FIRST AMENDMENT TO
GROUND LEASE DISPOSITION AGREEMENT

(107 ASH STREET)

THIS FIRST AMENDMENT TO GROUND LEASE DISPOSITION AGREEMENT (“**Amendment**”), dated as of September __, 2026 (“**Amendment Effective Date**”), is entered into between THE CITY OF SAN DIEGO, a California municipal corporation (“**City**”), and 101 Ash Venture LP, a California limited partnership (“**Developer**”). City and Developer may be referred to collectively as the “**Parties**.”

RECITALS

A. The Parties entered into that certain Ground Lease Disposition Agreement, dated as of August 18, 2025 (“**Agreement**”), which memorializes Developer’s commitment to renovate the City-owned improved real property located at 107 Ash Street (formerly designated as 101 Ash Street) in downtown San Diego (“**Property**”) into a mixed-use affordable housing project (“**Project**”) and to operate the Project subject to a long-term ground lease to be entered into between the Parties upon the satisfaction of certain conditions precedent (“**Lease**”). All capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Agreement unless the context clearly indicates otherwise.

B. Since the Parties entered into the Agreement, Developer has secured financing commitments for the total estimated costs of the Project and has increased the total number of residential units in the Project to 252 (from 250). To reflect these new circumstances, the Parties mutually desire to modify the Agreement by entering into this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Amendment to Section 6.1 of Agreement. Section 6.1 of the Agreement is deleted and replaced with the following text:

Anticipated Financing Sources. Developer’s anticipated financing sources for the Project include: the Construction Loan; the City Note; financing backed by the U.S. Department of Housing and Urban Development in the estimated amount of $73.1 million (“**HUD Financing**”); a loan from the San Diego Foundation in the estimated amount of $6 million (“**Foundation Loan**”); low-income housing tax credits; historic tax credits; the Deferred Developer Fee; and Developer’s equity contribution.

2. Amendment to Section 6.2 of Agreement. A new sentence is added to the end of Section 6.2 of the Agreement, so that Section 6.2 will read in its entirety as follows:

City Note. The City Note evidences Developer’s obligation to repay City the deferred purchase price for the value of the existing vacant office building on the Property which

City is conveying to Developer as of the Close of Escrow without payment of such purchase price in cash at closing (i.e., "carryback financing"). Developer acknowledges and agrees that the City Note amount is based on the Parties' fair and reasonable estimation of the value of the existing vacant office building on the Property, and that such amount constitutes purchase price consideration payable by Developer to City. Developer's repayment of the City Note will be secured by the City Deed of Trust, recorded with the County Recorder against the Leasehold Estate upon the Close of Escrow. The City Deed of Trust against the Leasehold Estate will be: (a) in junior lien priority to the Construction Loan Documents; and (b) on par with the repayment and lien priority of all other debt owed by Developer to other public agencies and payable through Residual Receipts (as defined in the Lease). To confirm the repayment and lien priority contemplated by clause (b) of the immediately preceding sentence, City reserves the right to enter into a public agency lenders' priority agreement (or similarly titled agreement) in reasonable form and substance with the other affected public agencies, as a condition to the Close of Escrow and, at City's election, to be recorded with the County Recorder upon the Close of Escrow. Despite any contrary provisions of this Section 6.2, (i) the City Deed of Trust against the Leasehold Estate will be in junior lien priority to the HUD Financing and the Foundation Loan; (ii) the HUD Financing will take relative repayment priority over the City Loan, as described in Section 31 of the City Note; and (iii) the Foundation Loan will take repayment priority over the City Loan.

3. Replacement Versions of Lease Attachments.

3.1. Attachment 2. Ground Lease Form. The Ground Lease Form in Attachment 2 of the Agreement shall be deleted in its entirety and replaced with the Ground Lease Form attached to this Amendment as Exhibit A.

3.2. Attachment 4. City Note Form. The City Note Form in Attachment 4 of the Agreement shall be deleted in its entirety and replaced with the City Note Form attached to this Amendment as Exhibit B.

3.3. Format of Exhibits. To best reflect the new revisions to the Ground Lease Form and the City Note Form, Exhibits A and B to this Amendment are in strikeout-underline format. The Parties shall use the clean format of these exhibits for the Close of Escrow.

3.4. Other Closing Documents. The Parties agree to make any conforming changes to the other closing documents, including the Lease Memorandum Form in Attachment 3 to the Agreement and the City Deed of Trust Form in Attachment 5 of the Agreement, that are reasonably necessary to ensure consistency with the provisions of this Amendment. The Parties also agree to sign and deliver, prior to the Close of Escrow, such additional closing documents as may be reasonably necessary to effectuate the intent of this Amendment related to the HUD Financing and the Foundation Loan.

4. Binding Effect. The Parties reaffirm the Agreement, as amended by this Amendment. Except as expressly modified by this Amendment, the Agreement shall remain unmodified and in full force and effect. To the extent any provisions of this Amendment are inconsistent with any provisions of the Agreement, the provisions of this Amendment shall govern and control. All references in the Agreement to the "Agreement" shall mean the Agreement as amended by this Amendment.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Each counterpart may be delivered by email or other electronic transmission (including without limitation, DocuSign). The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

(Remainder of the page intentionally left blank)

City and Developer sign and enter into this Amendment, as of the Amendment Effective Date, by and through the signatures of their respective authorized representative(s) set forth below:

CITY:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: ______________________________
Christina Bibler
Director
Economic Development Department

APPROVED AS TO FORM on September ____, 2026:

HEATHER FERBERT,
City Attorney

By: ______________________________
Kevin Reisch
Senior Deputy City Attorney

DEVELOPER:

101 Ash Venture LP,
a California limited partnership

By: 101 Ash AGP LLC,
a California limited liability company,
its Administrative General Partner

By: ______________________________
Sydne Garchik
Manager

By: 101 Ash MGP LLC,
a California limited liability company,
its Managing General Partner

By: Pacific Southwest Community Development Corporation,
a California nonprofit public benefit corporation,
its Sole Member and Manager,

By: ______________________________
Juan P. Arroyo
Executive Vice President

EXHIBIT A

REVISED GROUND LEASE FORM

[provided starting on next page]

GROUND LEASE
(10~~1~~7 Ash Street)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

101 ASH VENTURE LP,
a California limited partnership

GROUND LEASE

(10~~1~~7 Ash Street)

This GROUND LEASE ("**Lease**") is entered into as of ~~________________~~September _____, 202~~5~~6 ("**Commencement Date**"), by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and 101 ASH VENTURE LP, a California limited partnership ("**Tenant**"). For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **DEFINITIONS**. All defined words, terms, or phrases indicated by initial capitalization in this Lease and not specifically defined in the main body of this Lease are defined in **EXHIBIT A** attached to this Lease.

2. **PURPOSES**. At the Commencement Date, Landlord owns the Premises, consisting of improved real property in the City. The Parties previously entered into that certain Ground Lease Disposition Agreement (101 Ash Street), dated ~~____________~~August 18, 2025 ("**Disposition Agreement**"), providing for an escrow transaction and satisfaction of certain conditions precedent to entry into this Lease. In entering into this Lease, the Parties intend to provide for the lease of the Premises to Tenant to develop the Premises as a mixed-use project with affordable residential rental units and retail and commercial uses, as more specifically described in **EXHIBIT I** to this Lease ("**Project**"). The Project will include ~~approximately~~ 25~~0~~2 Dwelling Units, including ~~approximately~~ 24~~7~~9 Affordable Units restricted at varying levels of affordability and three unrestricted Manager's Units.

3. **LEASING AND HIRING**. Landlord leases the Premises to Tenant, and Tenant hires the Premises from Landlord, subject to the Permitted Exceptions, for the Term, upon the terms and conditions of this Lease. This Lease will restrict the use of the Property on and after the Commencement Date. The Lease Memorandum will provide notice that each Affordable Unit in the Project will, at all times until expiration of this Lease, be occupied or reserved for occupancy by a Qualified Household at an Affordable Rent.

4. **TERM**. The duration of this Lease ("**Term**") will: (a) commence on the Commencement Date; and (b) continue until the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

5. **PREMISES CONDITION**.

5.1 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.4, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITIONS, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE, OR ABANDONED), THE SUITABILITY OF THE

PREMISES FOR THE PROJECT OR ANY OTHER USE, OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES, AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING AS OF THE COMMENCEMENT DATE: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) TENANT IS EXPERIENCED IN REAL ESTATE DEVELOPMENT; (C) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE, AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (D) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (E) TO THE EXTENT THAT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER REGARDING THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION REGARDING SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTER. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION, AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE, AND TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL, OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES, AS OF THE COMMENCEMENT DATE.

5.2 Hazardous Substances. FROM AND AFTER THE COMMENCMENT DATE, LANDLORD WILL HAVE NO LIABILITY TO TENANT OR TO TENANT'S SUCCESSORS, ASSIGNS, SUBTENANTS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, REGARDLESS OF WHEN OR HOW THE HAZARDOUS SUBSTANCE WAS DISCHARGED ON THE PREMISES AND REGARDLESS OF WHEN OR HOW THE PRESENCE OF THE HAZARDOUS SUBSTANCE IS DISCOVERED. TENANT ACKNOWLEDGES THAT TENANT'S ACCEPTANCE OF ANY RISK RELATED TO THE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES IS FAIR AND REASONABLE IN LIGHT OF TENANT'S AMPLE OPPORTUNITY TO CONDUCT DUE DILIGENCE INVESTIGATIONS OF THE PREMISES BEFORE THE COMMENCEMENT DATE AND TENANT'S OBLIGATION TO REMEDIATE OR REMOVE HAZARDOUS SUBSTANCES DURING CONSTRUCTION OF THE PROJECT.

5.3 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES THE LANDLORD PARTIES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.4. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 5.3, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT 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.

5.4 Specific Obligations Excluded. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD; OR (3) IS BASED ON ANY ALLEGED INTENTIONAL ACT OR INTENTIONAL OMISSION ON THE PART OF LANDLORD THAT OCCURRED BEFORE THE COMMENCEMENT DATE; OR (4) INVOLVES AN ALLEGED HAZARDOUS SUBSTANCE DISCHARGE OR A PERSON'S ALLEGED EXPOSURE TO A HAZARDOUS SUBSTANCE BEFORE THE COMMENCEMENT DATE KNOWN BY THE LANDLORD THAT IS NOT ALREADY SUBJECT TO CURRENT LITIGATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

____
Initials of Authorized
Tenant Representative(s)

5.5 Acquisition of Subsequent Interest. ALL PERSONS ACQUIRING ANY INTEREST IN THE PREMISES FROM OR THROUGH TENANT, BY ACCEPTING SUCH INTEREST, WILL BE DEEMED TO HAVE AGREED TO ALL THE ACKNOWLEDGMENTS, AGREEMENTS, WAIVERS, AND RELEASES CONTAINED IN THIS SECTION 5.

5.6 Remediation. DURING CONSTRUCTION OF THE PROJECT, TENANT WILL FULLY REMEDIATE OR REMOVE ANY HAZARDOUS SUBSTANCE IN COMPLIANCE WITH APPLICABLE LAW TO THE EXTENT THAT THE HAZARDOUS SUBSTANCE EXISTS ON OR ABOUT THE PREMISES AND MAY DISRUPT, PREVENT, OR INTERFERE IN ANY WAY WITH THE PERMITTED USE UNDER THIS LEASE.

5.7 Asbestos Disclosure. Tenant acknowledges that portions of the improvements on the Premises contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915.

Tenant will disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915. Tenant will Indemnify Landlord against all Claims made on or after the Commencement Date arising from or relating to the existence of asbestos on the Premises and Tenant's use or occupancy of the Premises.

5.8 Asbestos Remediation. Without limiting Tenant's obligations under Section 5.6, during Construction of the Project and to the extent that Tenant makes any improvements, alterations, or repairs to existing or future physical improvements on the Premises, Tenant will be responsible for performance of all associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment will be conducted only with Landlord's prior written consent (which will not be unreasonably conditioned, withheld, or delayed) and in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to asbestos remediation are fulfilled.

6. **RENT**.

6.1 Base Rent. Landlord will lease the Premises to Tenant for base rent that includes two separate and distinct components: (a) the annual amount of $15,000, payable by Tenant to Landlord on January 1 of each Lease Year, and subject to an annual increase equal to ~~the greater of~~ three percent (3%) per annum ~~or the CPI increase attributable to the preceding Lease Year~~; and (b) an annual Residual Receipts Rent amount, payable by Tenant to Landlord on March 31 of each Lease Year, commencing in the Lease Year immediately after Tenant's full payment and satisfaction of the City Note. None of Tenant's payments toward the City Note will be counted as a credit or offset against the base rent amounts payable under this Section 6.1.

6.2 Payment. Tenant will pay all Rent payable to Landlord in lawful money of the United States of America by good and sufficient check payable to Landlord, by wire transfer, or by electronic funds transfer to Landlord, at Landlord's election, and at such address or to such account as Landlord will designate from time to time. Checks will only constitute payment, when collected.

6.3 Additional Rent. In addition to the base rent payable under Section 6.1, Tenant will pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant will pay all Additional Rent prior to delinquency.

6.4 Capital Events. In addition to any other form of Rent described in this Lease, Tenant will pay the applicable Capital Event Payment to Landlord upon the occurrence of any Capital Event.

