other. Both parties may (but are not required to) attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any party may have. Unless the parties agree otherwise, the mediation proceedings shall be voluntary and conducted in Redwood City, California (or such other location within San Mateo County as the parties may mutually agree), by an independent mediator acceptable to both parties who may be a retired judge of the California State Courts. The costs of the mediation shall be shared equally by both parties to the mediation, except that each party shall pay the fees, costs and expenses of its own legal counsel and consultants in connection with the mediation. Notwithstanding the foregoing, nothing in this Section 18.1 shall limit or preclude Landlord, in its governmental regulatory capacity, from exercising any enforcement powers under applicable law, including the right to bring actions in court for legal or equitable relief.

18.2 **Estoppel Certificates.**

18.2.1 **Tenant Estoppel Certificate.** At any time and from time to time, within thirty (30) days after receipt of a written request by Landlord, Tenant shall deliver to Landlord a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the Term Commencement Date; (iii) the dates to which the Rent and any

other deposits or charges have been paid; and (iv) stating whether or not, to the current actual knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee and any governmental funding source or regulatory agency providing financial assistance with respect to the Project.

18.2.2 Landlord Estoppel Certificate. At any time and from time to time, within thirty (30) days after receipt of a written request by Tenant, Landlord shall deliver to Tenant a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the Term Commencement Date; (iii) the dates to which the Rent and any other deposits or charges have been paid, and (iv) stating whether or not, to the current actual knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee.

18.3 Notices. Any notice, demand, request or other communication with respect to this Lease or with respect to the Premises, the Project or this Lease between Landlord and Tenant shall be in writing and shall not be effective for any purpose unless (i) personally served; (ii) delivered by delivery service; or (iii) mailed by certified or registered mail, postage prepaid, return receipt requested addressed as follows:

If to Landlord:

County of SanMateo
Department of Housing
264 Harbor Boulevard, Bldg. A
Belmont, CA94002
Attention: Director of Housing

with a copy to:

County Attorney for the County of San Mateo
500 County Center, 4th Floor
Redwood City, CA 94063
Attention: County Counsel

with a copy to:

If to Tenant:

Eastmoor Multifamily, L.P. c/o Core Affordable Housing LLC
470 South Market Street, San Jose, CA 95113-2819
Attention Chris Neale

with a copy to:

Cox Castle Nicholson LLP
50 California Street, Suite 3200
Attention Stephen Ryan and Lisa Weil

If to Tax Credit Investor:

Attention: _____

with a copy to:

Attention: _____

Notices given as described above shall be deemed delivered when:

- (a) If personally served, when delivered in accordance with the provisions of California Code of Civil Procedure for service of process on the type of entity to which the writing is addressed.
- (b) If served by delivery service, when signed for in the office of the party to whom directed.
- (c) If mailed, as required above, upon the first to occur of (i) receipt by the addressee as evidenced by a "return receipt" executed by a person in the office of addressee or (ii) on the date delivery is first attempted, as reflected by the records of the U.S. Postal Service.

Any party may change its address set forth above by notice given in the manner set forth above.

18.4 **Quiet Enjoyment.** Landlord covenants and agrees that Tenant, upon paying the Rent and all other charges under this Lease and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept at all times during the Term, shall have quiet enjoyment of the Premises during the Term, subject, however, to the exceptions,

reservations, conditions of this Lease or other rights of Landlord contained herein or as otherwise allowed by applicable law.

18.5 **Unavoidable Delays.** “Unavoidable Delays” shall mean delays caused by force majeure events. Force majeure events shall include acts of God (such as fires, explosions, earthquakes, and floods), litigation that results in an injunction prohibiting or otherwise delaying the continuity of construction or other acts related thereto, an acts of war, riots, acts or threats of terrorism, or unavoidable casualty beyond the control of either Landlord or Tenant, but shall not, in any event, include (a) unavailability of funds or (b) any monetary obligation that can be satisfied by the payment of a fixed sum.

18.6 **Miscellaneous.**

18.6.1 **Construction of Language.** In all cases the language in all parts of this Lease shall be construed according to its fair meaning and not strictly for or against Landlord or Tenant.

18.6.2 **Captions.** The word titles contained herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

18.6.3 **Successors and Assigns.** Subject to the provisions hereof, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

18.6.4 **Memorandum of Lease.** A Memorandum of Lease in the form attached hereto as Exhibit D (“**Memorandum of Lease**”) shall be signed by Landlord and Tenant at the same time as the Lease is signed. The Memorandum of Lease shall be recorded in the Official Records of the County of San Mateo, California, on the Term Commencement Date. Tenant will pay all costs of recording, including any County documentary transfer tax or City conveyance tax. Tenant shall pay the cost of any title insurance it may require.

18.6.5 **Brokers.** Landlord will not pay any brokerage commission or finder’s fee with regard to this Lease. Tenant represents that it has not engaged any broker or agent to represent Tenant in this transaction. Tenant shall indemnify, defend and hold Landlord harmless for, from and against any and all liabilities or expenses, including attorneys’ fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts or omissions of Tenant.

18.6.6 **Indemnity Includes Defense Costs.** In any case where one party is obligated under an express provision of this Lease to indemnify and to save the other party harmless from any damage or liability, the indemnity obligation shall be deemed to include defense of the indemnified party, such defense to be through legal counsel reasonably acceptable to the indemnified party.

18.6.7 **Business Days.** As used herein, the term “business day” shall mean any day other than a Saturday, Sunday or day on which the County is authorized to be closed for business.

If any of the dates specified in this Lease shall fall on a non-business day, then the date of such action shall be deemed to be extended to the next business day.

18.7 **Limitation on Landlord's Liability.** Landlord and Landlord's supervisors, officials, employees and agents shall have no personal liability under this Lease, and Tenant shall look solely to the value of Landlord's interest in the Premises and the Project Improvements for the satisfaction of any claim Tenant may have against Landlord. This limitation of personal liability shall be absolute and without any exception whatsoever.

18.8 **Disclaimer of Partnership.** The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association as between Landlord and Tenant.

18.9 **Disclaimer of Lender/Borrower Relationship.** The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not, as a result of this Lease, in any way nor for any purpose, become a lender to Tenant. It also is expressly understood that this Lease is not intended to, and shall not be construed to, create the relationship of lender and borrower.

18.10 **Notice and Cooperation in Legal Proceedings.** Tenant shall give prompt notice, in writing, to the Landlord of the commencement of any action, lawsuit or other legal proceeding against Landlord or against Tenant with respect to any aspect or part of the Premises or this Lease. Tenant shall fully cooperate with Landlord, and shall cause all the Tenant Representatives to fully cooperate, in connection with the prosecution or defense of any such legal proceedings. For purposes of this Lease, "**Tenant Representatives**" shall mean Tenant's agents, contractors, subcontractors, representatives, officers, employees, members, partners, shareholders, directors and managers

18.11 **No Waiver.** No delay or failure to require performance of any provision of this Lease shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

18.12 **California Public Records Act.** The Landlord is a public agency subject to the disclosure requirements of the California Public Records Act ("**CPRA**"). Tenant understands and agrees that any documents, records, or other materials submitted to County in connection with this Agreement may be public records subject to disclosure under the CPRA, unless an exemption from disclosure applies. Tenant further acknowledges that Landlord makes no representation or warranty that such documents, records, or materials will be determined to be exempt from disclosure, Landlord shall have no obligation to notify Tenant of a CPRA request or disclosure, and Landlord shall have no liability for any release of such documents, records, or materials in compliance with the CPRA.