6.5 No Allocation to FF&E. No Rent is allocable to any FF&E, Construction, or Tenant Improvements.

6.6 No Offsets. Tenant will pay all Rent, without deduction or setoff of any type or form.

6.7 Rent Reevaluation. Because of the extended duration of this Lease and to comply with California Civil Code section 719, the Parties intend to revalue the base rent payable under Section 6.1 on the first day of Lease Year 56 (the "**Revaluation Date**"). As of the Revaluation Date, the base rent will be revalued to be the fair market value of the Premises as of the day that is sixty (60) days before the applicable Revaluation Date. The fair market value of the Premises means the amount that a willing tenant would pay a willing landlord for a long-term ground lease of the Premises, neither being under a particular compulsion to rent or to lease, each fully aware of all applicable facts about the Premises, and assuming a reasonable marketing period, considered as if the Premises were vacant and clear of any structures or excavations, and free and clear of all leases (including this Lease), taking into account then-current general economic conditions; costs of construction; recent long-term ground leases of nearby comparable parcels; the real estate marketplace; and all other conditions in effect on the Revaluation Date that may reasonably be considered in determining the fair market value of the Premises. The fair market value of the Premises will otherwise be determined in accordance with prevailing standards of appraisal practice at the time of determination. Before the Revaluation Date, the Parties will endeavor to agree upon the revalued base rent. If two (2) months before the Revaluation Date, the Parties have not agreed on the revalued base rent, then either Party will Notify the other Party of the impasse. Each Party will within ten (10) Business Days after the effective date of such Notice of impasse designate an Appraiser. The two Appraisers so designated will within ten (10) Business Days designate a third Appraiser. If either Party fails to timely designate an Appraiser and does not cure such failure within ten (10) Business Days after Notice of such failure, then the one Appraiser the other Party designated will resolve the dispute. Within ten (10) Business Days after designation of the Appraiser(s), each Party will simultaneously submit to the Appraiser(s), with a copy to the other Party, such Party's proposed revalued base rent, with such information and supporting materials as each submitter determines appropriate. Within ten (10) Business Days after the Parties submit their proposed revalued base rent to the Appraiser(s), the Appraiser(s), by majority vote (or by the determination of the one Appraiser, if only one Appraiser is designated), will select as the revalued base rent either Landlord's proposal or Tenant's proposal. The Appraiser(s) will have no authority to designate any revalued base rent other than Landlord's proposal or Tenant's proposal. If a Party fails to timely submit a revalued base rent proposal to the Appraiser(s) and does not cure such failure within ten (10) Business Days after Notice of such failure, then the revalued base rent proposal submitted by the other Party (if the Party timely submitted such proposal) will automatically be the revalued base rent for that Revaluation Date, provided only that the Appraiser(s) determine(s) that such proposal is not commercially unreasonable, arbitrary, or capricious. The Parties will promptly confirm the revalued base rent in writing.

7. **ADDITIONAL TENANT PAYMENTS**.

7.1 Landlord's Net Return. This Lease will constitute an absolute "net" lease. The Rent will give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant will pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting, the Premises, except Landlord's administrative expenses.

7.2 Real Estate Taxes. Tenant will pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term, before delinquency, subject to Section 7.5. Tenant will also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes this Lease requires Tenant to pay. Tenant will within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires

Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Real Estate Taxes include any possessory interest tax imposed as a result of this Lease.

7.3 Personal Property Taxes. Tenant will pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to any personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant will also pay all interest and penalties any Government assesses for late payment of any such personal property tax.

7.4 Documentary Transfer Tax. Tenant will pay all documentary transfer taxes imposed by the State, the County, or other Government under California Revenue and Taxation Code sections 11911, *et seq*., with respect to entry into this Lease, any Modification to this Lease, any extension of this Lease, any Transfer or Equity Interest Transfer, any Lease Memorandum associated with any of the foregoing, or otherwise imposed regarding this Lease or Tenant.

7.5 Change of Leasehold Estate or Fee Estate Ownership. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes, Tenant agrees to pay all increases in Real Estate Taxes resulting from a Transfer, Equity Interest Transfer, or other change in ownership of the Leasehold Estate. Landlord will pay all increases in Real Estate Taxes resulting from a change in ownership of the Fee Estate, except upon a transfer or conveyance of the Fee Estate to Tenant or an Affiliate of Tenant, in which event Tenant will pay all such increases in Real Estate Taxes.

7.6 Utilities. Tenant will arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, repair, use, and service relating to all the foregoing items, for the Premises during the Term. Landlord will have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord will not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct, except to the extent Landlord is immune from such liability under applicable Law and subject to any defense available to Landlord.

8. **USE**.

8.1 Permitted Use. Tenant will only use the Premises during the Term for the Permitted Use in compliance with Law and this Lease and no other uses.

8.2 Continuous Operation. Tenant will use and operate the entirety of the Premises during the Term for the Permitted Use and no other use. Notwithstanding the immediately preceding sentence, nothing in this Lease will obligate Tenant to use or operate any affected part of the Premises for any purpose during any of the following periods: (a) during any Major Construction; or (b) following a Loss (other than an Immaterial Loss), until Tenant has completed Restoration. Tenant will use commercially reasonable efforts to sublease the Affordable Units, the Commercial Space, and the Retail Space at the earliest practicable opportunity after the Project Completion Date occurs. After initial subleases are signed, and continuing throughout the Term, Tenant will use commercially reasonable efforts to sublease any vacant Affordable Units, vacant Commercial

Space, and vacant Retail Space at the earliest practicable opportunity after each vacancy first occurs.

8.3 Landlord's Reservation of Rights.

8.3.1 *Government Action*. Nothing express or implied in this Lease will be construed or interpreted to limit, restrict, waive, or vary any required Approval from Governmental Authority or constitute issuance of an Approval by Landlord under its Governmental Authority. By entering into this Lease or taking any action under this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, issuance of any Approval required for the Permitted Use, or otherwise. Tenant will diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord (in its governmental regulatory capacity) and other Governments necessary for the Permitted Use.

8.3.2 *Natural Resources*. Landlord reserves all right, title, and interest in all natural resources relating to the Premises, including subsurface natural gas, oil, minerals, and water, on or within the Premises.

8.3.3 *Access Rights*. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property. Landlord will reasonably consider reserving and granting easements or licenses, at Tenant's sole cost and expense, as reasonably necessary for the installation, operation, and repair of necessary public utilities or public services for the Premises and will deliver any documents and authorizations to Tenant as may be reasonably necessary to facilitate the intent of this sentence, which documents and authorizations may be subject to reasonable review of Tenant and Tenant's lenders and tax credit investor, upon request and consent from Landlord.

8.4 Abandonment. Tenant will not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term.

8.5 No Discrimination or Segregation. Tenant covenants by and for itself, its heirs, executors, administrators, and assigns, and all Persons claiming under or through it, that this Lease is made and accepted upon and subject to the all the following conditions:

8.5.1 *Standards*. There will be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises nor will Tenant, or any Person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises.

8.5.2 *Interpretation*. Notwithstanding Section 8.5.1, with respect to familial status, Section 8.5.1 will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 8.5 will be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code will apply to Section 8.5.1.

8.6 Noise. Tenant will not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5.

8.7 Nuisance. Tenant will not itself and will not allow any other Person to use the Premises for any unlawful purpose and will not itself and will not allow any other Person to perform, permit, or suffer any act or omission upon or about the Premises that would result in a nuisance or a violation of Law.

8.8 Exterior Signs. Except for signs located inside the improvements on the Premises and not visible outside those improvements or signs required by Law, no banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a "**Sign**") may be placed on the Premises without Landlord's prior written consent, in each instance, which consent may be given or withheld in Landlord's sole and absolute discretion. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense. Tenant will comply with all Laws requiring the posting of Signs in or at the Premises. If any unauthorized Sign is found in or at the Premises, Tenant will remove the Sign at Tenant's sole expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the Sign within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign at Tenant's sole expense. If Landlord performs work required of Tenant under this Section 8.8, Tenant will reimburse Landlord for all expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such expenses. Each amount of money reimbursable to Landlord by Tenant under this Section 8.8 that is not paid within fifteen (15) days after Notice to Tenant of such amount, will accrue Default Interest from the date incurred until paid.

8.9 No Artist's Rights. Unless Tenant first obtains Landlord's consent, Tenant will not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

8.10 Availability of Employees. Tenant further agrees to have one or more of its employees who is/are knowledgeable regarding this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding the circumstances of this Lease or the operation of the Premises, attend meetings with Landlord's staff or meetings of Landlord's City Council, when requested to do so by reasonable advance Notice to Tenant.

8.11 Compliance with Law. Tenant will, during the Term, at Tenant's sole expense, in all material respects: (a) comply with all Laws and Permitted Exceptions; and (b) procure and comply with all Approvals required by Law.

9. **MAINTENANCE**.

9.1 Maintenance Standard. Except to the extent that: (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, the entirety of the Premises will be maintained by Tenant, at Tenant's sole expense, in good condition and repair and in a neat, clean and orderly condition (reasonable wear and tear and any other condition this Lease does not require Tenant to repair or Restore excepted), including maintenance, repair, reconstruction and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises. Tenant's obligation to maintain the Premises described in the immediately preceding sentence will include: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, trash, debris, filth, and refuse from the Premises and the adjoining sidewalk and thoroughly sweeping these areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti with the type of surface covering originally used on the affected area; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers and lines; (e) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as will be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character, and level of quality of the landscaping; and (h) making all repairs or installations required by Law. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Tenant may contract with a maintenance contractor for performance of all or part of the duties and obligations of Tenant with respect to the maintenance of the Premises; provided, however, that Tenant will remain responsible and liable for the maintenance of the Premises, during the Term. Tenant expressly waives all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942.

9.2 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Tenant's receipt of Notice of the Maintenance Deficiency, Landlord will have the right to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity then available to Landlord to accomplish the abatement of the Maintenance Deficiency. All money spent by Landlord for the abatement of a Maintenance Deficiency under this Section 9.2 will be reimbursed to Landlord by Tenant, within thirty (30) days after Notice to Tenant of the amount of money spent. All money spent by Landlord for the abatement of a Maintenance Deficiency under this Section 9.2 that is not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount of money spent, will accrue Default Interest, until paid in full.

9.3 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of a structure or improvement on the Premises and visible from any public right-of-way adjacent or contiguous to the Premises will be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 9.2, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti, or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti, if Tenant does not duly commence and complete such removal within a reasonable time under the circumstances, then after Notice to Tenant, Landlord will have the right to enter the Premises and remove the graffiti. All money spent by Landlord for the graffiti removal at the Premises under this Section 9.3 will be reimbursed to Landlord by Tenant, within thirty (30) days after Notice to Tenant of the amount of money spent. All money spent by Landlord for graffiti removal under this Section 9.3 not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount of money spent, will accrue Default Interest until paid in full.

10. **PROJECT AND OTHER CONSTRUCTION**.

10.1 Project. Tenant will cause the Project Completion Date to occur on or before the Project Completion Deadline. Subject to availability of financing sources and applicable laws and regulations, Tenant will ensure that all components of the Project described in **EXHIBIT I** to this Lease are integrated into the final Project and that Construction of the Project complies with the Plans to be approved by Landlord under Section 10.4. Tenant also will ensure that the Affordable Units are occupied or Available for occupancy before any occupancy or use of the Commercial Space or the Retail Space. Tenant is solely responsible for payment of all hard and soft costs of Construction of the Project.

10.2 Subsequent Construction Rights. Except as set forth in this Section 10.2, Tenant will not construct or materially alter any improvements on the Premises, without Landlord’s prior written approval, which may be given or withheld, in Landlord’s sole and absolute discretion. Tenant will have the right to make the following alterations or improvements to the Premises, without Landlord’s approval, except to the extent such alterations or improvements constitute Major Construction: (a) Construction not affecting any Structure or diminishing the value or utility of the Fee Estate or the Premises (including capacity) for its existing use immediately preceding such Construction; (b) reasonable and customary alterations to the interior spaces of Buildings on the Premises; (c) alterations required by Law; or (d) alterations reasonably required to Restore or repair improvements on the Premises after a Casualty or Condemnation. All alterations or improvements on the Premises by Tenant will comply with all applicable Laws and will be performed by appropriate State licensed contractors.

10.3 Major Construction. Tenant will not commence demolition or removal of existing improvements, excavation, or any other substantial on-site or off-site physical element of any Major Construction, unless and until Tenant satisfies the Construction Commencement Conditions for such Major Construction.

10.4 Plans. Landlord will have forty-five (45) days after receiving any Plans to Notify Tenant that such Plans do not comply with this Lease. If Landlord does not give such Notice within such forty-five (45) day period, then Landlord will have waived any right to assert that such Plans or any Construction performed substantially in compliance with such Plans do not comply with this Lease. If Tenant makes any material changes to the Plans, excluding ordinary field changes, then Tenant will promptly deliver copies of such changes to Landlord for its approval in the same manner provided for approval of the original Plans in this Section 10.4. Neither the retention of any Plans nor any other action Landlord takes regarding any Plans will constitute Landlord's opinion or representation on their sufficiency. Landlord's review or approval of any Plans under this Section 10.4 is solely in Landlord's proprietary capacity as a Party to this Lease and is separate from and in addition to any review or approval of such Plans by Landlord acting under its Governmental Authority. Tenant will reimburse Landlord for all expenses (including Legal Costs) incurred by Landlord in reviewing any Plans under this Section 10.4 (exclusive of and in addition to Landlord's expenses in reviewing such Plans under its Governmental Authority) for each integrated project or Application, within thirty (30) days following Notice of such costs and expenses. All such expenses not reimbursed to Landlord by Tenant within such thirty (30) day period will accrue Default Interest from the date of the Notice of such expenses, until paid in full.

10.5 <u>Prosecution and Completion</u>. To the extent such work is permitted by this Lease, if Tenant starts to demolish any improvements on the Premises, or starts excavation, then Tenant will prosecute such work with reasonable diligence to completion. Tenant will with reasonable promptness and reasonable diligence commence, prosecute, and complete Tenant's Major Construction in a good and workmanlike manner in compliance with Law, the Development Criteria, and this Lease.

10.6 <u>Approvals</u>. Tenant will apply to each applicable Government for all Approvals required for any Construction. Tenant will pay all Government fees (including those of Landlord acting under its Governmental Authority) necessary to obtain such Approvals.

10.7 <u>License of Construction Documents</u>. Tenant grants to Landlord a license to use all Construction Documents and all Plans for purposes of any law related to intellectual property, subject to the rights of Permitted Leasehold Lenders under this Lease. Such license includes the right to Modify the Plans and the right to grant sublicenses. Tenant represents and warrants that it has the power and authority to grant such licenses. Landlord will not exercise its rights under any license of Construction Documents or Plans granted to Landlord under this Lease, unless this Lease terminates and the New Lease Option Period expires without a Permitted Leasehold Lender requesting and entering into a New Lease.

10.8 <u>Insurance During Major Construction</u>. Before Tenant commences (and at all times during) Major Construction or related excavation or demolition, terminating on the Construction Completion Date for such Major Construction, in addition to the other insurance this Lease requires, Tenant will, at its sole cost and expense, procure and maintain, and cause the Builder to procure and maintain, at least the following insurance coverage (by separate policy or endorsement(s) to other policies), or equivalent, all in compliance with the requirements of this Lease regarding insurance: (1) Builder's Risk Insurance (defined in **EXHIBIT F**); (2) Liability Insurance (defined in **EXHIBIT F**); (3) Automobile Liability Insurance (defined in **EXHIBIT F**); and (4) Workers' Compensation Insurance (defined in **EXHIBIT F**). The Builder will include all subcontractors as insured under its insurance policies or will furnish separate certificates and endorsements for each subcontractor to Landlord for review and approval. All insurance coverage for subcontractors will satisfy all the insurance requirements imposed on Tenant and Builder under this Lease. During any demolition or excavation, Tenant, Builder, and their respective subcontractors will procure and maintain such additional liability insurance as will be reasonably customary to cover the added risks of such demolition or excavation.

10.9 Completion Deliveries. Within three (3) months after Tenant obtains a temporary Certificate of Occupancy (or equivalent approval) from Landlord (under its Governmental Authority) for a Major Construction, Tenant will obtain and give Landlord copies of: (a) two (2) complete sets of "as-built" Plans for the entire Major Construction and an "as-built" survey; and (b) a final Certificate of Occupancy (or equivalent approval) from Landlord (under its Governmental Authority) for the entire Major Construction.

10.10 Tenant Attendance at Landlord Meetings. Tenant agrees to have one or more of its employees or consultants who are knowledgeable regarding this Lease and any Major Construction planned, in progress, or recently completed, such that such Person(s) can meaningfully respond to Landlord or Landlord staff questions regarding the progress of such Major Construction, attend meetings with Landlord's staff or meetings of Landlord's City Council, when requested to do so by Landlord's staff, with reasonable advance Notice to Tenant.

11. **CONSTRUCTION SURETY**. For each Major Construction, Tenant will deposit with Landlord Construction Surety for such Major Construction prior to the commencement of any work of such Major Construction, including any excavation or demolition work. Tenant will maintain the Construction Surety in full force and effect, until the Construction Completion Date for the Major Construction. Tenant will not assign or encumber or attempt to assign or encumber any Construction Surety, except: (a) as part of an assignment of this Lease complying with this Lease; (b) assignment of Construction Surety to a Post-Foreclosure Tenant or a New Tenant, when either acquires this Lease; or (c) as collateral to a Permitted Leasehold Lender.

12. **FINANCIAL REPORTING; AUDIT RIGHTS**. Tenant will deliver Financial Reporting Statements to Landlord as follows: (a) an Annual Revenue Statement within one hundred twenty (120) days after the end of each Lease Year; (b) a Cost Certification Statement within ninety (90) days after the Project Completion Date; and (c) a Capital Event Statement within sixty (60) days after each pertinent Capital Event is consummated. Landlord will keep all information in Financial Reporting Statements confidential to the extent permitted by Law.

12.1 Preparation and Content of Statements. Each Financial Reporting Statement will be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Financial Reporting Statement will be certified by an executive level officer of Tenant with substantial knowledge about the factual background and content of the Financial Reporting Statement. Each Financial Reporting Statement will certify that the accounting practices of Tenant conform to industry standards and the requirements of this Lease. If such certification cannot be made, then the Financial Reporting Statement will show any adjustments necessary to conform Tenant's accounting practices such that the certification can be made. Each Financial Reporting Statement will be in a customary form reasonably satisfactory to Landlord.

12.2 Overpayment or Underpayment; Landlord's Right to Audit. If any Financial Reporting Statement, as it may be adjusted under this Section 12.2, indicates an overpayment or underpayment of money owed to Landlord (e.g., an overpayment or underpayment of Residual Receipts Rent for the subject Lease Year revealed by an Annual Revenue Statement), the amount of any overpayment will be refunded by Landlord to Tenant or the amount of any underpayment will be paid by Tenant to Landlord, within thirty (30) days following Notice of the particular overpayment or underpayment. Each such Financial Reporting Statement will be conclusive and binding on the Parties, unless Landlord commences an audit of Tenant's financial records under this Section 12.2, within three (3) years after the end of the subject Lease Year with respect to an Annual Revenue Statement or within one (1) year after Tenant's delivery to Landlord of any type of Financial Reporting Statement other than an Annual Revenue Statement. On ten (10) Business Days' Notice (Notice will not be required during the continuance of a Default), only during normal business hours, and (so long as no Default has occurred) no more often than once each Lease Year, Landlord's auditor may audit Tenant's financial statements and all information referenced in the pertinent Financial Reporting Statement for up to three (3) preceding Lease Years. Tenant will, without charge, assist in such audit, as Landlord's auditor may reasonably request.

12.3 Retention. Tenant will, during the Term and for a period of three (3) years following the Expiration Date, maintain and cause Tenant's Affiliates to maintain, safe and intact, all Financial Reporting Statements and supporting information. From time to time, upon Notice from Landlord requesting such information, Tenant will make all Financial Reporting Statements, whether in the custody or control of Tenant or Tenant's Affiliates available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises or another reasonable location in the County at any reasonable time, on five (5) days advance Notice.

12.4 Audit Costs. If any Landlord audit of one or more Annual Revenue Statements discloses that Tenant underpaid Residual Receipts Rent to an extent of four percent (4%) or more on an annual basis for one or more Lease Years, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in the Rent payable for any Lease Year, with Default Interest on such Rent deficiency amount from the date such amount was originally due, until paid in full. If any Landlord audit of any type of Financial Reporting Statement other than an Annual Revenue Statement discloses that Tenant under-reported any amount in the Financial Reporting Statement by five percent (5%) or more, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in any monetary amount payable to Landlord, with Default Interest on such deficiency amount from the date such amount was originally due, until paid in full. If any Landlord audit of Tenant's Residual Receipts Rent payments discloses Tenant's overpayment of any Residual Receipts Rent, the overpaid amount will be credited to Tenant against future Residual Receipts Rent payments becoming due to Landlord under this Lease (Landlord will be under no obligation to make payments of any overpaid amount to Tenant during the Term), unless this Lease has terminated, in which case Landlord will pay any overpaid amount to Tenant within thirty (30) days after Landlord's receipt of the audit report disclosing the overpayment; provided, however, that Landlord may first apply any such overpayment to any amounts owed to Landlord by Tenant before making any such payment to Tenant.

12.5 Identity and Retention of Auditor. Landlord's auditor will be a certified public accountant reasonably agreed to by both Landlord and Tenant, whose services will be at the sole expense of the Tenant. Landlord's auditor will comply with such reasonable restrictions on time and access as Tenant may require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Landlord's auditor will not work under a contract providing a contingency fee for amounts determined to have been underpaid to Landlord by Tenant.

13. **WAGE LAWS AND REQUIREMENTS**. Tenant will comply with Prevailing Wage Laws in performing all Construction on the Premises and with Living Wage Requirements in providing all operations and services at the Premises.

14. **PROHIBITED LIENS**.

14.1 Tenant's Covenant. Tenant will Notify Landlord of each Prohibited Lien within twenty (20) days following Tenant's receipt of notice of such Prohibited Lien. Tenant will, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Lien in good faith, Tenant may maintain an appropriate dispute of such Prohibited Lien without payment, if Tenant records a bond complying with the provisions of California Civil Code section 3143 and releasing the Leasehold Estate from the disputed Prohibited Lien. Tenant will, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord will Notify Tenant.

14.2 Protection of Landlord. LANDLORD WILL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR ANY SUBTENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT WILL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT WILL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

14.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE, THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES,

LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT. LANDLORD WILL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT WILL GIVE LANDLORD TEN (10) DAYS PRIOR NOTICE OF THE COMMENCEMENT OF ALL CONSTRUCTION OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

15. AFFORDABLE RENTAL COVENANTS AND RESTRICTIONS.

15.1 Tenant Acknowledgment. Tenant acknowledges and agrees that this Lease imposes certain covenants, conditions, and restrictions on the use and occupancy of the Premises during the Term that may result in less than all the Affordable Units being leased or rented and that may not constitute the highest and best use of the Premises.

15.2 Agreement to Record. Tenant agrees that Landlord will record the Memorandum of Lease with the County Recorder against the Property.

15.3 Affordable Housing Restrictive Covenant. Tenant covenants to and for the benefit of Landlord that after the Project Completion Date, Tenant will own, manage, and operate, or cause the management and operation of, the Premises to ensure that the Affordable Units are occupied or Available for occupancy only by Qualifying Households at an Affordable Rent and for no other purposes throughout the Term in accordance with the terms of this Lease.

15.4 No Transient Tenancies. Neither the Premises nor any Affordable Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or other transient use.

15.5 Average Affordability Level. Tenant covenants to and for the benefit of Landlord that all the Affordable Units will be occupied or Available for occupancy by a Qualifying Household at an Affordable Rent on a continuous basis for a period of ~~not less than fifty~~sixty-five (~~55~~65) years from the issuance of the final Certificate of Occupancy for the Dwelling Units. Each Affordable Unit will be occupied by a Qualifying Household earning a household income ranging from 30% of Area Median Income up to 80% of Area Median Income. The Affordable Units will have a cumulative average affordability not exceeding 60% of Area Median Income. The calculation of the cumulative average affordability of the occupied Affordable Units will be based on a weighted average calculation as follows: (i) each occupied Affordable Unit will be assigned a fixed household income designation (e.g., 30%, 50%, 60%, or 80% of Area Median Income); and (ii) the weighted average will equal the average affordability level of the total number of occupied Affordable Units. For illustrative purposes only, in a hypothetical scenario where the occupied Affordable Units consist of ~~ten~~twenty (~~10~~20) Affordable Units at the 30% household income designation, ~~fifteen~~twenty (~~15~~20) Affordable Units at the 50% household income designation, ~~thirty~~twenty (~~30~~20) Affordable Units at the 60% household income designation, and forty~~-five~~ (~~45~~40) Affordable Units at the 80% household income designation, the cumulative average affordability of the occupied Affordable Units will be 60% of Area Median Income.

Subject to Tenant's continuous compliance with the cumulative average affordability requirement, Tenant will ensure that the Affordable Units are occupied or Available for occupancy by Qualified Households at varying household income designations and at a mix of sizes ranging from studio units, one-bedroom units, two-bedroom units, and three-bedroom units. Tenant's initial plan for the mix of household incomes and sizes of Dwelling Units includes:

15.5.1 The sixty-~~eight~~nine (~~68~~69) studio Affordable Units will be occupied or Available for occupancy by Qualifying Households that includes ~~seven~~eight (~~7~~8) Extremely Low Income Households, ten (10) Very Low Income Households, twenty (20) Low Income 60% Households, and thirty-one (31) Low Income 80% Households;

15.5.2 The fifty-~~one~~four (~~51~~54) one-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that includes ~~five~~six (~~5~~6) Extremely Low Income Households, eight (8) Very Low Income Households, ~~fifteen~~seventeen (~~15~~17) Low Income 60% Households, and twenty-three (23) Low Income 80% Households;

15.5.3 The ~~sixty-six~~seventy-one (~~66~~71) two-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that includes seven (7) Extremely Low Income Households, ten (10) Very Low Income Households, ~~eighteen~~twenty-three (~~18~~23) Low Income 60% Households, and thirty-one (31) Low Income 80% Households;

15.5.4 The ~~sixty-two~~fifty-five (~~62~~55) three-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that includes ~~six~~four (~~6~~4) Extremely Low Income Households, ten (10) Very Low Income Households, ~~eighteen~~thirteen (~~18~~13) Low Income 60% Households, and twenty-eight (28) Low Income 80% Households;

15.5.5 One (1) one-bedroom Dwelling Unit and two (2) two-bedroom Dwelling Units may be used as Manager Units that may be leased at a rent that is not an Affordable Rent.

15.6 Affordable Rent. Tenant covenants to and for the benefit of Landlord that the monthly rent charged to a Qualifying Household for the occupancy of a Affordable Unit will never exceed an Affordable Rent for such Qualifying Household.

15.6.1 *Rent Increases*. Rent for Affordable Units may be increased only once in any twelve (12) month period, based on changes in Area Median Income or CTCAC AMI, as applicable, or changes in the income level of the Qualifying Household occupying the Affordable Unit, consistent with Sections 15.6.2 and 15.6.3; provided that the rent for each Affordable Unit must never exceed an Affordable Rent for the Qualifying Household occupying the Affordable Unit and the cumulative average affordability level of the Affordable Units specified in Section 15.5 must be maintained at all times.

15.6.2 *Determination of Household Income*. Determination of Qualifying Household income must be made by Tenant at the time of initial application by an individual or family for occupancy of an Affordable Unit. At the time of initial application, Tenant must require each applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Also, at least once every twelve (12) months during the Term and within sixty (60) days following the Expiration Date, Tenant will require each Qualifying Household occupying an Affordable Unit to recertify the Qualifying Household's income on the Income

Certification Form. Additionally, on the renewal of an Affordable Unit Sublease, Tenant will require the Qualifying Household occupying the Affordable Unit to recertify the Qualifying Household's income on the Income Certification Form. Tenant will make a good faith effort to verify the accuracy of income information provided in each Income Certification Form by an applicant for occupancy of an Affordable Unit or by a recertifying Qualifying Household occupying an Affordable Unit, by conducting a credit reporting agency or similar search and taking at least one of the following steps: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the applicant for the most recently concluded income tax year; (2) obtain an income verification form from the current employer(s) of the applicant; (3) obtain an income verification form from the United States Social Security Administration or the California Department of Social Services, if the applicant receives assistance from either of such agencies; or (4) if the applicant is unemployed and has no income tax return, obtain another form of independent income verification. For purposes of this Section 15.6.2, Tenant may conclusively rely upon the evidence of the age of a Person as presented in a valid California Driver's License or other form of identification issued by the State or the Federal Government that includes a date of birth and a photograph of the subject Person. All verification information will only be obtained by Tenant after obtaining the written consent of the applicant for the release of such information to Tenant. Failure to consent in writing to the release of such income verification information to Tenant or Landlord will disqualify an applicant for occupancy of an Affordable Unit and be grounds for termination of a previously Qualifying Household's Affordable Unit Sublease.