18.13 **Third Party Beneficiaries.** This Lease does not confer any rights or remedies upon any person or entity other than the parties. Except as otherwise expressly stated herein, there are no third party beneficiaries to this Lease.

18.14 **Subconsultants.** If any obligation is performed for Tenant through a subconsultant or any other Tenant Representative, Tenant will remain fully responsible and liable for the performance of all obligations under this Lease and Tenant will be solely responsible for all payments due to its subconsultants and all of the other Tenant Representatives. No contract, subcontract or other agreement entered into by Tenant with any third party in connection with the Premises contemplated herein will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, Landlord with respect to such arrangement. None of the Tenant Representatives will be deemed an employee or agent of Landlord or a third-party beneficiary for any purposes under this Lease.

18.15 **Counterparts; Electronic Signatures.** This Lease may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

18.16 **Conflict of Interest.**

- A. Tenant represents and warrants that (1) no official or employee of Landlord has been employed or paid by it or any of the Tenant Representatives to aid in the procuring of this Lease; and, (2) no official or employee of Landlord will be employed or paid by Tenant or any of the Tenant Representatives or otherwise personally benefit from this Lease.
- B. Tenant shall comply, and require its Tenant Representatives to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et seq., the California Political Reform Act (California Government Code section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et seq.). Failure to do so constitutes a material breach of this Lease and is grounds for immediate termination of this Lease by the Landlord.
- C. In accepting this Lease, Tenant covenants that it and its subconsultants and Tenant Representatives presently has/have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in

any manner or degree with the performance of this Lease. Tenant, on its own behalf and on behalf of its subconsultants and Tenant Representatives, further covenants that, in the performance of this Lease, it and its subconsultants will not employ any contractor or person having such an interest. Tenant, including but not limited to the Tenant Representatives, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Lease, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

- D. If the disclosure provisions of the Political Reform Act are applicable to any individual providing Service under this Lease, Tenant shall, upon execution of this Lease, provide the Landlord with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Tenant's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), in connection with this Lease. Tenant shall immediately notify the Landlord of the names and email addresses of any additional individuals later assigned to perform any of the work for the Project under this Lease in such a capacity. Tenant shall immediately notify the Landlord of the names of individuals working in such a capacity who, during the course of the Lease, end their services.
- E. If the disclosure provisions of the Political Reform Act are applicable to any individual providing work under this Lease, Tenant shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Lease, annually by April 1, and within 30 days of their termination of service pursuant to this Lease.

18.17 **Entire Lease: Governing Language.** This Lease constitutes the entire agreement by and between the parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This Lease comprises the complete and final expression of the rights, obligations, duties, and undertakings of the parties and sets forth all consideration, covenants, understandings and inducements pertaining thereto.

18.18 **Changes or Amendments to Lease.** No modification or amendment shall be valid unless set forth in writing and signed by Landlord and Tenant. Landlord shall cooperate in including within the Lease by suitable amendment from time to time any provision that may reasonably be requested by any Leasehold Lender, Tax Credit Investor, or any proposed Leasehold Lender or proposed Tax Credit Investor, for the purpose of allowing any such Leasehold Lender, Tax Credit Investor, proposed Leasehold Lender or proposed Tax Credit Investor, reasonable means to protect

or preserve its interest in the Tenant and/or the Premises, as applicable. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Lease Term or rent under the Lease nor otherwise in any material respect adversely affect any rights of Landlord under the Lease, provided further, that no such amendment shall reduce or impair any affordability obligations, tenant income restrictions, rent limits, or County monitoring and enforcement rights set forth in this Lease or in the Regulatory Agreement. At the request of a Leasehold Lender or Tax Credit Investor or proposed Leasehold Lender or proposed Tax Credit Investor, the Director of the County's Department of Housing is authorized but not obligated to modify the provisions of this Lease in a commercially reasonable manner necessary to obtain financing from a Leasehold Lender or Tax Credit Investor or proposed Leasehold Lender or proposed Tax Credit Investor.

18.19 **Cumulative Remedies.** The rights and remedies of the parties to this Lease, whether pursuant to this Lease or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

18.20 **Governing Law, Exclusive Jurisdiction.** This Lease, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Lease or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Lease, including arbitration, administrative, settlement and mediation proceedings, shall be brought only in San Mateo County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SAN MATEO COUNTY, CALIFORNIA.

18.21 **Use of Landlord's Name for Commercial Purposes.** Tenant shall not use the name or logo of the Landlord or reference any endorsement from the Landlord in any fashion for any purpose, without the prior express written consent of the Landlord.

18.22 **Disentanglement.** Tenant shall cooperate with Landlord to ensure a smooth transition at the time of termination of this Lease, regardless of the nature or timing of the termination. Tenant shall cooperate with Landlord's efforts to ensure that there is no interruption of work required under the Lease and no adverse impact on the provision of services or Landlord's activities. Tenant also agrees to work with other Landlord Consultants in the provision of services that are similar or the same as covered under this Lease.

18.23 **Wages.** Employee Compensation. Tenant shall prepare, process and pay the payroll for its staff and employees and shall pay all applicable federal and state employment taxes and payroll insurance, including but not limited to any income, social security and unemployment taxes and worker compensation costs. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims, liabilities and expenses with respect thereto.

- (a) Tenant's Employee Wages and Related Expenses. Tenant shall pay all expenses related to the performance by Tenant of the terms and conditions

of this Agreement. Landlord shall not be liable to reimburse Tenant for any such expenses. Tenant shall timely (and without delay) hire, pay and supervise, as employees of Tenant, all persons necessary to carry out Tenant's responsibilities and duties hereunder. Tenant shall have the sole responsibility for all matters relating to such employees and shall fully comply with applicable laws and regulations affecting such employees, including, without limitation, laws and regulations regarding prevailing wage, payroll withholding, worker's compensation, Social Security, unemployment insurance, hours of labor, wages and working conditions, and shall maintain worker's compensation insurance in the amount of any statutory requirements.

(i) Tenant shall cause its employees performing work under this Agreement to be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat 948; 62 Stat 740; 63 Stat 108; title 18 U.S.C.A., Section 874; and title 40 U.S.C.A., Section 276c). Tenant shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering provision of services and deliverables under this Agreement including to insure compliance with such regulations, and shall be responsible for the submission of required affidavits except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements.

(b) Living Wage (If Applicable). Unless otherwise exempted or prohibited by law or County policy, where applicable, Tenant and its subcontractors, to the extent they provide "Covered Services" to the County (as defined in San Mateo County Ordinance Code Chapter 2.88 – Living Wage Ordinance) and the value of such services meets the monetary threshold set forth therein, shall pay all "Covered Employees" no less than the Living Wage established by the County of San Mateo and comply with all requirements of Chapter 2.88 of the County of San Mateo Ordinance Code, as amended from time to time. Compliance for purposes of this provision includes, without limitation, fair compensation, earned sick leave, posting of Living Wage notices, and retention of payroll records for no less than three (3) years, protection from retaliation, and compliance with all other rights and protections set forth in Chapter 2.88. If Tenant and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

(i) Suspend, modify, or terminate the Covered services or this Lease.

- (ii) Require the Tenant and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (iii) Pursue any and all other remedies available under the Living Wage Ordinance or other applicable laws.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Tenant certifies that it is currently complying with the Living Wage Ordinance with respect to all Covered Employees and warrants that it will continue to comply with the Living Wage Ordinance throughout the Term.

(c) Wage Theft Prevention.

- (i) Compliance with Wage and Hour Laws. Tenant, and any Tenant Representatives it employs or contracts with to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage, prevailing wage, or living wage laws.
- (ii) Definitions. For purposes of this Section, a “Final Judgment” shall mean a judgment, decision, determination, or order (which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable law, or arbiter, or arbitration pane and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, the San Mateo County Office of Labor Standards and Enforcement.
- (iii) Prior Judgments, Decisions or Orders against Tenant. By signing this Lease, Tenant affirms that it has disclosed any final judgments

that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter or arbitration panel and (B) found that Tenant violated an applicable wage and hour law or pay equity law. Tenant further affirms that is has satisfied and complied with – or has reached agreement with the County regarding the manner in which it will satisfy – any such final judgments.

- (iv) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract. If at any time during the term of this Lease, Tenant receives a Final Judgment rendered against it for violation of an applicable wage and hour law or pay equity law, then Tenant shall promptly satisfy and comply with any such Final Judgment. Tenant shall inform the County of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Tenant shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment.
 - (v) Access to Records Concerning Compliance with Pay Equity Laws. County's Right to Withhold Payment. In addition to and notwithstanding any other provision of this Lease concerning access to Tenant's records, Tenant shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity laws. Upon the County's request, Tenant shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Tenant's normal business hours upon no less than 10 business days' advance notice.
 - (vi) Material Breach. Failure to comply with any part of this Section constitutes a material breach of this Lease. Such breach may serve as a basis for termination of this Lease and/or any other remedies available under this Lease and/or law.
 - (vii) Contractors. Tenant shall impose all the requirements set forth in this Section on any contractors permitted to perform work under this Lease. This includes ensuring that any subcontractor receiving a Final Judgment for violation of any applicable law promptly satisfies and complies with such Final Judgment.
- (d) Prevailing Wage. Tenant acknowledges and agrees that work, construction, project improvements and Alterations performed under this Agreement may be considered a public work within the meaning of

California Labor Code Section 1720 and that the requirements of Section 1771, et seq. apply to such public work. Tenant has included (and will include) consideration for this obligation in calculating compensation under this Agreement, if such prevailing wage requirements are applicable. Tenant is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws. Landlord may at any time, without obligation to do so, audit Tenant to verify whether Tenant is in compliance with prevailing wage laws. Tenant shall cooperate with all such audits, including making available and providing copies, during the period 9:00 am to 5:00 pm, Monday through Friday, any and all records requested by Landlord to verify compliance promptly upon request, but not later than seventy-two hours after such request.

18.24 **Time of the Essence**. Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease.

18.25 **Incorporation of Exhibits**. All exhibits referred to in this Lease and any addenda, appendices, attachments, exhibits, and schedules which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Lease and shall be deemed to be part of this Lease.

18.26 **Severability**. Should any part of the Lease between Landlord and the Tenant be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Lease which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

18.27 **Ambiguities**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Lease. Should any ambiguities or conflicts between contract terms and conditions contained in this Lease and its exhibits exist, the terms and conditions in this Lease shall control over its exhibits.

18.28 **Joint and Several**. If Tenant consists of more than one general partner, the obligations of all such general partners shall be joint and several. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

18.29 **Other Representations, Warranties and Covenants**. Tenant represents, warrants and covenants that the following is true and correct and shall be true and correct at all times during the Term:

- (A) Tenant is in good standing under the laws of the State of California and is authorized to carry on and do business in the State of California as such business is now conducted and to perform its obligations under this Lease.
- (B) Tenant has the full right, power and lawful authority to enter into this Lease and its execution and delivery of this Lease by it or on its behalf has been fully authorized by all requisite actions.

- (C) Tenant has provided Landlord with true and correct copies of documentation reasonably acceptable requested by acceptable to Landlord designating the parties authorized to execute this Lease on its behalf.
- (D) Tenant's execution, delivery and performance of its obligations under this Lease will not violate any applicable laws, regulations, or rules nor to its knowledge after due inquiry, constitute a breach or default under any contract, agreement, or instrument to which it is a party, or any judicial or regulatory decree or order to which it is a party or by which it is bound.
- (E) Tenant has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against it any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.
- (F) All documents, instruments, and other information delivered by Tenant to the Landlord pursuant to this Lease are true, accurate, correct and complete to the best of Tenant's knowledge unless otherwise indicated in writing delivered concurrently with such delivery. Landlord shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by Tenant or any of Tenant's employees, agents, subcontractors or consultants.
- (G) This Lease, when executed by it and delivered, shall constitute its legal, valid and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this Lease is required, other than consents, approvals, and authorizations which have already been unconditionally given.
- (H) Upon its receipt of knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true, promptly give written notice of such fact or conditions to the Landlord.

18.30 **Affordability and Relocation Assistance.** At Landlord's discretion, Tenant shall deliver the Premises, at Lease Termination, to Landlord free from all occupancies and tenancies and Project Subtenants, unless otherwise agreed to by Landlord. For purposes of this Lease, "**Project Subtenants**" shall mean the residents who are authorized by Tenant to occupy the Premises, as consistent with the Regulatory Agreement. Tenant must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar applicable laws. Tenant shall be solely and exclusively liable and responsible for notice and

payment of any and all relocation costs and expenses of the Project Subtenants, in accordance with all applicable laws. Tenant and not Landlord shall be solely responsible and liable for paying all relocation assistance and for providing all noticing pursuant to applicable law and such obligations shall continue in full force and effect notwithstanding the expiration, assignment, foreclosure or termination of this Lease, unless expressly released in writing by the County.

18.30.1.1 Landlord is materially relying on the following obligations of Tenant as a basis for entering into this Lease: Tenant represents, warrants, covenants and certifies that (1) Tenant will comply with all its obligations and responsibilities under the Regulatory Agreement and all applicable laws pertaining to affordable housing; (2) Tenant is currently in compliance with all other existing Regulatory Agreements and affordability covenants that Tenant has entered into with County for other unrelated projects and all applicable laws pertaining to affordable housing; and (3) Tenant, its successors and assigns, will remain in compliance with all applicable laws pertaining to affordable housing after termination of the Regulatory Agreement, and shall (if requested by Landlord or if required by applicable laws) (i) except as otherwise requested in writing by Landlord, provide all Project Subtenants with at least twelve (12) months advance written notice of intent to terminate each tenancy prior to the expiration or termination of the Regulatory Agreement or this Lease, and such notice shall be given in the same manner and contain the same information as provided for in California Government Code Section 65863.10 and California Health and Safety Code 52087; and, in addition, (ii) will continue to offer and provide affordable housing on the Premises in compliance with the Lease terms until the expiration of the twelve month notice of termination issued to such Project Subtenants, unless and until Tenant offers and provides to each such Project Subtenant and each such Project Subtenant accepts in lieu of the 12 month notice the relocation assistance and benefits found in Section 7264(b) of the California Government Code.