15.6.3 *No Assignment of Specific Affordable Units; Increase in Household Income.* Specific Affordable Units are not assigned to any particular qualifying income category (i.e., Extremely Low Income Household, Very Low Income Household, Low Income 60% Household, or Low Income 80% Household). The restricted income level of each Affordable Unit may change as Affordable Units become vacant, a Qualifying Household subtenant's income changes, or other Affordable Units are occupied by Qualifying Households. In all circumstances, though, the rent for each Affordable Unit will be an Affordable Rent for the Qualifying Household occupying the Affordable Unit and the cumulative average affordability level of the Affordable Units specified in Section 15.5 will be maintained within the Premises. Subject to applicable CTCAC regulations or other Law, if on any recertification, the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of the qualifying income for a Low Income 60% Household, then Tenant or Management Agent will notify the household that its Affordable Unit Sublease will not be renewed on expiration, unless the household again becomes a Qualifying Household on recertification prior to the expiration of its Affordable Unit Sublease. In any event, if the income category of a Qualifying Household on recertification is different from the previous income category of the Qualifying Household, Tenant or Management Agent will rent the next available Affordable Unit to a Qualifying Household with an income level that will maintain the cumulative average affordability level of the Affordable Units specified in Section 15.5. Also, Affordable Rent for an Affordable Unit will increase or decrease in accordance with increases or decreases in the income level of the Qualifying Household occupying the Affordable Unit, but not more than once every twelve (12) months based on an annual recertification under Section 15.6.2 and subject to Tenant's obligation to maintain the cumulative average affordability level of the Affordable Units specified in Section 15.5 at all times.

15.6.4 *Maintenance of Income Records*. Tenant will maintain on file all Income Certification Forms completed by applicants for occupancy of Affordable Units and by Qualifying

Households that occupied or are occupying Affordable Units under Section 15.6.2 for at least five (5) years after the Expiration Date. Tenant will provide copies of the Premises rent roll and Income Certification Forms to Landlord within fifteen (15) days following Notice to Tenant requesting delivery of such information.

15.6.5 *Inspections*. Tenant and each Qualifying Household occupying an Affordable Unit will permit Landlord or its authorized agent to conduct inspections of the Premises and each Affordable Unit, from time to time, for purposes of verifying compliance with this Lease, upon fifteen (15) days advance Notice to Tenant.

15.6.6 *Annual Reporting*. Tenant will submit its first Annual Report to Landlord on or before the April 30 immediately following the Project Completion Date. Thereafter, on or before each April 30 during the Term and within sixty (60) days following the Expiration Date, Tenant will submit an Annual Report to Landlord. The required reporting dates may be changed at the sole discretion of Landlord, with six (6) months advance Notice to Tenant; provided, however, Landlord will never require such reporting more often than twice in any twelve (12) calendar month period. Landlord will maintain the confidentiality of all information specifically relating to any particular applicant for occupancy of an Affordable Unit or Qualifying Household occupying an Affordable Unit, to the extent allowed by Law.

15.7 Tenant's Right to Sublease Affordable Units. Subject to the other terms and conditions of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Affordable Unit Subleases, Modify any Affordable Unit Sublease, terminate any Affordable Unit Sublease, evict any subtenant, or grant any consent under any Affordable Unit Sublease, all without Landlord's consent. Notwithstanding any provision of this Lease to the contrary, Tenant has no right to enter into any sublease for the entire Premises or any part of the Premises that is not an Affordable Unit. No Affordable Unit Sublease will affect any obligation of Tenant or right of Landlord under this Lease, all of which will continue in full force and effect, notwithstanding any Affordable Unit Sublease. Each Affordable Unit Sublease will be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that any subtenant causes any Default will not relieve Tenant of Tenant's obligation to cure such Default. Tenant will take all steps reasonably necessary to prevent Defaults caused by subtenants. Tenant will not sublease all or any portion of the Premises to any Person that is not a Qualifying Household.

15.8 Tenant Covenant Regarding Subleasing of Affordable Units. Tenant, for itself, its successors and assigns, covenants, and agrees that, if any Affordable Unit is subleased during the Term, the sublease of the Affordable Unit will be accomplished through a written Affordable Unit Sublease and all the following restrictions will apply to the Affordable Unit Sublease:

15.8.1 One (1) or more Qualifying Residents will be the record tenant of the Affordable Unit.

15.8.2 Tenant will provide a legible copy of this Lease to each prospective subtenant of any Affordable Unit, prior to entering into an Affordable Unit Sublease with such subtenant for any Affordable Unit.

15.8.3 The Affordable Unit Sublease for each Affordable Unit will be for a period of not less than twelve (12) months and will end no later than the day before the Scheduled Expiration Date.

15.8.4 The Affordable Unit Sublease for each Affordable Unit will not contain any of the following provisions:

(a) An agreement by the Qualifying Household to be sued, to admit guilt, or to the entry of a judgment in favor of Tenant or Management Agent in a lawsuit brought relating to the Affordable Unit Sublease;

(b) An agreement by the Qualifying Household that Tenant or Management Agent may take, hold, or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of Tenant or Management Agent and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Affordable Unit, after the Qualifying Household moves out of the Affordable Unit;

(c) An agreement by the Qualifying Household not to hold Tenant or Management Agent or their respective agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) An agreement by the Qualifying Household that Tenant or Management Agent may institute a lawsuit, involving or affecting the Qualifying Household or any of the Qualifying Household's members, without notice to the Qualifying Household or any affected member;

(e) An agreement by the Qualifying Household that Tenant or Management Agent may evict the Qualifying Household or any of the Qualifying Household's members without instituting a civil court proceeding in which the Qualifying Household or any affected member of the Qualifying Household has an opportunity to present a defense, or before a court decision on the respective rights of Tenant or Management Agent and the Qualifying Household or any affected member of the Qualifying Household;

(f) An agreement by the Qualifying Household to waive any right to a trial by jury;

(g) An agreement by the Qualifying Household to waive the Qualifying Household's right to appeal or to otherwise challenge a court decision relating to the Affordable Unit Sublease;

(h) An agreement by the Qualifying Household to pay attorney's fees or other legal costs, even if the Qualifying Household wins in a court proceeding by Tenant or Management Agent against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay reasonable attorneys' fees and other legal costs, if the Qualifying Household loses such a legal action;

(i) An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent) totaling more than the amount of one month's rent payable by the Qualifying Household for such Affordable Unit, exclusive of a reasonable deposit for one or more pets.

15.8.5 Each Affordable Unit Sublease will contain all the following provisions:

(a) An agreement authorizing Tenant or Management Agent to immediately terminate the tenancy of a Qualifying Household occupying an Affordable Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;

(b) An agreement providing that each Qualifying Household occupying an Affordable Unit will be subject to annual certification or recertification of income (including release of supporting documents to Tenant and Landlord) as a condition of continued occupancy of the Affordable Unit;

(c) An agreement providing that each Qualifying Household occupying an Affordable Unit may be subject to rental increases in accordance with this Lease; and

(d) An agreement providing that Tenant or Management Agent will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability, or receipt of public assistance or housing assistance (including holders of certificates or vouchers under Title 24 Code of Federal Regulations Part 982-Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or comparable participation in a HOME tenant-based rental assistance program) in connection with rental of an Affordable Unit, or in connection with the employment or application for employment of Persons for operation or management of the Premises, and all contracts, applications and leases entered into for such purposes will contain similar non-discrimination clauses to such effect;

(e) Tenant or Management Agent will not terminate the tenancy or refuse to renew the Affordable Unit Sublease of a Qualifying Household, except where: (a) the Qualifying Household commits serious or repeated violations of the terms and conditions of the Affordable Unit Sublease; (b) except as otherwise provided in this Lease, the previously Qualifying Household is no longer a Qualifying Household; (c) the Qualifying Household is in violation of applicable Federal, State or local law; or (d) there is other good cause. Tenant will, in terminating the tenancy of a Qualifying Household or refusing to renew the Affordable Unit Sublease of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least sixty (60) days before the effective date of the termination of the tenancy; and

(f) A provision in form and substance substantially as set forth below modified, as appropriate, to reflect the definitions in the Affordable Unit Sublease:

> **All terms, covenants, and provisions of this Affordable Unit Sublease and all rights, remedies, and options of subtenant under this Affordable Unit Sublease are and will at all times remain fully subject and subordinate in all respects to that certain Ground Lease dated ~~______________~~September ___, ~~20~~2026, between the City of San Diego, a California municipal corporation (Landlord"), and ~~__________________, a __________~~101 Ash Venture LP, a California limited partnership ("Lease"). All terms and conditions of the**

Lease are incorporated into this Affordable Unit Sublease. If the Lease terminates, then this Affordable Unit Sublease will automatically and concurrently terminate, unless Landlord elects, in Landlord's sole and absolute discretion, in writing to continue this Affordable Unit Sublease. In that event, subtenant, at the option and request of Landlord, will attorn to Landlord and recognize Landlord as subtenant's direct landlord under this Affordable Unit Sublease. Subtenant will sign and deliver, at any time and from time to time, upon the request of Landlord, any instrument necessary or appropriate to evidence such attornment.

15.9 Tenant Selection Policies. Tenant will adopt written subtenant selection policies and criteria for all Affordable Unit Subleases that:

15.9.1 are consistent with the purpose of providing affordable rental for Qualifying Households in accordance with the cumulative average affordability level of the Affordable Units specified in Section 15.5 at an Affordable Rent;

15.9.2 are reasonably related to eligibility for Affordable Unit occupancy and ability to perform the obligations of the Affordable Unit Sublease for an Affordable Unit;

15.9.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are residents of the City or involuntarily displaced by activities of Landlord;

15.9.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

15.9.5 give prompt written notice to each rejected applicant of the grounds for rejection;

15.9.6 provide for all the Affordable Units to be occupied by or Available for occupancy on a continuous basis by Qualifying Households in accordance with the cumulative average affordability level of the Affordable Units specified in Section 15.5 at an Affordable Rent;

15.9.7 do not give preference to any particular class or group of Persons in leasing or renting the Affordable Units, except as provided in Section 15.9.3 and to the extent a tenant must be a Qualifying Household that is either an Extremely Low-Income Household or a Low-Income 80% Household;

15.9.8 provide that there will be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises, nor will Tenant or any Person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 15.9.8 will not be construed to apply to housing for older persons, as defined in Section 12955.9

of the Government Code. With respect to familial status, nothing in this Section 15.9.8 will be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the Government Code will apply to the first sentence of this Section 15.9.8; and

15.9.9 provide for a statement in all advertisements, notices, and signs regarding the availability of Affordable Units for sublease to the effect that Tenant is an equal housing opportunity provider.

15.10 Covenant of the Tenant Regarding Resident Association. Tenant, for itself, its successors and assigns, covenants, and agrees that the interest in the Premises or any Affordable Unit of any resident association or other association related to the Premises will be subject and subordinate to this Lease and each member of such association will be either Tenant or a Qualifying Resident member of a Qualifying Household occupying an Affordable Unit.

15.11 Assignment of Affordable Unit Subleases and Subrent. To secure Tenant's performance under this Lease, Tenant assigns, transfers, and sets over to Landlord, subject to the conditions in this Section 15.11 (and the rights of Permitted Leasehold Lenders), Tenant's right, title, and interest in and to all Affordable Unit Subleases and Subrent. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Subrent. Landlord's exercise of such rights will not constitute an eviction of Tenant. Unless and until an Event of Default by Tenant or termination of this Lease, Tenant will have a license to exercise its right, title, and interest in and to all Affordable Unit Subleases and Subrent. Landlord may revoke such license, at Landlord's option, only during the pendency of an Event of Default by Tenant or on a termination of this Lease. Upon any such revocation, Landlord may collect Subrent directly from subtenants, and apply the net amount of money collected to amounts of money owed to Landlord by Tenant, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. No such revocation will be, or be deemed to be, Landlord's waiver of any term or condition of this Lease, acceptance of any subtenant as Tenant, or release of Tenant from any obligations under this Lease.

15.12 Collection of Subrent. Landlord will not send any Subrent Payment Notice unless an Event of Default has occurred. If Landlord collects any Subrent, then Landlord will apply it first to pay all of Landlord's costs in collecting such Subrent, including Legal Costs, then to pay all Rent then due, and then to cure all Defaults of Tenant and then to pay all costs of the Premises. Landlord will then remit any remaining Subrent to Tenant. Tenant directs Landlord accordingly. If Landlord sends a Subrent Payment Notice, Tenant cures all Defaults, and this Lease has not been terminated, then Landlord will, at Tenant's expense (including Landlord's Legal Costs), give each subtenant a Notice rescinding Landlord's Subrent Payment Notice.

15.13 Tenant's Obligations Regarding Affordable Unit Subleases.

15.13.1 *Affordable Unit Sublease Lists and Enforcement*. Tenant will, upon request (no more frequently than once every six (6) months) give Landlord a current list of all Affordable Unit Subleases. Tenant will perform its obligations under all Affordable Unit Subleases and Tenant will enforce all its rights under Affordable Unit Subleases in a commercially reasonable manner.

15.13.2 *Affordable Unit Sublease Update Packages*. Tenant will give Landlord copies of all Affordable Unit Subleases and amendments to Affordable Unit Subleases, to the extent such copies have not previously been delivered to Landlord, or a certificate that no such new Affordable Unit Subleases or new Affordable Unit Sublease amendments have been entered into, at least, once each Lease Year, within thirty (30) days following the first day of each Lease Year, together with a current rent roll for the Premises, listing all Affordable Unit Subleases and subtenants (and their current Subrent and security deposits).

15.14 Records Retention; Examination Rights. Tenant will prepare and maintain and will cause Tenant's Affiliates and Management Agent to prepare and maintain complete and accurate Records for all periods during the Term. Tenant will, during the Term and for a period of six (6) years following the Expiration Date, maintain and cause Tenant's Affiliates and Management Agent to maintain, safe and intact, all the Records. From time to time, upon Notice from Landlord requesting such information, Tenant will make all Records, whether in the custody or control of Tenant, Tenant's Affiliates, or Management Agent, available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises at any reasonable time, on five (5) days advance Notice. Tenant will also provide Landlord any additional information concerning the Affordable Units or the Premises reasonably requested by Landlord.

16. COMMERCIAL/RETAIL SPACE.

16.1 Commercial/Retail Space Subtenants. The type and quality of subtenants allowed in the Commercial Space or Retail Space must be in harmony with the balance of the Project and approved in the reasonable discretion of the City. No offensive or incongruent uses will be allowed, including all the following:

16.1.1 Any public or private nuisance (as defined in California Civil Code section 3479) connected with business operations conducted on the Leased Premises and/or Improvements;

16.1.2 Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

16.1.3 Any noxious odor, materials and any toxic or caustic corrosive fuel or gas in violation of applicable law;

16.1.4 Any warehouse, other than that which is incidental to the primary commercial use or business operation, and any assembly, manufacturing, distillation, refining, smelting, agriculture, or mining operation;

16.1.5 Any pawn shop, adult business or facility as defined and regulated by the SDMC. Such uses include, without limitation, massage establishments (to the extent defined and regulated in such Code as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters, and paraphernalia businesses;

16.1.6 Any gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns.

16.2 Tenant Operational Standards for Commercial/Retail Space. Tenant will ensure that all Commercial Space and Retail Space within the Project is continuously operated in a first-class, commercially reasonable manner consistent with comparable mixed-use developments in the region. Tenant will include in all subleases of Commercial Space or Retail Space a requirement that subtenants maintain operating hours, signage, lighting, and general upkeep consistent with such standards. Landlord will have the right to review and approve design and signage for all Commercial Space and Retail Space storefronts to ensure consistency with the Project's public-facing appearance and community-serving objectives.

16.3 Early Termination. In the event this Lease is terminated prior to its Scheduled Expiration Date, whether for default or otherwise, Landlord will have the right, but not the obligation, to:

16.3.1 require Tenant to assign to Landlord, without additional consideration, all subleases associated with the Commercial Space or Retail Space;

16.3.2 assume direct control of the Commercial Space or Retail Space operations; or

16.3.3 enter into new leases with existing Commercial Space or Retail Space subtenants. Tenant will cooperate in facilitating such transition.

16.4 Access and Circulation Management. Tenant will ensure that access to the residential areas of the Premises is secure and separate from the Commercial Space and Retail Space areas of the Premises to the greatest extent practicable. Commercial and retail loading and deliveries will be restricted to designated hours and locations reasonably acceptable to Landlord to minimize disruption to residents of Dwelling Units on the Premises.

17. **MANAGEMENT**.

17.1 Management. Tenant and Management Agent will operate the Premises in a manner that will provide decent, safe, and sanitary facilities to the residential, Commercial Space, and Retail Space occupants and invitees of the Premises, will comply with all the provisions of this Lease, each other applicable contract or agreement between the Parties, and all applicable Law. Tenant and Management Agent will use commercially reasonable efforts to ensure that the operation, use, and occupancy of the Commercial Space and the Retail Space will remain in harmony with, and will not disrupt, the peaceful, safe occupancy and enjoyment of the residents of the Dwelling Units at all times. Tenant will be responsible for management of the Premises, including the selection of Qualifying Households, certification and recertification of household size and income for Qualifying Households occupying Affordable Units, evictions, collection of Subrents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Landlord will have no responsibility for the management or operation of the Premises. The Premises will always be managed by an experienced Management Agent reasonably acceptable to Landlord, with demonstrated ability to operate facilities like the Premises in a manner that will provide decent, safe, and sanitary conditions in a self-sufficient manner. For the purposes of this Lease, if Tenant directly performs the functions of the Management Agent with Tenant's employees or by means of a service contract with an Affiliate of Tenant, Tenant's role as the Management Agent will be deemed approved by Landlord. If the

Management Agent is a Person other than Tenant or an Affiliate of Tenant, Tenant will submit to Landlord, for Landlord's approval, the identity of each proposed Management Agent, together with additional information relevant to the background, experience, and financial condition of the proposed Management Agent, as reasonably requested by Landlord. Landlord will approve or disapprove the proposed Management Agent by Notice to Tenant within thirty (30) days following Landlord's receipt of all requested information regarding such Management Agent, as provided for in the immediately preceding sentence. Unless the proposed Management Agent is approved by Landlord within such thirty (30) day period, the Management Agent will be deemed disapproved by Landlord.

17.1.1 *Performance Review*. Upon Notice from Landlord, Tenant will, with the participation of Landlord, periodically review the management practices and financial status of the Premises and the Management Agent. Landlord will not request such periodic review more frequently than once each calendar year. The purpose of each periodic review will be to enable Landlord to determine if the Premises are being operated, maintained, and managed in accordance with the requirements and standards of this Lease and all applicable Law.

17.2 Operating Reserve. On or before the Project Completion Date, Tenant will (or will cause the Management Agent to) establish the Operating Reserve by depositing an amount of money equal to (or greater than) the projected amount of the first three (3) months of Operating Expenses, into the Operating Reserve. Interest earned on funds in the Operating Reserve will be deposited into the Operating Reserve. Tenant will maintain the balance of the Operating Reserve at an amount of money equal to or greater than the three times the average monthly Operating Expenses for the immediately preceding Lease Year ("**Minimum Balance**"). An equal, verified operating reserve requirement of an Institutional Lender holding a Permitted Leasehold Security Instrument or the Tax Credit Investor may be used as a substitute for the Operating Reserve. Tenant will provide to Landlord, at the same times and in the same manner as required for the submittal of the Annual Report, evidence reasonably satisfactory to Landlord of compliance with this Section 17.2. The Operating Reserve will be used solely to cover shortfalls between Revenue and actual Operating Expenses. After making each withdrawal from the Operating Reserve, Tenant will replenish the Operating Reserve to the Minimum Balance before the first day of the next Lease Year. If the Operating Reserve cannot be replenished to the Minimum Balance through a single deposit, Tenant will develop a plan for restoring the required Minimum Balance, subject to the review and approval of such plan by Landlord. The balance of the Operating Reserve will be transferred to the Capital Replacement Account on or after the later of: (i) the date Revenue achieves a minimum annual debt coverage ratio of 1.15 to 1.00 for three (3) consecutive years after the date of issuance by Landlord (under its Governmental Authority) of a final Certificate of Occupancy for the entire Project; or (ii) such later date as required by either an Institutional Lender holding a Permitted Leasehold Security Instrument or the Tax Credit Investor. Upon transfer of the balance of the Operating Reserve to the Capital Replacement Account, the requirement to maintain the Operating Reserve will be terminated and of no further force or effect.

18. **ENVIRONMENTAL CONDITIONS**. Tenant will not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant will Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following Tenant discovering or becoming aware of such Environmental Condition.

18.1 Remediation. If action or inaction by a Tenant Party or a subtenant results in an Environmental Condition, Tenant will remediate the Environmental Condition for use of the Property as allowed before the occurrence of the Environmental Condition in accordance with Law, at Tenant's sole expense. If Tenant knows or reasonably believes an Environmental Condition is an imminent danger to public health and safety, Tenant will take all action necessary to alleviate the imminent danger, at Tenant's sole expense.

18.2 Removal. If a Tenant Party or a subtenant stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant will remove or cause the removal of all such Hazardous Substances from the Premises prior to the Expiration Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant will be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 18.2.

18.3 Reports. Tenant will deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant will also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

18.4 Environmental Assessment. If Landlord reasonably believes that action or inaction by a Tenant Party or a subtenant resulted in an Environmental Condition, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be performed at Tenant's sole expense. Tenant will reimburse Landlord for all money expended by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of money expended. Any amount of money reimbursable to Landlord by Tenant under this Section 18.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, will accrue Default Interest from the date incurred until paid.

19. **INDEMNIFICATION**.

19.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant will Indemnify the Landlord Parties against all Claims arising from: (a) use or occupancy of the Premises or this Lease by any of the Tenant Parties; (b) personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises or adjoining real property; (c) personal injury (including death) or property damage resulting from use or occupancy of the Premises by any of the Tenant Parties; (d) a wrongful intentional act or negligence of one or more of the Tenant Parties; (e) strict liability relating to use or occupancy of the Premises by any of the Tenant Parties; (f) all Applications made at Tenant's request; (g) any agreement that Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease or the Premises, including any lease or sublease related to residential, commercial, or retail uses; (h) services, labor, material, or equipment supplied to, for, or on behalf of Tenant; (i) any workers' compensation claim by one or more employees or contractors of one or more of the Tenant Parties; (j) any Prevailing Wage Determination; and (k) any Environmental Condition. Subject to Tenant's express and paramount obligations and acknowledgements under Section 5 related to the actual or potential presence of Hazardous Substances on or about the Premises, Tenant's obligations to Indemnify the Landlord Parties will exclude Claims arising solely from the established active negligence or willful misconduct of a Landlord Party. In addition, and notwithstanding any other provision of this Agreement, Tenant will not be required to Indemnify the Landlord Parties with respect to any pending or future Environmental Claim that both: (a) is based on any alleged act or omission on the part of a Landlord Party that occurred before the Effective Date of the Disposition Agreement; and (b) involves an alleged Hazardous Substance Discharge or a Person's alleged exposure to a Hazardous Substance. Without the obligation to incur any out-of-pocket costs, Tenant will reasonably cooperate with Landlord's effort to defend against any such Environmental Claim, including providing Landlord and its representatives and agents with physical access to the Property upon reasonable advance Notice from Landlord to Tenant from time to time.

19.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will not be construed or interpreted as in any way restricting, limiting, or modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease will not in any way restrict, limit, or modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

19.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will survive the Expiration Date, until all actual or prospective Claims subject to the Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

19.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

19.4.1 *Notice*. The affected Landlord Parties will Notify Tenant of the Claim within a reasonable time.

19.4.2 *Selection of Counsel*. Tenant will select counsel reasonably acceptable to Landlord's City Council. Even though Tenant will defend the Claim, the affected Landlord Parties may, at their respective options, engage separate legal counsel, at Tenant's expense, to advise them regarding the Claim and their defense. The affected Landlord Parties' separate legal counsel(s) may attend all proceedings and meetings. Tenant's legal counsel will actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

19.4.3 *Cooperation*. The affected Landlord Parties will reasonably cooperate with Tenant's defense of the Landlord Parties.

19.4.4 *Settlement*. Tenant may only settle a Claim with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

19.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Tenant or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Tenant's duty to defend the Landlord Parties at any stage of a Claim within the scope of Tenant's obligations to Indemnify the Landlord Parties under this Lease.

19.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties will be reduced to the extent required to comply with applicable Law.

20. **RIGHT OF CONTEST**.

20.1 Tenant's Right. Notwithstanding anything to the contrary in this Lease, Tenant will have the exclusive right to contest, at its sole expense, by appropriate legal proceedings diligently conducted in good faith: (a) the amount or validity of any Prohibited Lien; (b) the validity of any Law or its application to the Premises; (c) the terms or conditions of, or requirements for, any Approval; or (d) the validity or merit of any Claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "**Contest**"). Tenant will Notify Landlord of Tenant's commencement of a Contest, within thirty (30) days following Tenant's commencement of such Contest. Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions to remain satisfied throughout the period of the Contest:

20.1.1 *No Criminal Act*. Such deferral or non-compliance will not constitute a criminal act by Landlord or Tenant or subject Landlord or the Fee Estate to a material risk of any fine or penalty.

20.1.2 *No Liability*. Such deferral or non-compliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate.

20.1.3 *No Forfeiture*. Such deferral or non-compliance will not place the Fee Estate in material danger of being forfeited or lost.

20.1.4 *No Cost to Landlord*. Such Contest will be without cost, liability, or expense to Landlord, and Tenant will Indemnify Landlord against any cost, liability, or other expense arising from such Contest.

20.1.5 *Diligence*. Tenant will prosecute such Contest with reasonable diligence and in good faith.

20.1.6 *Payment*. If required for such Contest, Tenant will have paid all required amounts of money.

20.1.7 *Security*. If the amount of money at issue in such Contest (and all other Contests then pending) exceeds one hundred thousand dollars ($100,000) multiplied by the CPI Adjustment Factor, then Tenant will, before proceeding with such Contest, provide Landlord with Contest Security equal to such excess.

20.1.8 *Named Parties*. If Landlord has been named as a party in any action, Tenant will cause Landlord to be removed as a party.

20.2 Landlord Obligations and Protections. Landlord need not join in any Contest. Tenant will pay all reasonable expenses, including Legal Costs, of any Contest and Indemnify Landlord against such expenses.

20.3 Miscellaneous. Upon final determination of Tenant's Contest of a Law, Tenant will comply with such final determination. So long as all the conditions under Section 20.1 remain satisfied, Landlord will enter no objection to any Contest, except to the extent involving any Landlord's Governmental Authority. Landlord may contest any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; (b) Tenant fails to commence such Contest within 15 days after receipt of such Notice; and (c) Landlord's Contest complies with all conditions and covenants that would apply to a Contest by Tenant, transposing references to the Parties and their interests, as appropriate.

20.4 Contest Security. Landlord will promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

21. **INSURANCE**.

21.1 Tenant to Insure. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, or Construction of the Project or other Construction on the Premises, Tenant will maintain, at its sole expense, throughout the Term, all the insurance coverage (or its then reasonably available equivalent) required in **EXHIBIT F** to this Lease.

21.2 Insurance Review. Once each Lease Year, starting with Lease Year 3, either Party may initiate a review of this Lease's insurance requirements to determine whether any required insurance coverage needs to be increased to protect the interests of Landlord or Tenant. Such an insurance review may be commenced by one Party Notifying the other Party of the commencement of such a review. The effective date of a Notice initiating an insurance review will commence a sixty (60) day period during which the Parties will negotiate in good faith regarding increasing the insurance coverage required under this Lease. Neither Party will unreasonably withhold, condition, or delay its consent to a requested increase in the insurance coverage required under this Lease.

22. **LOSSES AND LOSS PROCEEDS**.

22.1 Notice. If either Party becomes aware of a Loss, such Party will Notify the other Party of such Loss.

22.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent will abate and Tenant will, except as otherwise provided in this Section 22.2, Restore with reasonable promptness. On the occurrence of a Substantial Casualty before the Project Completion Date, Tenant may, by Notice to Landlord given within ninety (90) days after the Substantial Casualty with the consent of each Permitted Leasehold Lender, elect a Casualty Termination of this Lease in its entirety, effective ninety (90) days after such Notice. Upon any Casualty Termination prior to the Project Completion Date, all Property Insurance Proceeds or Builder's Risk Insurance proceeds arising from such Substantial Casualty will be allocated in accordance with Section 22.8. If Tenant does not timely and validly elect a Casualty Termination following a Substantial Casualty occurring before the Project Completion Date: (a) this Lease will not terminate and Tenant will Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant will be solely responsible for: (i) negotiating and adjusting all Property Insurance Proceeds regarding the Casualty, subject to the rights of Permitted Leasehold Lenders; and (ii) the costs of Restoration.