18.30.1.2 Nothing in this Lease shall be construed as relieving, nor does it relieve, the Tenant, its successors and assigns, of any prior, existing or continuing obligation(s) to comply in any or all respects with any and all applicable statutes and regulations, including but not limited to California Health and Safety Code Section 52080 et seq. (e.g. affordability obligations and/or relocation assistance for tenants) and California Government Code Sections 65863.10 through and including 65863.13 (e.g., notice to tenants).

18.30.1.3 Landlord does not waive its right(s) to act in its regulatory or enforcement capacity as a governmental or regulatory body, including but not limited to its ability, obligation or right (discretionary or otherwise) to seek enforcement of, or take any other action pertaining to, any applicable laws in relation to any party to this Lease or the Regulatory Agreement, or respective successors or assigns, or any Project Subtenant rights.

18.30.1.4 Tenant represents, warrants and agrees to defend, indemnify and hold harmless the County, its officers, elected and appointed officials, employees and agents (collectively and each a “**County Agent**”) from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the Regulatory Agreement, Tenant's failure to comply with affordable housing laws, any claim or

obligation to project relocation assistance, notice or relocation benefits to any of the Project Subtenants, excepting only such loss or damage which is directly caused by the sole gross negligence or willful misconduct of the County or any County Agent. The Tenant will conduct all defenses at its sole cost and expense and the Issuer shall reasonably approve selection of County's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of Tenant, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Tenant, its affiliates or other parties are not a limitation upon the obligation of the Tenant including without limitation the amount of indemnification to be provided by the Tenant.

Each of the foregoing items inclusive shall be deemed to be ongoing representations, warranties and covenants of Tenant and shall survive termination, expiration or cancellation of this Lease.

18.31 **Landlord Reliance and Consequential Damages.** Acceptance by Landlord of the work, Project or Project Improvements (in whole or in part) performed under this Lease does not operate as a release of the Tenant from such professional responsibility for performance under this Lease. It is further understood and agreed that Tenant is apprised of the scope(s) of the work to be performed under this Lease and Tenant agrees that the work can and shall be performed in a fully competent manner.

- A. Tenant recognizes that the timely and competent completion of the Project is an important inducement to enter into this Lease, and that the failure of Tenant to timely and competently perform may result in substantial negative financial consequences to the Landlord. Landlord and Tenant agree that, in addition to any and all other sums which Tenant may be obligated to pay to Landlord for a breach, if any, of this Lease, Tenant hereby acknowledges that damages, including those set forth above, which are a consequence of Tenant's failure to timely, safely and/or properly complete the services and deliverables herein with professional quality and skill are presently known and foreseeable by the Parties hereto.

18.32 **Further Assurances.** Tenant covenants and agrees that it will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Lease.

18.33 **OFAC.** Tenant represents and warrants to Landlord that: (i) Tenant and the Tenant Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Tenant and the Tenant Representatives are not engaged in the Project or entering into this Lease, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

18.34 **Representation by Counsel.** The parties to this Lease were represented by their respective counsel in the negotiation and execution of this Lease. The parties are aware of the

provisions set forth in California Civil Code §1717 and intend this paragraph of the Lease to meet said statutory requirements so that the reference to attorneys' fees in the Insurance provisions and exhibits of this Lease, applies only in the indemnification context in such provisions and exhibits.

18.35 **Audit.** Tenant shall maintain for a period of at least three (3) years following the end of each calendar or tax fiscal year to which they pertain, complete and accurate books and records relating to Tenant's use of the Premises, compliance with the Lease terms, Alterations, Project Improvements, operating expenses and tax expenses. Such books and records shall be kept at the location where Tenant customarily maintains its books and records; however, such location shall be within the County of San Mateo, State of California. After delivery of at least thirty (30) days prior written notice, Landlord, or any accountant designated by it, shall have the right to examine and/or audit the books and records evidencing such expenses for any of the previous three (3) calendar years, during Tenant's reasonable business hours but not more frequently than once during any calendar year. Tenant shall fully cooperate with Landlord or its representatives in such audits and shall promptly resolve any discrepancies between Landlord and Tenant in the accounting of such expenses.

18.36 **County Regulatory Authority.** Tenant acknowledges and agrees that Landlord, acting not as landlord but in its governmental regulatory capacity, has certain governmental regulatory authority over the Premises and that nothing in this Lease binds the Landlord to exercise or refrain from exercising this discretionary governmental authority in any particular manner.

18.37 **Inspection by Certified Access Specialist.** As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Premises have not undergone inspection by a certified access specialist ("CASp"). As required by Section 1938(e) of the California Civil Code, Landlord also states that: "A CASp can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises." Any CASp inspection elected to be conducted by Tenant shall be done at Tenant's sole cost and expense, and to the extent that a CASp inspection identifies any necessary repairs to correct violations of construction-related accessibility standards, Tenant shall be responsible to correct such violations.

18.38 **County Sustainability Policies.** All alterations, modifications, renovations, improvements, maintenance, repairs and operations in, of or about the Premises shall comply fully with all applicable County of San Mateo green building and sustainability standards and policies, including (without limitation) Ordinance No. 4824 (Energy Code, Part 6 and Green Building Code, Part 11) and all-electric, EV infrastructure and on-site solar requirements for new construction, and shall be aligned with the County's climate and electrification goals set forth in its Community Climate Action Plan (CCAP). Any reasonably equivalent standards may be substituted with Landlord's prior written approval (which shall not be unreasonably withheld).

18.39 **ADA**. Tenant shall ensure that the Premises conform and comply with the requirements of the Americans with Disabilities Act, as amended from time to time, a federal law codified at 42 U.S.C. 12101 et seq., including, but not limited to Title III thereof, all regulations and guidelines related thereto and all requirements of Title 24 of the State of California (collectively, the “ADA”).

18.40 **No-Smoking**. The Premises shall comply at all times with San Mateo County Ordinance Code , Title 4 (Sanitation and Health), Chapter 4.97 – Regulation of Smoking in and Around Multi-Unit Residences, as amended or modified from time to time (including, for purposes of this Section, the definition of “Smoke” as vapors, gases, particles or other by-products released by combustion or electrical ignition of tobacco, nicotine, marijuana or other substances). Tenant shall enforce policies, standards and rent requirements that preclude smoking at any time on, in or around the Premises except as otherwise allowed in the County Ordinance Code.

18.41 **Equal Opportunity/Nondiscrimination**. Tenant shall comply with all laws and County of San Mateo policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et sea.); California Labor Code sections 1101 and 1102. Tenant shall not discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. It is further the policy of the County that no party contracting with the County may discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

18.42 **Integrated Pest Management**. Tenant shall comply and shall ensure the Tenant’s representatives comply with the most recent version of the County’s Integrated Pest Management Program as updated from time to time by County, and currently found at: <https://www.smcgov.org/parks/san-mateo-county-parks-integrated-pest-management-program>. Tenant shall be responsible for obtaining and complying with the most recent version of this program requirements.

18.43 **Continued Affordability Obligation Following Assignment or Foreclosure**

Tenant acknowledges and agrees that uninterrupted provision of affordable housing on the Premises is a material consideration in Landlord’s willingness to enter into this Lease. Accordingly, the obligations of Tenant under this Lease and the Regulatory Agreement regarding affordability, tenant income restrictions and rent limits shall run with the leasehold estate and shall be binding upon any successor or assignee of Tenant (including any Leasehold Lender or its designee), and shall continue in full force and effect notwithstanding any foreclosure, assignment in lieu of foreclosure, or other transfer of Tenant’s interest.

18.44 **No Merger**. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly

or indirectly: (a) this Ground Lease or the leasehold estate created by this Ground Lease or any interest in this Ground Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold Mortgagee or leasehold Mortgagees, having any interest (including a security interest) in (i) this Ground Lease or the leasehold estate created by this Ground Lease, and (ii) any other estate in the Property or the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

The County of San Mateo,
a political subdivision of the state of California

By: _____

Its: _____

Date: _____

TENANT:

Eastmoor Multifamily, L.P. by
Core Affordable Housing LLC

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF DALY CITY,
IN THE COUNTY OF

SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

A portion of Lot 9 as shown on that certain map entitled "Map of the Pierce Van Winkle and Patten Tracts", filed in the Office of the County Recorder of San Mateo County, State of California on December 19, 1883, in Book B of Maps at Page 3, and a copy entered in Book 1 of Maps at Page 20, and more particularly described as follows:

Beginning at a point which bears North $89^{\circ} 36' 20''$ East, 329.91 feet South $0^{\circ} 23' 40''$ East, 60.09 feet from the Northwest corner of Lot 12, as said Lot is shown on the Map hereinabove referred to, said point of beginning also being the Southwesterly corner of lands conveyed from Eastmoor Corporation to Pedemonte Properties Inc., by Deed recorded June 1, 1964, in Book 4722 of Official Records at Page 422 (File No. 27590-X), records of San Mateo County, California; thence along the Southerly boundary of said lands South $85^{\circ} 28' 45''$ East, 150.63 feet and North $56^{\circ} 54' 59''$ East, 17.73 to the Northwesterly corner of that certain parcel of land granted by Shell Oil Company, a Delaware corporation, to the City of Daly City by Deed recorded May 26, 1982, as Series No. 82044197, Official Records of San Mateo County; thence South $00^{\circ} 23' 40''$ East, 76.33 feet to a point on an arc, described in Director's Quitclaim Deed by the State of California to the Eastmoor Corporation recorded April 7, 1964, in Volume 4682 of Official Records of San Mateo County at Page 643 (7574-X); thence on the arc of a curve to the right, from a tangent which bears South $29^{\circ} 56' 43''$ West, with a radius of 73.006 feet and a central angle of $65^{\circ} 28' 54''$, an arc distance of 83.44 feet to a point of compound curvature; thence along the arc of a curve to the right, the tangent of which bears North $84^{\circ} 34' 23''$ West, with a radius of 390.03 feet and a central angle of $05^{\circ} 03' 28''$, an arc distance of 34.43 feet to a point of reverse curvature; thence along a curve to the West, concave Southerly, the tangent of which bears North $79^{\circ} 30' 55''$ West, with a radius of 1,535.00 feet and a central angle of $02^{\circ} 17' 32''$, an arc distance of 61.41 feet to Southeasterly corner of that certain parcel of land granted by the Eastmoor Corporation to Fiori Paolinelli, aka Fiori Pinelli, and Margaret Paolinelli in the Deed recorded November 29, 1963, in Volume 4600 of Official Records of San Mateo County at Page 491; thence on and along the Westerly line of the herein described Parcel, North $00^{\circ} 23' 40''$ West, a distance of 100.03 feet to the point of beginning.

EXCEPTING THEREFROM the interest thereof conveyed to the City of Daly City, a municipal corporation, by Deed recorded July 3, 1989, Series No. 89086843.

ALSO EXCEPTING THEREFROM all right title and interest in and to any oil, gas, and other minerals (including, without limitation, helium, lignite, sulfur, phosphate and other solid, liquid and gaseous substances), as reserved in the Deed recorded July 15, 1998, as Series No. 98-111727, Official Records.

PARCEL TWO:

An easement over and across the following described parcel of land, more particularly described as follows:

A portion of Lot 12, as said Lot is delineated and described upon that certain Map entitled, "Map of the Pierce Van Winkle and Patten Tracts", which Map was filed in the office of the Recorder of the County of San Mateo, State of California on December 19, 1883, in Book B of Maps Page 3, a copy entered in Book 1 of Maps at Page 20, and

more particularly described as follows:

Beginning at a point which bears, North 89 degrees 36' 20" East, 310.48 feet and South 0 degrees 23' 40" East, 58.47 feet from the Northwest corner of Lot 12, as said Lot is shown on the Map hereinabove referred to; running thence from said point of beginning, South 85 degrees 28' 45" East, 19.50 feet; South 0 degrees 23' 40" East, 100.03 feet to a point in the Northerly line of Eastmoor Avenue; thence along said Northerly line, Westerly on the arc of a curve to the left from a tangent bearing, North 81 degrees 48' 27" West, with a radius of 1,535 feet, subtending a central angle of 1 degrees 41' 18" an arc distance of 45.23 feet; thence leaving said line, North 48 degrees 02' 18" East, 33.92 feet and North 0 degrees 23' 40" West, 73.10 feet to the point of beginning.

JPN: 008-008-082-14A

APN: 008-082-200

EXHIBIT B

Schedule B exceptions to the Title Report

[This Exhibit B should not include the loans which are part of the closing]

EXHIBIT C

INSURANCE REQUIREMENTS DURING CONSTRUCTION PERIOD

Without limiting the Tenant's indemnification of the County, during the Construction Period (as defined in Section 9.1 of the Lease), the Tenant at its own expense shall provide and maintain or require its General Contractor to provide and maintain, the following insurance coverages and provisions:

A. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides total limits, arranged in any combination of primary and excess insurance, as follows:
 - a. Each occurrence - \$25,000,000
 - b. General aggregate - \$25,000,000
 - c. Products/Completed Operations aggregate - \$25,000,000

All general or excess liability insurance submitted to comply with these requirements shall provide or be endorsed to provide for a separate aggregate limit for the project that is the subject of this agreement. In the alternative, County may approve a higher minimum limit than specified above.

General liability coverage shall be at least as broad as insurance Services Office form CG 00 01. The policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any so-called "contractor's limitation endorsements" including limitations on:

- a. Explosion, collapse or underground hazards ("XCU")
- b. Products and completed operations
- c. Contractual liability

If any policies contain endorsements excluding items listed above or similar endorsements removing or limiting coverage provided in the basic policy, such endorsements shall be submitted to Landlord for review along with other evidence of insurance required by this Lease. Landlord may approve coverage with such endorsement(s), or may require to have the exclusion or limitation removed, or to arrange other insurance for the uninsured exposure.

General liability coverage shall include or be endorsed to include as additional insureds the following:

“County of San Mateo, and members of the Board of Supervisors of the County of San Mateo, and the officers, agents, and employees of the County of San Mateo, individually and collectively, as additional insureds.”

The additional insured endorsement shall be at least as broad as Insurance Services Office form CG 20 10, any edition prior to 2004. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance or self-insurance maintained by the Landlord, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Such insurance shall include coverage for completed operations.

2. Automobile Liability Insurance

- a. For bodily injury (including death) and property damage providing total limits of not less than five million dollars (\$5,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
- b. Automobile liability insurance shall be at least as broad as Insurance Services Office form CA 00 01.

3. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including coverage for all states in which work related to this Project may be performed.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per accident.