22.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation after the Project Completion Date, this Lease will terminate in its entirety, as of the Condemnation Effective Date. Neither Party will settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, neither Party will be required to obtain the consent of the other Party to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award will be paid to Depository in accordance with Section 22.6. For any Condemnation, Landlord (subject to the rights of any Fee Lender under this Lease) and Tenant (subject to the rights of any Permitted Leasehold Lender under this Lease) will allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

22.3.1 *Landlord's Costs*. For a Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

22.3.2 *Tenant's Costs*. To reimburse Tenant (subject to the rights of Permitted Leasehold Lenders) for Tenant's actual expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

22.3.3 *Tenant's Claim*. Tenant will, subject to the rights of Permitted Leasehold Lenders, receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken, as of the Condemnation Effective Date.

22.3.4 *Landlord's Claim*. Landlord will, subject to the rights of Fee Lenders, receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken, as of the Condemnation Effective Date.

22.3.5 *Tenant's Residual Claim*. Tenant will, subject to the rights of Permitted Leasehold Lenders, receive the entire remaining Condemnation Award.

22.4 Insubstantial Condemnation. If a Condemnation that is not a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss occurs after the Commencement Date, then any Condemnation Award relating to such Condemnation will be paid to Depository and applied first toward Restoration, in the same manner as Restoration after

Casualty under Section 22.6. Regardless of whether the Condemnation Award is adequate, Tenant will, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award will be distributed to Landlord and Tenant in accordance with Section 22.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

22.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent will abate under this Lease and this Lease will not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award allocable to the period outside the Term will belong to Landlord. Otherwise, Tenant (subject to the rights of Permitted Leasehold Lenders) will receive the Condemnation Award (to the extent attributable to periods within the Term).

22.6 Use of Loss Proceeds. Landlord assigns to Tenant (and any Permitted Leasehold Lender) the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds will be paid to Depository, for disbursement in accordance with the terms of this Lease. If a Loss is an Immaterial Loss, then (subject to the terms of the Senior Permitted Leasehold Security Instrument on disbursement of Loss Proceeds to Restore) the Depository will release all Loss Proceeds to Tenant, to be applied first to Restoration. Depository will first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. If a Loss is not an Immaterial Loss and there is no Casualty Termination, or Substantial Condemnation, then Depository will release Loss Proceeds to Tenant for Restoration, from time to time, as Restoration progresses, in accordance with the procedures required by the Senior Permitted Leasehold Security Instrument. If no Permitted Leasehold Security Instrument exists, then Depository will disburse the Loss Proceeds to Tenant (or directly pay to Tenant's contractor, if Tenant so requests), from time to time, in proportion to the percentage of completion of the Construction constituting the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository will release to Tenant, and Tenant may retain (subject to rights of Permitted Leasehold Lenders) any remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant will hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant will not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Lien, under Section 14.1. If Loss Proceeds are insufficient to Restore and there is no Casualty Termination or Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant will nevertheless Restore at Tenant's sole cost and expense. Depository will not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. The insurance company providing the largest amount of the Loss Proceeds regarding a Casualty will determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration. If such insurance company fails or refuses to make such determination or the Loss Proceeds arise from a Condemnation, then the Senior Permitted Leasehold Lender will make such determination or if there is no Permitted Leasehold Lender, Landlord will make such determination.

22.7 Continuation of Lease. Except as this Lease expressly provides, this Lease will not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises or any part of the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease will exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated under its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, will continue unabated.

22.8 Tenant Obligation to Clear Site. If Tenant elects a Casualty Termination in accordance with the terms of this Lease, then Landlord may, by Notice to Tenant within sixty (60) days after receiving Tenant's Notice of Casualty Termination, require Tenant to cause the improvements on or to the Premises to be demolished and the debris removed and all substantial excavations filled in and compacted, so that Tenant returns the Premises to Landlord as vacant and compacted land, free of improvements, demolition debris, and substantial excavations. The Parties will cooperate to make available for such work, in installments as the work proceeds, all available Property Insurance Proceeds or Builder's Risk Insurance proceeds arising from the Casualty, substantially in accordance with the disbursement procedures that would govern use of Property Insurance Proceeds to Restore. Tenant will perform such work with reasonable promptness, but its completion will not be a condition to any Casualty Termination. Tenant's obligation to complete such work will survive the Casualty Termination. After completion of and full payment for such work, any remaining Property Insurance Proceeds or Builder's Risk Insurance proceeds will belong to Landlord. The provisions of this Section 22.8 will survive the Expiration Date.

22.9 No Effect on Landlord Eminent Domain Authority. Nothing in this Lease is intended to nor will be interpreted to waive, limit, or restrict any Governmental Authority of Landlord, including the power of eminent domain over the Premises or any other property, or any other Governmental Authority over the Premises or any other property.

23. **LANDLORD'S TRANSFERS AND FINANCING**.

23.1 Transfers. Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord will Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Subject to the Landlord's transferee's written assumption of the Landlord's rights and obligations under this Lease, upon any transfer or conveyance of the entire Fee Estate (including any transfer or conveyance of the Fee Estate by or in lieu of exercise of remedies under a Fee Security Instrument), the grantor will be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. Subject to the Landlord's transferee's written assumption of the Landlord's rights and obligations under this Lease, this Lease will bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

23.2 Fee Security Instruments. Subject to the terms and conditions of this Lease and the Statement of Priorities, Landlord will have the right, at any time and from time to time during the Term, to make and deliver any Fee Security Instrument. All Fee Security Instruments will be subject and subordinate to this Lease. Landlord will not enter into any Fee Security Instrument violating the immediately preceding sentence. Tenant will not subordinate this Lease to any Fee Security Instrument without consent from all Permitted Leasehold Lenders. Tenant will reasonably cooperate with Landlord and each actual or prospective Fee Lender by providing information reasonably requested by the Fee Lender and entering into agreements or signing and delivering documents reasonably requested by each actual or prospective Fee Lender.

23.3 Protection of Fee Lenders. If Tenant gives Landlord any Notice of a Landlord Default, Tenant will simultaneously give a copy of such Notice to all Fee Lenders of which Tenant has received Notice and contact information for delivery of Notices. Each Fee Lender will have the right (but no obligation) to cure the Landlord Default within sixty (60) days following expiration of the cure period allowed to Landlord under this Lease, and with like effect as if Landlord had effected such cure. Tenant's failure to give each Fee Lender the Notice required by this Section 23.3 will not be a Default by Tenant, but no Notice by Tenant of any Landlord Default (or any resulting exercise of rights or remedies by Tenant) will be effective against such Fee Lender, unless and until Tenant will have given to such Fee Lender the Notice and opportunity to cure required by this Section 23.3.

24. **SUBLEASING, LICENSING, AND SUBDIVISION**.

24.1 Subleasing and Licensing. Except for Affordable Unit Subleases signed in compliance with this Lease, Tenant may not sublease or license use of the Premises, including the Commercial Space or the Retail Space, to any Person without first obtaining City's written consent, to be granted or withheld in Landlord's reasonable discretion. At all relevant times during the Term, Tenant will use commercially reasonable efforts to contract with a qualified Third Person to manage a childcare center for children ages 0 through 5 in the Commercial Space. If Tenant is unable to secure a qualified Third Person for such purposes despite demonstrating to Landlord that it used commercially reasonable efforts to do so, Landlord may, in its sole and absolute discretion, consent in writing to an acceptable alternative use of the Commercial Space that will provide a tangible benefit to the local community substantially equivalent to the preferred childcare center use. [To include if applicable upon the Close of Escrow: By signing this Lease, Landlord confirms its consent to ___________ as the initial sublessee of the Commercial Space and ___________ and ___________ as the initial sublessees of the Retail Space, subject to Landlord's approval of the pertinent subleases governing the occupancy of those proposed sublessees.]

24.2 Subdivision. Tenant may not seek or obtain any Approvals for conversion of any portion of the Premises, including the Commercial Space or the Retail Space, into individual condominiums or subdivided parcels or lots without first obtaining Landlord's written consent. Landlord may grant or withhold any requested consent of this nature in its sole and absolute discretion. Tenant acknowledges and agrees that Landlord's decision whether to grant or withhold the requested consent will be based on Landlord's protection of its proprietary interest in the Property and other factors relevant to Landlord, not on any Governmental Authority.

24.3 Reasonable Restrictions. Tenant acknowledges and agrees that, under the circumstances that the Parties are entering into this Lease, including Landlord's substantial financial subsidy toward the Project (including the Commercial Space and the Retail Space), the restrictions in this Lease on subleasing, licensing, and subdivision are reasonable.

25. **TENANT'S TRANSFERS**.

25.1 During Project Construction. During the period beginning on the Commencement Date and ending on the Project Completion Date, no Transfer is permitted, unless and until Landlord consents in writing to the proposed Transfer in Landlord's sole and absolute discretion.

25.2 After Project Construction. Except for a Permitted Transfer, Tenant will not have any right to make or allow any Transfer or Equity Interest Transfer after the Project Completion Date without first obtaining Landlord's prior written consent, which may not be unreasonably withheld. Landlord's disapproval of a proposed Transfer or Equity Interest Transfer will be deemed reasonable if, among other circumstances evaluated in Landlord's reasonable discretion, the proposed Transferee: (a) does not have sufficient expertise in the management and leasing of developments similar to the Project located on the Premises; (b) is not in sound financial condition and does not have the sufficient financial resources to manage the Project as required by this Lease and to comply with Tenant's obligations under this Lease; or (c) is in violation of any City policies or Laws. Tenant acknowledges and agrees that Landlord will not approve a Transfer or Equity Interest Transfer to a Prohibited Transferee. Landlord will not consent to any Transfer or Equity Interest Transfer if a Notice of Default to Tenant is outstanding as of the date of Tenant's Notice to Landlord of the Transfer or Equity Interest Transfer or at any time following the date of such Notice through and including the effective date of the Transfer or Equity Interest Transfer. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers and Equity Interest Transfers are reasonable. Tenant will provide prompt Notice to Landlord regarding any Permitted Transfer.

25.3 Transfers to Lender. At any time, an Equity Interest Transfer or Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument, without Landlord's consent; (b) a Transferee who obtains an Equity Interest or the Leasehold Estate through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written consent, in Landlord's sole and absolute discretion.

25.4 Annual Information on Equity Interests in Tenant. Within thirty (30) days after the first day of each Lease Year, Tenant will certify Tenant's then current ownership structure to Landlord, including the identity of all the then current owners of Equity Interests in Tenant.

25.5 Notice and Documentation. Tenant will Notify Landlord of each proposed Transfer or Equity Interest Transfer, accompanied by all the following:

(a) A current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with GAAP and sufficiently detailed to allow Landlord to evaluate the proposed Transferee's current assets, liabilities, and the monetary amount by which the total monetary value of all assets of the proposed Transferee exceed the total monetary value of all liabilities of the proposed Transferee;

(b) All written agreements between Tenant and the proposed Transferee effectuating such Equity Interest Transfer or Transfer, conditioned on Landlord's approval of such Transfer;

(c) A description of all properties owned or operated by the proposed Transferee that are similar to the Premises (if any);

(d) A certification by the Chief Financial Officer or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the Laws of the State, that the proposed Transferee is not a Prohibited Transferee;

(e) An Estoppel Certificate covering all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of Tenant's Notice to Landlord requesting approval of the Equity Interest Transfer or Transfer, as applicable (and updated on the effective date of such Equity Interest Transfer or Transfer, as applicable, to cover all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of such Equity Interest Transfer or Transfer, as applicable); and

(f) All other information regarding the proposed Transferee reasonably requested by Landlord.

25.6 Transfer Taxes. Tenant will pay all transfer and other taxes payable because of any Transfer by Tenant or Equity Interest Transfer by any holder of any Equity Interest in Tenant.

25.7 Future Transfers. The provisions of this Section 25 will also apply to any future Equity Interest Transfers or Transfers by any Tenant or holder of an Equity Interest in Tenant previously approved by Landlord under this Section 25.

25.8 Landlord's Costs. Tenant will reimburse Landlord for all reasonable costs (including Legal Costs) Landlord incurs in reviewing and approving each proposed Equity Interest Transfer or Transfer requiring Landlord's consent under this Lease.

25.9 Charter Section 225. Under San Diego City Charter section 225, Tenant and each of its assignees will disclose to Landlord the names and identities of all natural persons who own more than 10% of Tenant, each assignee, sublessee, and licensee.

26. LEASEHOLD SECURITY INSTRUMENTS.

26.1 Tenant's Rights. Subject to the terms and conditions of this Lease and the Statement of Priorities, Tenant will have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instruments encumbering this Lease and the Leasehold Estate, provided that all Defaults are cured before or on the effective date of the Permitted Leasehold Security Instruments; and (b) assign (absolutely or collaterally) Tenant's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

26.2 Limitations on Leasehold Security Instruments. Landlord will not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances will the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Tenant or any Person other than Landlord. Prior to the Project Completion Date, Permitted Leasehold Security Instruments may only secure repayment of Construction Financing being applied solely to pay the cost of the original Construction of the Project. Notwithstanding anything to the contrary contained in this Lease, at no time prior to the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed ninety-five percent (95%) of the costs of the original Construction of the Project. At no time following the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the then current appraised Market Value of the Leasehold Estate (including any improvements and business operations of Tenant on the Premises). Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Tenant is outstanding under this Lease will not encumber the Leasehold Estate and will be a Default by Tenant, subject to applicable Notice and cure periods, unless all Defaults of Tenant under this Lease are cured concurrent with the grant of such Security Instrument.

26.3 Effect on Landlord. No Permitted Leasehold Security Instrument will affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. Any Permitted Leasehold Lender Protections may be exercised only by, and will only benefit, Permitted Leasehold Lenders, New Tenants, and Post-Foreclosure Tenants. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then such Permitted Leasehold Security Instrument will be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. If this Lease terminates and the New Lease Option Period expires, without any Permitted Leasehold Lender timely requesting and entering into a New Lease, then such Permitted Leasehold Lender will no longer be entitled to any Permitted Leasehold Lender's Cure Rights or other Lender Protections. The priority of the Leasehold Estate and the consequences of a Foreclosure Event under a Permitted Leasehold Security Instrument are as described in the Statement of Priorities. Nothing in any Permitted Leasehold Security Instrument binds Landlord or imposes any obligation or liability on Landlord.

26.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a Foreclosure Event and exercise any other rights or remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any other provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it will, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Tenant under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) will have any personal liability under this Lease unless and until (and then only so long as) it is Tenant under this Lease. Any such personal liability will be limited to the Person's interest in this Lease.

26.5 Transfer of Escrows, Reserves, Security, and Other Deposits Held by Landlord. Upon any Foreclosure Event or New Lease Delivery Date, the Tenant's right, title, and interest in any security deposit, letter of credit (subject to the issuer's consent), reserve account, escrow account (for Real Estate Taxes, insurance premiums, Rent, or any other purpose), security, prepaid Rent, or other amount of money the former Tenant previously paid Landlord under this Lease, any Restoration Funds, and any Construction Surety (subject to the surety's consent) will automatically be assigned to the New Tenant or Post-Foreclosure Tenant, as applicable. In such event, such former Tenant will no longer have any right, title, or interest in or to the foregoing. Instead, New Tenant or Post-Foreclosure Tenant will hold all such rights, free of any claim of the former Tenant. To the extent that on any New Lease Delivery Date, the New Lease requires Tenant to restore the amount of any security deposit, bond, or account, New Tenant's failure to do so will constitute a

Monetary Default, subject to all applicable Notices and opportunity to cure, including Permitted Leasehold Lender's Cure Rights.

26.6 Termination of Permitted Leasehold Lender's Rights. If a Permitted Leasehold Lender is entitled to Lender Protections, then such entitlement will not terminate, unless and until such time, if any, as either: (a) its Permitted Leasehold Security Instrument is satisfied, except through a Foreclosure Event (in which event the Permitted Leasehold Lender will proceed under Section 26.9); (b) such Permitted Leasehold Lender consents in writing to termination of its Lender Protections; or (c) after Landlord complies with all Lender Protections, Landlord validly terminates this Lease, no Permitted Leasehold Lender validly requests (and is entitled to) and enters into a New Lease, and the New Lease Option Period expires. Upon the occurrence of the circumstances described in clause "(c)" in the immediately preceding sentence, the obligations formerly secured by each applicable Permitted Leasehold Security Instrument will no longer be secured by such Permitted Leasehold Security Instrument and no Permitted Leasehold Security Instrument will encumber the Leasehold Estate.

26.7 Lease Impairments. Any Lease Impairment made or entered into without Permitted Leasehold Lender's Consent will (at the option of the Senior Permitted Leasehold Lender) not be effective and not bind Permitted Leasehold Lenders or any New Tenant or Post-Foreclosure Tenant. Nothing in this Section 26.7 limits Landlord's right to terminate this Lease after an Event of Default and the expiration of all Permitted Leasehold Lender's Cure Rights, without cure of such Event of Default, subject however to: (a) provisions of this Lease limiting Landlord's right to terminate this Lease because of any Tenant-Specific Default; and (b) the right of a Permitted Leasehold Lender to obtain a New Lease.

26.8 Permitted Leasehold Lender and Tax Credit Investor Notice of Default. Any Landlord right to terminate this Lease following any Tenant Default will be conditioned upon Landlord first Notifying each Permitted Leasehold Lender and Tax Credit Investor, of which Landlord received Notice and an address for service of Notice of the Default, and no Permitted Leasehold Lender timely curing such Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 26.9.

26.9 Permitted Leasehold Lender's and Tax Credit Investor's Cure Rights. If any Tenant Default occurs, then any Permitted Leasehold Lender or Tax Credit Investor will have the time provided for below in this Section 26.9 within which to take (if such Permitted Leasehold Lender or Tax Credit Investor so elects, and no Permitted Leasehold Lender or Tax Credit Investor will have any duty to undertake any Permitted Leasehold Lender's Cure or Tax Credit Investor's Cure, as applicable, of any kind) whichever of the actions set forth below as will apply to such Default:

26.9.1 *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender or Tax Credit Investor may, at its option, cure such Default, within fifteen (15) days following expiration of Tenant's cure period under this Lease for such Monetary Default.

26.9.2 *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender or Tax Credit Investor can reasonably cure without obtaining possession of the Premises (excluding any Tenant-Specific Default), provided that Permitted Leasehold Lender or Tax Credit Investor has cured all Monetary Defaults, Permitted Leasehold Lender or Tax Credit Investor, as applicable, may: (a) Notify Landlord of the Permitted Leasehold Lender's or Tax Credit Investor's, as applicable, intent to cure the Non-Monetary Default; (b) within thirty (30) days following expiration of Tenant's cure period for such Non-Monetary Default, commence to cure such Non-Monetary Default; and (c) diligently prosecute the cure of such Non-Monetary Default to completion within a reasonable time under the circumstances.

26.9.3 *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default or Project Construction Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises, Permitted Leasehold Lender will be entitled (but not required) to do the following (but only so long as, for any Defaults that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises, such Permitted Leasehold Lender has exercised or is exercising, within the applicable cure periods, the applicable Permitted Leasehold Lender's Cure Rights):

(a) **Pursue Premises Control**. At any time within thirty (30) days following expiration of the cure period (if any) applicable to Tenant, or if no cure period applies to Tenant, then within thirty (30) days after receiving Notice of the Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and (subject to any applicable stay in any Bankruptcy Proceeding affecting Tenant or any applicable injunction) then diligently prosecute such proceedings to completion. If a Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control in accordance with this Section 26.9.3(a) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender or Post-Foreclosure Tenant will proceed with reasonable diligence to cure all Defaults (excluding Tenant-Specific Defaults) within: (i) thirty (30) days after such Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control; or (ii) if such Default is not reasonably susceptible of cure within such thirty (30) day period, then within a reasonable time under the circumstances.

(b) **Performance of Lease Obligations**. Perform all the Tenant's covenants and obligations under this Lease that can be performed by such Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

26.10 Security Instrument Defaults. If a Permitted Leasehold Security Instrument is in default, the Permitted Leasehold Lender will, as provided by Law, have the right, without Landlord's prior consent, subject to all other provisions of this Lease, to:

26.10.1 *Assignment in Lieu of Foreclosure*. Accept an assignment of the Leasehold Estate in lieu of foreclosure; or

26.10.2 *Foreclosure Sale*. Cause a foreclosure sale of the Leasehold Estate to be held through either judicial proceedings or power of sale under the applicable Permitted Leasehold Security Instrument.

26.11 Landlord's Exercise of Other Rights and Remedies. Whenever a Permitted Leasehold Lender is exercising, or is entitled to exercise, Permitted Leasehold Lender's Cure Rights, Landlord may, notwithstanding anything to the contrary in this Lease, continue to deliver Notices of Default to, collect actual damages from, and seek equitable relief (including a negative or mandatory injunction) against Tenant on account of any Default, and may require Tenant to Indemnify the Landlord Parties (and other Indemnitees) in each case when, as, and to the extent this Lease requires.

26.12 Permitted Leasehold Lender Exercise of Tenant's Rights. So long as such Permitted Leasehold Lender's cure rights (and right to obtain a New Lease) under this Lease have not expired, such Permitted Leasehold Lender may, at any time, exercise (and will always have standing to exercise and assert) all rights or remedies of Tenant under this Lease, subject to all limitations on such rights. Any exercise of such rights by any Permitted Leasehold Lender will be as effective as if done by Tenant.

26.13 Indemnity Regarding Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Permitted Leasehold Lender desires to enter the Premises to cure any Default, then, as a condition to such entry, such Permitted Leasehold Lender will agree in writing to Indemnify the Landlord Parties regarding Claims arising from any negligence or willful misconduct of such Permitted Leasehold Lender in pursuing the cure of any such Default, except Claims arising solely from the active negligence or willful misconduct of the Landlord Parties.

26.14 Limited Assignment of Security Instruments. No Permitted Leasehold Lender will assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender Controlling such Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by such Permitted Leasehold Security Instrument.

27. **NEW LEASE**.

27.1 New Lease Notice. If the Expiration Date occurs before the Scheduled Expiration Date for any reason (including because of any Default or rejection in a Bankruptcy Proceeding or any Permitted Leasehold Lender's failing to timely exercise its Permitted Leasehold Lender's Cure Rights), but excluding any termination with Permitted Leasehold Lender's Consent because of a Loss or otherwise, then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Permitted Leasehold Lender), Landlord will, within ten (10) Business Days, Notify all Permitted Leasehold Lenders of such termination. If a Permitted Leasehold Lender requests a New Lease during the New Lease Option Period, then from the Expiration Date to the New Lease Delivery Date, Landlord will not: (a) operate the Premises in an unreasonable manner; (b) terminate Affordable Unit Subleases or any subleases pertaining to the Commercial Space or the Retail Space except for the subtenant's default; or (c) lease the Premises (except Affordable Unit Subleases) to anyone other than New Tenant. Upon a Permitted Leasehold Lender's request for a New Lease made during the New Lease Option Period, Landlord will enter into a New Lease with New Tenant, provided that on the New Lease Delivery Date, New Tenant: (i) pays Landlord all monetary amounts then due under this Lease, as if this Lease had not terminated; and (ii) agrees to cure with reasonable diligence all then-uncured Non-Monetary Defaults (except Tenant-Specific Defaults), within a reasonable period after the New Lease Delivery Date. Nothing in this

Lease will prevent Landlord from terminating this Lease in accordance with its terms (after compliance with all Permitted Leasehold Lender's Cure Rights), but any such termination will, thereafter, be subject to Permitted Leasehold Lenders' and New Tenant's rights to obtain a New Lease (even if any Permitted Leasehold Lender could have prevented such termination by exercising its Permitted Leasehold Lender's Cure Rights). The following additional provisions will apply to any New Lease:

27.1.1 *Priority*. Any New Lease and New Tenant's Leasehold Estate under such New Lease, and Landlord's obligation to deliver possession of the Premises under any New Lease, will all be subject to: (a) the rights of all Persons in possession of the Premises; (b) any matters that encumbered the previous Leasehold Estate and were senior and prior to the Permitted Leasehold Security Instrument held by the Permitted Leasehold Lender that requested the New Lease; and (c) Permitted Exceptions.

27.1.2 *Adjustment for Net Income*. On the New Lease Delivery Date, Landlord will pay New Tenant an amount of money equal to the Revenue received by Landlord from the Premises, less (a) Rent and (b) operating expenses expended or incurred by Landlord, from the Expiration Date to the New Lease Delivery Date, provided that New Tenant simultaneously pays Landlord (or credits Landlord an amount of money equal to) all amounts of money required to be paid Landlord under this Lease upon entry into such New Lease (including any Rent due, but unpaid), and not otherwise paid by Landlord from Revenue received by Landlord.

27.1.3 *Transfer of Certain Items*. On the New Lease Delivery Date, Landlord will assign and convey, without recourse to New Tenant, Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Tenant (or Permitted Leasehold Lender) would have been entitled to receive, but for Tenant's Default and Landlord's termination of this Lease; (b) all Affordable Unit Subleases and all subleases of the Commercial Space and the Retail Space arising from the terminated Lease, except to the extent any such sublease expired or was terminated in compliance with this Lease (which surviving subleases, upon such assignment by Landlord to New Tenant, will become subleases arising from the Leasehold Estate under the New Lease); (c) security deposits under Affordable Unit Subleases and subleases of the Commercial Space and the Retail Space actually held by Landlord; and (d) improvements located at the Premises, to the extent of the former Tenant's former interest in such improvements under the terminated Lease.

27.1.4 *Preservation of Subleases*. Between the Expiration Date and the New Lease Delivery Date (or the expiration of the New Lease Option Period, if no Permitted Leasehold Lender requests a New Lease), all Affordable Unit Subleases and all subleases of the Commercial Space and the Retail Space will temporarily be direct leases between Landlord and the former subtenants, but this circumstance will not be deemed to impose any obligation on Landlord. On the New Lease Delivery Date, the reinstatement or assignment of the surviving subleases (or direct leases with former subtenants) from Landlord to New Tenant will be without warranty from or recourse of any kind whatsoever to Landlord.

27.1.5 *Landlord's Costs and Expenses*. If a Permitted Leasehold Lender requests Landlord enter into a New Lease, then on the New Lease Delivery Date (and as a condition to Landlord's delivery of the New Lease) such Permitted Leasehold Lender will pay all reasonable expenses, including documentary transfer taxes and Legal Costs, incurred or payable by Landlord in connection with any Default and termination of this Lease, recovery of possession of the Premises, preparation, signature, and delivery of the New Lease, any memorandum of the New Lease requested by New Tenant and recordation of any such memorandum, and all other documents New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

27.1.6 *Survival*. All rights of any Permitted Leasehold Lender, and obligations of Landlord, regarding a New Lease will survive termination of this Lease for the duration of the New Lease Option Period.

28. **INTERACTION OF MULTIPLE ESTATES**.

28.1 Priorities of Multiple Lenders. If more than one Lender of a particular type (Fee Leasehold) desires to exercise any Lender Protections applicable to such Lender, then the Party against whom such Lender Protections are to be exercised will be required to recognize either: (a) only the Lender desiring to exercise such Lender Protections and whose Security Instrument is most Senior (as against other Security Instruments of like type); or (b) such other Lender as all Fee Lenders or all Permitted Leasehold Lenders, as applicable, designate in writing to exercise such Lender Protections. Priority of Security Instruments will be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of the same type (Fee or Leasehold, as applicable); or (ii) a report or certificate of a title insurance company licensed to do business in the State. Neither Tenant nor Landlord will be obligated to determine the relative priorities of any Security Instruments.

28.2 No Merger. Notwithstanding any acquisition of both the Fee Estate and the Leasehold Estate by Tenant, any Post Foreclosure Tenant, a New Tenant, any Lender, or a Third Person, without the written consent of Landlord, Tenant, and all Permitted Leasehold Lenders (the consent of Landlord, Tenant, and Permitted Leasehold Lenders only being required until their respective rights under this Lease are terminated), the Fee Estate and the Leasehold Estate will always remain separate and distinct estates.

29. **QUIET ENJOYMENT**. During the Term, subject to Landlord's rights and remedies under this Lease (including the right to issue Subrent Payment Notices), Landlord covenants that Tenant will and may peaceably and quietly enjoy the Premises for the Term, subject to the terms and conditions of this Lease, without molestation, hindrance, or disturbance by or from Landlord and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions and Fee Security Instruments. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant.