4. Pollution Liability Insurance

Tenant shall provide Pollution Liability coverage including bodily injury, personal injury, and property damage from a pollution event resulting from the construction work or operations of the Project with limits not less than \$5,000,000 per claim or per occurrence and \$5,000,000 aggregate limits, including claim expenses and defense, written on a claims made or occurrence basis for the Project inclusive of the term of construction and a ten (10) year completed operations period, including coverage for mold. If the construction of the Project involves the removal of asbestos, the removal/ replacement of underground tanks and/or the removal of toxic chemicals and substances, the contractor or subcontractor performing such

work shall provide the appropriate pollution coverage, with limits of no less than \$5,000,000 per claim or per occurrence.

5. Professional Liability Insurance

- a. Coverage shall apply to any design activity performed by Tenant's consultants, including but not limited to Tenant's architect and civil engineer, for the Project Improvements, and shall specifically include coverage of the Development Plans for the Project.
- b. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per claim/aggregate.
- c. If coverage contains a self-insured retention, it shall not be greater than two hundred fifty thousand dollars (\$250,000) per claim unless otherwise approved by Landlord.
- d. If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after the Construction Period is completed. If the Tenant's consultant ceases to do business during this period, Tenant agrees to purchase an extended reporting option on the last professional liability policy so that the period of coverage for reporting claims extends to at least three (3) years after the Construction Period is completed.

6. Builders' Risk Insurance

- a. Tenant shall provide Builders' Risk/Course of Construction insurance on an "all-risk" basis, with a limit of no less than the full replacement value of the Improvements constructed, and covering the work and all materials and equipment to be incorporated therein, including property in transit or elsewhere, subject to certain sublimits, and insuring the interests of the Landlord, the Tenant, its contractor and subcontractors and material suppliers. Such insurance shall contain insurer's waiver of subrogation in favor of the Tenant, its contractor and subcontractors, and material suppliers. Such insurance shall contain insurer's waiver of subrogation in favor of the Tenant, its contractor and subcontractors, and material suppliers.

7. Business Interruption Insurance. Tenant shall maintain business interruption and extra expense insurance for a period of not less than twelve (12) months covering loss of revenues or rent resulting from a delay or interruption in Project operations caused by a covered loss during the Construction Period.

8. Boiler and Machinery Insurance. If boilers, generators or similar equipment are installed as part of the Project Improvements, Tenant shall also maintain Boiler and Machinery insurance in an amount not less than the full replacement value of such equipment.

B. Special Provisions

The following provisions shall apply:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Tenant pursuant to this Lease, including but not limited to the provisions concerning indemnification.
2. No liability insurance coverage provided to comply with this Lease shall prohibit Tenant, or Tenant's employees, or agents, from waiving the right of recovery prior to a loss. Any such limitations must be removed by endorsement or policy shall be endorsed to waive any insurer right of subrogation against Landlord or other indemnitees. Tenant waives its right of recovery against Landlord. Tenant shall assure that all contracts with its contractor or subcontractors or other parties performing work related to this Lease include similar waivers in favor of Landlord.
3. Except as to limits, which may be determined by Tenant, Tenant shall require that every subcontractor and subconsultant, of Tenant or its contractor, performing or providing any portion of the work related to the Lease, obtain and maintain for the duration of its performance of the work and for the full duration of all guarantee or warranty periods (and such longer periods as required for completed operations coverage), the types of insurance coverage outlined in A.1 through A.8 above, and all such other insurance as required by applicable laws; provided, however, that subcontractors not providing professional services shall not be required to provide Professional Liability coverage. Tenant assumes full responsibility for verifying existence and adequacy of subcontractor coverage.
4. In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, Landlord has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Landlord will be promptly reimbursed by Tenant.
5. Tenant acknowledges and agrees that any actual or alleged failure on the part of Landlord to inform Tenant of non-compliance with any requirement imposes no additional obligations on Landlord nor does it waive any rights hereunder.
6. Landlord, in its reasonable discretion and upon not less than thirty (30) days' written notice to Tenant, may increase, reduce or otherwise adjust the insurance limits required herein to reflect changes in construction costs, inflation, or prevailing commercial

standards. Any such adjustment shall be commercially reasonable and consistent with comparable projects in the County of San Mateo.

EXHIBIT D

Form of Memorandum of Lease

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

County of San Mateo
Department of Housing
264 Harbor Blvd., Bldg. A
Belmont, CA 94002
Attention: HCD Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (“**Memorandum**”) is made as of _____, _____ by and between the County of San Mateo (“**Landlord**”) and Eastmoor Multifamily, L.P (“**Tenant**”).

1. For good and valuable consideration, receipt of which is hereby acknowledged, Landlord hereby leases to Tenant and Tenant hires from Landlord certain improved real property described on Exhibit A hereto (“**Premises**”). The terms and conditions of this lease are more particularly set forth in an unrecorded Ground Lease (the “**Lease**”) between Landlord and Tenant dated for reference purposes as of _____ which is hereby incorporated herein by this reference thereto.

2. The primary term of the Lease (“**Lease Term**”) commences on the Term Commencement Date (which is defined in the Lease as the date this Memorandum is recorded in the public records) and expires on the last day of the month in which the fifty-fifth (55th) anniversary of the Term Commencement Date occurs.

3. Tenant has one option, subject to the terms and conditions of the Lease, to renew the Lease, subject to County advance approval on terms acceptable to the County, for a total maximum Term of no more than Ninety-nine (99) years.

4. The Lease requires that the Premises be used for the Term for affordable housing and related uses, as more particularly set forth in the Lease and in the Regulatory Agreement by Tenant recorded substantially concurrently herewith.

5. This Memorandum has been executed, acknowledged and recorded solely for the purpose of providing constructive notice of the Lease. This Memorandum may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an

original. If any inconsistency or conflict exists between the provisions of this Memorandum and the Lease, the terms, covenants and conditions of the Lease shall control.

[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the day and year first written above.

Tenant:

Eastmoor Multifamily, L.P

By: _____

Its: _____

Landlord:

County of San Mateo, a political subdivision
of the State of California

By: _____

Its: _____

[SIGNATURES MUST BE ACKNOWLEDGED]

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.

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

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.

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 TO MEMORANDUM OF LEASE

[LEGAL DESCRIPTION OF REAL PROPERTY]

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

PARCEL ONE:

A portion of Lot 9 as shown on that certain map entitled "Map of the Pierce Van Winkle and Patten Tracts", filed in the Office of the County Recorder of San Mateo County, State of California on December 19, 1883, in Book B of Maps at Page 3, and a copy entered in Book 1 of Maps at Page 20, and more particularly described as follows:

Beginning at a point which bears North 89° 36' 20" East, 329.91 feet South 0° 23' 40" East, 60.09 feet from the Northwest corner of Lot 12, as said Lot is shown on the Map hereinabove referred to, said point of beginning also being the Southwesterly corner of lands conveyed from Eastmoor Corporation to Pedemonte Properties Inc., by Deed recorded June 1, 1964, in Book 4722 of Official Records at Page 422 (File No. 27590-X), records of San Mateo County, California; thence along the Southerly boundary of said lands South 85° 28' 45" East, 150.63 feet and North 56° 54' 59" East, 17.73 to the Northwesterly corner of that certain parcel of land granted by Shell Oil Company, a Delaware corporation, to the City of Daly City by Deed recorded May 26, 1982, as Series No. 82044197, Official Records of San Mateo County; thence South 00° 23' 40" East, 76.33 feet to a point on an arc, described in Director's Quitclaim Deed by the State of California to the Eastmoor Corporation recorded April 7, 1964, in Volume 4682 of Official Records of San Mateo County at Page 643 (7574-X); thence on the arc of a curve to the right, from a tangent which bears South 29° 56' 43" West, with a radius of 73.006 feet and a central angle of 65° 28' 54", an arc distance of 83.44 feet to a point of compound curvature; thence along the arc of a curve to the right, the tangent of which bears North 84° 34' 23" West, with a radius of 390.03 feet and a central angle of 05° 03' 28", an arc distance of 34.43 feet to a point of reverse curvature; thence along a curve to the West, concave Southerly, the tangent of which bears North 79° 30' 55" West, with a radius of 1,535.00 feet and a central angle of 02° 17' 32", an arc distance of 61.41 feet to Southeasterly corner of that certain parcel of land granted by the Eastmoor Corporation to Fiori Paolinelli, aka Fiori Pinelli, and Margaret Paolinelli in the Deed recorded November 29, 1963, in Volume 4600 of Official Records of San Mateo County at Page 491; thence on and along the Westerly line of the herein described Parcel, North 00° 23' 40' West, a distance of 100.03 feet to the point of beginning.

EXCEPTING THEREFROM the interest thereof conveyed to the City of Daly City, a municipal corporation, by Deed recorded July 3, 1989, Series No. 89086843.

ALSO EXCEPTING THEREFROM all right title and interest in and to any oil, gas, and other minerals (including, without limitation, helium, lignite, sulfur, phosphate and other solid, liquid and gaseous substances), as reserved in the Deed recorded July 15, 1998, as Series No. 98-111727, Official Records.

PARCEL TWO:

An easement over and across the following described parcel of land, more particularly described as follows:

A portion of Lot 12, as said Lot is delineated and described upon that certain Map entitled, "Map of the Pierce Van Winkle and Patten Tracts", which Map was filed in the office of the Recorder of the County of San Mateo, State of California on December 19, 1883, in Book B of Maps Page 3, a copy entered in Book 1 of Maps at Page 20, and

more particularly described as follows:

Beginning at a point which bears, North 89 degrees 36' 20" East, 310.48 feet and South 0 degrees 23' 40" East, 58.47 feet from the Northwest corner of Lot 12, as said Lot is shown on the Map hereinabove referred to; running thence from said point of beginning, South 85 degrees 28' 45" East, 19.50 feet; South 0 degrees 23' 40" East, 100.03 feet to a point in the Northerly line of Eastmoor Avenue; thence along said Northerly line, Westerly on the arc of a curve to the left from a tangent bearing, North 81 degrees 48' 27" West, with a radius of 1,535 feet, subtending a central angle of 1 degrees 41' 18" an arc distance of 45.23 feet; thence leaving said line, North 48 degrees 02' 18" East, 33.92 feet and North 0 degrees 23' 40" West, 73.10 feet to the point of beginning.

JPN: 008-008-082-14A

APN: 008-082-200

EXHIBIT E
Payment and Performance Bonds
(Payment Bond Form)
INSTRUCTIONS

The payment bonds shall each be furnished by a surety authorized and licensed to do a surety business in the State of California, having a financial rating from A.M Best Company of A-, VII or better, in the amount of the full cost of completing, designing and constructing the Project Improvements and made payable to the County of San Mateo, a political division of the state of California, and shall identify County as the obligee. Said surety shall provide a letter signed by an authorized representative of surety in which surety agrees to provide the required payment bonds as stated herein. County shall have the right to verify with the surety that the surety will have the required bonds under the conditions stated herein.

Tenant shall deliver to County three originals of each of the payment bonds executed by both Tenant and the surety.

Tenant shall provide County with the name and address of any bonding company issuing bonds that secures the payment of wages by Tenant or its representatives. If the name or address of any bonding company changes over the Term of the Lease, Tenant shall provide the new name and address of the new bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Payment of Wages."

Tenant shall insert in every subcontract or other arrangement which Tenant may make for performance of the work or labor provided for in the Lease, a provision that each subcontractor shall provide County with the name and address of any bonding company issuing a bond that secures the payment of wages by the subcontractor. If the name or address of any such bonding company changes over the term of the Lease, subcontractor shall provide the new name and address of the bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Payment of Wages."

Tenant acknowledges and agrees that in the event that County or any of County's agents or representatives provides notice of withholding of payment to Tenant or any subcontractor, a copy of the notice may also be served on any of Tenant's or subcontractors' bonding companies that issued a bond to secure payment of wages.

Tenant shall insert in every subcontract or other arrangement which Tenant may make for performance of work or labor provided for in the Lease, a provision that each subcontractor shall acknowledge and agree that in the event that County or any of County's agents or representatives provides notice of withholding of payment to Tenant or to any subcontractor, a copy of the notice may also be served on any of Tenant's or subcontractors' bonding companies that issued a bond to secure payment of wages.

Use and occupancy of the Premises prior to acceptance and completion of all work does not relieve Tenant of its responsibility to maintain insurance and bonds required under the Lease until the entire work is completed and accepted by County in accordance with all terms and conditions of the Lease.

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSON BY THESE PRESENTS:

1.01 THAT WHEREAS, the County of San Mateo, a political subdivision of the State of California (“County”) has entered into a Lease with _____ (“Tenant”) dated _____ 20_ (the “Agreement”), which Agreement is by this reference made a part hereof, for the construction, design, use and occupancy of affordable housing on the Premises (the Project Improvements) to be performed by Tenant.

A. AND WHEREAS, Tenant is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided _____ by _____ law;

B. NOW, THEREFORE, we, the undersigned Principal and _____NAME OF SURETY_____, as Surety, are held and firmly bound unto County (as oblige) in the sum of 100% OF THE COST OF COMPLETING THE PROJECT IMPROVEMENTS, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents;

C. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Tenant, or its executors, administrators, successors, or assigns approved by County, or its subcontractors or any of the Tenant Representatives shall fail to pay any of the persons named in California Civil Code Section 3181 (as amended or replaced from time to time), or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Tenant, subcontractors and Tenant Representatives pursuant to Section 13020 of the State of California Unemployment Insurance Code (as amended or replaced from time to time) with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys’ fees, otherwise the above obligation shall become and be null _____ and _____ void;

D. This bond shall inure to the benefit of any of the persons named in California Civil Code 3181, (as amended or replaced from time to time) as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California _____ Mechanic’s _____ Lien _____ Laws;

E. E. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder;

F. Surety’s obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection

with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing County's rights against the other; and,

G. Correspondence or claims relating to this bond shall be sent to Surety at the address set for the below.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of ____, 20__.

Tenant (as Principal)

SURETY

Company: _____

Company: _____

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

END OF DOCUMENT

(Performance Bond Form)
INSTRUCTIONS

The performance bonds shall each be furnished by a surety authorized and licensed to do a surety business in the State of California, having a financial rating from A.M Best Company of A-, VII or better, in the amount of the full cost of constructing, designing and developing the Project Improvements on the Premises and made payable to the County of San Mateo, a political division of the state of California, as obligee. Said surety shall provide a letter signed by an authorized representative of surety in which surety agrees to provide the required performance bonds as stated herein. County shall have the right to verify with the surety that the surety will have the required bonds under the conditions stated herein.

Tenant shall deliver to County three originals of each of the performance bonds executed by both Tenant and the surety.

Tenant shall provide County with the name and address of any bonding company issuing bonds that secures performance by Tenant or its representatives. If the name or address of any bonding company changes over the Term of the Lease, Tenant shall provide the new name and address of the new bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Performance."

Tenant shall insert in every subcontract or other arrangement which Tenant may make for performance of the work provided for in the Lease, a provision that each subcontractor shall provide County with the name and address of any bonding company issuing a bond that secures the performance by the subcontractor. If the name or address of any such bonding company changes over the Term of the Lease, subcontractor shall provide the new name and address of the bonding company to County in writing within ten days of such change. The writing shall be clearly identified as "Notice of Change in Bonding Company For Performance."

Tenant acknowledges and agrees that in the event that County or any of County's agents or representatives provides notice of withholding of payment to Tenant or any subcontractor, a copy of the notice may also be served on any of Tenant's or subcontractors' bonding companies that issued a bond to secure performance.

Tenant shall insert in every subcontract or other arrangement which Tenant may make for performance of work provided for in the Lease, a provision that each subcontractor shall acknowledge and agree that in the event that County or any of County's agents or representatives provides notice of withholding of payment to Tenant or to any subcontractor, a copy of the notice may also be served on any of Tenant's or subcontractors' bonding companies that issued a bond to secure performance.

Use and occupancy by County prior to acceptance and completion of all work does not relieve Tenant of its responsibility to maintain insurance and bonds required under the Lease until the entire work is completed and accepted by County in accordance with all terms and conditions of the Lease.

CONSTRUCTION PERFORMANCE BONDS

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, the County of San Mateo, a political subdivision of the State of California (“County”), has entered into a Lease with _____ (“Tenant” or “Principal”) dated the ___ day of ____, 201__ (the “Agreement”), for the design, construction, operation and management of an Affordable Housing Project on the Premises (the “Project Improvements”), which Agreement is by this reference made a part hereof, for the work to be performed by Tenant.

1.02 AND WHEREAS, Tenant is required to furnish a bond in connection with the Agreement for the completion of the Project Improvements:

1.03 NOW, THEREFORE, we, the undersigned Tenant and _____Name of Surety_____ as Surety are held and firmly bound unto County in the sum of 100% OF THE FULL COST OF COMPLETING ALL OF THE PROJECT IMPROVEMENTS ON THE PREMISES to be paid to County, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Tenant, or its heirs, executors, administrators, successors, or assigns approved by County, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement for the completion of all of the Project Improvements on the Premises, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Tenant's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless County, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

1.05 No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, or work or actions by County to mitigate the damages resulting from any breach in performance by Tenant, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

1.06 Whenever Tenant shall be and declared by County in default under the Agreement, Surety shall promptly remedy the default, or shall promptly, and in no even later than forty five (45) days from notice:

A. Undertake through its agents or independent contractors (but having qualifications and experience reasonably acceptable to County), to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Tenant under the Agreement, including without

limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

B. Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by County of the lowest responsible bidder (or such other qualifications as determined by County), arrange for an Agreement between such bidder and County and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Agreement Sum, and to pay and perform all obligations of Tenant under the Agreement, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Agreement Sun," as used in this paragraph shall mean the total amount payable by County to Tenant under the Agreement and any amendments thereto, less the amount paid by County to Tenant for work accepted and completed.

1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing County's rights against the others.

1.08 Surety may not use Tenant to complete the Agreement absent County's Consent. County shall have the right in its sole discretion to continue the work of the Agreement, as necessary following a default and/or termination, as necessary to prevent risks of personal injury, property damage or delay to the project.

1.09 No right of action shall accrue on this bond to or for the use of any person or corporation other than County, its successors or assigns.

1.10 Surety shall join in any proceedings brought under the Agreement upon County's demand, and shall be bound by any judgment.

1.11 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of ____, 2016.

TENANT (Principal)

SURETY

Company: _____(Corp Seal)
Signature: _____
Name and Title: _____
Address: _____

Company: _____(Corp Seal)
Signature: _____
Name and Title: _____
Address: _____

EXHIBIT F

REGULATORY AGREEMENT (Form)

EXHIBIT G

Approved Leasehold Mortgages

EXHIBIT H

Hazardous Materials Disclosure Statement

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as Tenant. After a lease agreement is signed by you and the Landlord (the “**Lease Agreement**”), on an annual basis in accordance with the provisions of Section 7 of the signed Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual certificate provided by you thereafter will be maintained in confidentiality by Landlord subject to release and disclosure as required by (i) any prospective purchaser(s) of all or any portion of the property on which the Premises are located, (ii) Landlord to defend itself or its lenders or representatives against any claim or demand, and (iii) any laws, rules, regulations, orders, decrees, or ordinances, including court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the signed Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: _____

Attn: _____
Phone: _____

Name of (Prospective) Tenant: _____

Mailing Address: _____

Contact Person, Title and Telephone Number(s): _____

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):

Address of (Prospective) Premises: _____

Length of (Prospective) Initial Term: _____

1. General Information:

Describe the initial proposed operations to take place in, on, or about the Premises, including principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted.

2. Use, Storage and Disposal of Hazardous Materials

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing Tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes	Yes []	No []
Chemical Products	Yes []	No []
Other	Yes []	No []

If Yes is marked, please explain: _____

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including the estimated frequency, and the proposed contractors or subcontractors. Existing Tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. Storage Tanks and Sumps

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing Tenants should describe any such actual or proposed activities.

Yes [] No []

If yes, please explain: _____

4. Waste Management

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing Tenants should describe any additional identification numbers issued since the previous certificate.

Yes [] No []

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing Tenants should describe any new reports filed.

Yes [] No []

If yes, attach a copy of the most recent report filed.

5. Wastewater Treatment and Discharge

5.1 Will your company discharge wastewater or other wastes to:

_____ storm drain? _____ sewer?
_____ surface water? _____ no wastewater or other wastes discharged.

Existing Tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes [] No []

If yes, describe the type of treatment proposed to be conducted. Existing Tenants should describe the actual treatment conducted.

6. Air Discharges

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing Tenants should indicate whether or not there are any such air filtration

8. Enforcement Actions and Complaints

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing Tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes []

No []

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing Tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Section 27 of the signed Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes []

No []

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing Tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Section 27 of the signed Lease Agreement.

8.3 Have there been any problems or complaints from adjacent Tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing Tenants should indicate whether or not there have been any such problems or complaints from adjacent Tenants, owners or other neighbors at, about or near the Premises.

Yes []

No []

If yes, please describe. Existing Tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement.

9. Permits and Licenses

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing Tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the HazMat Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, including Tenant's indemnification of the Indemnitees and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name) _____, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(Prospective) Tenant:

By: _____
Title: _____
Date: _____

SCHEDULE 1

MILESTONES

TABLE OF EXHIBITS

EXHIBIT A	Legal Description of Premises
EXHIBIT B	Schedule B Exceptions to the Title Report
EXHIBIT C	Insurance Requirements During Construction Period
EXHIBIT D	Form of Memorandum of Lease
EXHIBIT E	Payment and Performance Bonds
EXHIBIT F	Regulatory Agreement with Restrictive Covenants
EXHIBIT G	Approved Leasehold Mortgages
EXHIBIT H	Hazardous Materials Disclosure Statement
SCHEDULE 1	Milestones