30. **ACCESS AND INSPECTION**. Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable Notice, during regular business hours, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substance Discharge; provided, however, no invasive testing will be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld;

or (e) show the Premises to a prospective Fee Estate purchaser or Fee Lender. In entering the Premises, Landlord and its agents will not unreasonably interfere with Tenant's operations on the Premises and will comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Lease will not entitle Tenant to any rights or remedies, except as expressly provided in this Section 30, and such entry will not constitute an actual or constructive eviction of Tenant from the Premises, nor will it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice in the case of an emergency. Landlord (either through its staff or Third Person consultants or both) will have the right of reasonable access to the Premises, without the payment of charges or fees, during normal construction hours during any Major Construction. All Landlord representatives who enter the Premises will identify themselves at the main entrance to the Premises, the on-site construction management office or, if none, to the apparent on-site construction supervisor on the Premises, upon their entrance onto the Premises, and will always be accompanied by a representative of Tenant, while on the Premises. Tenant will make a representative of Tenant available for this purpose during all normal construction hours, upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord will have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with the provisions of this Lease. Tenant acknowledges and agrees that: (i) any such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease; (ii) are made solely for Landlord's benefit; (iii) Landlord's inspections may be superficial or general in nature; (iv) are for the purposes of informing Landlord of the progress of Construction on the Premises or the conformity of the Premises with the terms and conditions of this Lease; and (v) Tenant will not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction with or acceptance of any materials, workmanship, conformity of the Premises with the terms and conditions of this Lease, or otherwise. Tenant agrees to make its own regular inspections of all work of Construction on the Premises to determine that the progress, quality, and all other requirements of the work of Construction are being performed in a manner satisfactory to Tenant.

31. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. Notwithstanding anything to the contrary in this Lease, all improvements, Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises will, during the Term, be owned by, and belong to, Tenant and all benefits and burdens of ownership of such improvements, Building Equipment or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations will be and remain in Tenant during the Term.

32. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation, or Casualty, Tenant will not commit or suffer to be committed any waste of all or any portion of the Premises, any Building Equipment, or any other improvement on or to the Premises. Tenant agrees to keep the Premises, all Building Equipment, and all other improvements on or to the Premises clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, all Building Equipment, or all FF&E.

33. **EVENTS OF DEFAULT; REMEDIES**.

33.1 <u>Definition of "Event of Default"</u>. An "**Event of Default**" means the occurrence of any one or more of the following events:

33.1.1 *Monetary Default*. A Monetary Default that continues for ten (10) days after Notice to Tenant of the Monetary Default, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount.

33.1.2 *Project Default*. Tenant's failure to cause the Project Completion Date to occur on or before the Project Completion Deadline and Tenant does not cure such failure within thirty (30) days after Notice to Tenant of such failure.

33.1.3 *Bankruptcy or Insolvency*. Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

33.1.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in other parts of this Section 33.1.4, occurs and Tenant does not cure it within thirty (30) days after Notice to Tenant of the Non-Monetary Default. For a Non-Monetary Default that cannot reasonably be cured within thirty (30) days following the date of such Notice, Tenant will not be in Default if: (a) within thirty (30) days following the date of such Notice, Tenant Notifies Landlord of Tenant's intention to take all reasonable steps to cure the Non-Monetary Default; and (b) within a reasonable time under the circumstances, Tenant commences and diligently prosecutes such cure to completion.

33.2 <u>Remedies</u>. If an Event of Default occurs, then Landlord will, at Landlord's option, in Landlord's sole and absolute discretion, have the right to exercise any one or more of the following remedies, all cumulative (so exercise of one remedy will not preclude exercise of another remedy), in addition to such other remedies as may be available at law, or in equity, or under any other terms of this Lease.

33.2.1 *Termination of Tenant's Rights*. Landlord may terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term will terminate, such date of termination will be the Expiration Date, and Tenant will immediately surrender possession of the Premises to Landlord under Section 34.

33.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord because of the occurrence of an Event of Default, this Lease will also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant, in addition to Landlord's remedies under the City Note and any related agreements:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such 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 such rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount 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 would be likely to result therefrom.

(e) The "worth at the time of award" of the amounts referred to in Sections 33.2.2(a) and 33.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 33.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

33.2.3 *Taking Possession*. Subject to the rights of each Permitted Leasehold Lender, Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 33.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether through summary proceedings or otherwise, will absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord will apply all rents from any such reletting in the manner provided in Section 33.4. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 33.2.3 in Landlord's name and will be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant will nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all amounts of money required to be paid by Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 33.2.3 will constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

33.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

33.2.5 *Receipt of Moneys*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease, will reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession of the Premises by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter becoming due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

33.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, will waive any such Default or Event of Default, or such covenant, agreement, term, condition, or restriction. No covenant, agreement, term, condition, or restriction of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, will be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default will Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease will continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease or subsequent Event of Default.

33.2.7 *Conditional Limitation*. Landlord may serve upon Tenant a 7-day Notice of termination of this Lease. Upon the expiration of such 7-day period, this Lease and the Term will automatically and without any action by anyone terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 7-day period were the Expiration Date. The passage of such 7-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant will then quit and surrender the Premises to Landlord under Section 34, but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term will terminate and expire as set forth in this Section 33.2.7. This Section 33.2.7 is intended to establish a conditional limitation and not a condition subsequent.

33.2.8 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Default, including reasonable costs of recovering possession or reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each installment of Rent not paid or each accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages.

33.2.9 *Continue Lease*. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to maintain Tenant's right to possession of the Premises after an Event of Default, this Lease will continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent.

33.3 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Project Construction Default or any Non-Monetary Default.

33.4 Proceeds of Reletting. Landlord will apply any proceeds of any reletting of the Premises as follows, without duplication, but including Default Interest on all such amounts:

33.4.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

33.4.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants and other occupants, including all brokerage commissions, Legal Costs, and other reasonable costs of preparing the Premises for reletting;

33.4.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord will maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

33.4.4 *Residue*. Fourth, to pay to itself any balance remaining of Tenant's liability to Landlord.

33.5 Tenant's Late Payments; Administrative Charges. If Tenant fails to make any payment to Landlord required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights or remedies, Tenant will pay Default Interest to Landlord on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant makes such payment in full. In addition, and without limiting any other rights or remedies of Landlord, Tenant will pay to Landlord, as Additional Rent, an administrative charge equal to five percent (5%) of any payment Tenant fails to pay within ten (10) days after such payment is first due and payable. Nothing in this Section 33.5 is intended to affect or change Landlord's rights or remedies regarding a Default or an Event of Default by Tenant under this Lease, except establishing Landlord's right to charge Default Interest and an administrative charge on late payments. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, will not be deemed a penalty or compensation for use of funds, and will not be credited against any other obligations of Tenant under this Lease.

33.6 Landlord's Right to Cure. If Tenant, at any time, fails to make any payment or take any action this Lease requires, then Landlord, after seven (7) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit following such Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice to Tenant of the amount of money paid or expended by Landlord to make a payment or take an action under this Section 33.6, Tenant will reimburse Landlord, as Additional Rent, for an amount of money equal to: (a) all reasonable amounts of money paid, and reasonable costs and expenses (including

Legal Costs) incurred, by Landlord in exercising its cure rights under this Section 33.6; and (b) Default Interest on the amounts described in clause "(a)" of this Section 33.6 from the date of expenditure until the date of reimbursement to Landlord.

33.7 Holding Over. If for any reason or no reason Tenant remains in the Premises after the Expiration Date, then Landlord will suffer injury that is substantial and difficult or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant will pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant remains in the Premises after the Expiration Date, an amount of money equal to one hundred fifty percent (150%) of the prior year's Rent. Additionally, Tenant will be liable for all damages incurred by Landlord as a result of Tenant remaining in the Premises after the Expiration Date. The Parties further state their intention that this Lease will not renew under California Civil Code section 1945 or any other Law.

33.8 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease will be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment will not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy under this Lease.

33.9 Survival. No termination of this Lease and no taking possession of or reletting the Premises will relieve Landlord or Tenant of their respective liabilities and obligations under this Lease, all of which will survive the Expiration Date, repossession, or reletting, subject to any limitations on personal liability or recourse expressly set forth in this Lease.

33.10 Multiple Suits. Landlord may sue to recover damages, or any amount of money equal to all installments of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages arising from an Event of Default.

33.11 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right under this Lease or applicable Law because of a Landlord Default, to claim a partial or total eviction (actual or constructive) because of a Landlord Default, or to exercise any other right or remedy against Landlord, Tenant will give Landlord Notice of the Landlord Default and thirty (30) days following the effective date of Notice of such Landlord Default to cure the Landlord Default. If Landlord cannot with due diligence cure any Landlord Default within thirty (30) days following the effective date of Notice of such Landlord Default, such cure period will be extended for such further period as Landlord will reasonably require, provided that: (a) within thirty (30) days following the effective date of Notice to Landlord of the Landlord Default, Landlord Notifies Tenant of Landlord's intention to take all reasonable steps to cure the Landlord Default; and (b) within a reasonable time under the circumstances, Landlord commences such cure and diligently prosecutes such cure to completion.

Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of a Landlord Default.

34. **END OF TERM**.

34.1 Surrender. Upon any Expiration Date: (a) all Buildings and Building Equipment will become Landlord's property; (b) Tenant will deliver possession of the Premises to Landlord, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore, subject to Section 22.8; (c) Tenant will deliver the Premises free and clear of all: (i) subleases, except Affordable Unit Subleases, unless otherwise requested in writing by Landlord, and (ii) liens except: (1) Permitted Exceptions, exclusive of Permitted Leasehold Security Instruments; and (2) liens that Landlord caused; (d) Tenant will assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable subleases, licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (e) the Parties will cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; (f) the Parties will adjust for all expenses and income of the Premises and will make such payments as will be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant will first be applied to cure any Default), provided, however, that Tenant will be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the end of the Term (if any) and Landlord will not be required to pay or credit Tenant for any Real Estate Taxes paid by, or on behalf of, Tenant; and (g) the Parties will terminate the Lease Memorandum by signing and recording the Quitclaim Deed in accordance with Section 34.2. Notwithstanding anything to the contrary in this Section 34, Tenant may remove from the Premises any FF&E owned by Tenant, but Tenant must do so, if at all, prior to the Expiration Date. Tenant will immediately repair all material damage to the Premises from removal of FF&E. Tenant's FF&E not removed before the Expiration Date will be deemed abandoned.

34.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant will sign, acknowledge, and deliver to Landlord a Quitclaim Deed conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such Quitclaim Deed (which Notice may be given thirty (30) days or less before any Expiration Date or at any later time). If Tenant fails or refuses to deliver such Quitclaim Deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a Quitclaim Deed on Tenant's behalf, which appointment is irrevocable and coupled with an interest. If the Expiration Date precedes the Scheduled Expiration Date, Landlord reserves the right to continue imposing the rent and income restrictions on the Affordable Units under the New Lease (if applicable) in a manner consistent with the original commitments under this Lease, such that any transferee or assignee to Tenant's right, title, and interest in and to the Premises will be required to abide by such rent and income restrictions.

35. **NOTICES**. All Notices submitted by either Party to the other Party under or as required by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (iv) electronic

transmission, including email (which will be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a notice email). All Notices must be sent to the Party representative designated in **EXHIBIT D** to this Lease. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any Notice will be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices delivered via email.

35.1 Replacement of Statutory Notice Requirements. When this Lease requires service of a Notice, that Notice will replace, rather than supplement, any equivalent or similar Notice required by Law, including any notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a notice in a particular manner, service of that notice (or a similar Notice required by this Lease) in the manner required by this Section 35 will replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

35.2 Refused, Unclaimed, or Undeliverable Notices. Any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be Notified will be effective as of the first date the Notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

36. **NO BROKER**. Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) will Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 36.

37. **ESTOPPEL CERTIFICATES**. Each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign, acknowledge, and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party will sign, acknowledge, and return such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign, acknowledge, and return an Estoppel Certificate within the required fifteen (15) day period, then the Certifying Party will pay the Requesting Party two hundred fifty dollars ($250) times the CPI Adjustment Factor per day as liquidated damages for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party will pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate.

38. **MISCELLANEOUS**.

38.1 Reservation of Powers. Nothing express or implied in this Lease will be construed or interpreted to limit, restrict, waive, or vary any required consent, approval, or permit from Landlord or constitute an approval by Landlord under its Governmental Authority. Tenant is required to apply to Landlord and proceed through Landlord's standard process for any Approval related to any use or development of the Premises or the Project by Tenant or otherwise.

38.2 Compliance with Landlord Standard Contract Provisions. Tenant will comply with all Landlord standard contract provisions set forth in **EXHIBIT G** to this Lease.

38.3 Termination of Disposition Agreement. As of the Commencement Date, the Parties intend and agree that the Disposition Agreement will be terminated in its entirety and of no further force or effect and the rights and obligations of the Parties regarding the Premises will be exclusively governed by this Lease, except any provision of the Disposition Agreement expressly surviving the Close of Escrow under the Disposition Agreement.

38.4 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the Parties, or claim made by either Party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party will be entitled to reimbursement of its Legal Costs, with Default Interest, and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other Party's Default or Landlord Default.

38.5 Third-Party Beneficiaries. Any present or future Lender or New Tenant may enforce all Lender Protections directly in its own name as an intended third-party beneficiary only of the Lender Protections provisions of this Lease. Such third-party beneficiary rights regarding a New Lease are intended to and will survive any Expiration Date during the New Lease Option Period. Except for these specified intended third-party beneficiaries, there are no intended third-party beneficiaries of this Lease. Nothing in this Lease is intended nor will be deemed to confer upon any Person (except Landlord, Tenant, New Tenant, Post-Foreclosure Tenant, and Lenders) any right to enforce this Lease.

38.6 Amendment. Each Modification of this Lease must be in a writing signed by both Parties and is subject to Permitted Leasehold Lender's Consent, and in the case of any Modification of this Lease that could be reasonably expected to materially affect the rights or interests of the Tax Credit Investor in the Project, is also subject to the consent of the Tax Credit Investor.

38.7 Successors and Assigns. This Lease will bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 38.7 will not limit, supersede, or Modify any Transfer or Equity Interest Transfer restrictions in this Lease.

38.8 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party will not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default or Landlord Default will waive such Default or Landlord Default at any other time or any other Default or Landlord Default.

38.9 Survival. All rights and obligations that by their nature are to be performed after the Expiration Date will survive the Expiration Date. Also, all the provisions of this Lease will be applicable to any dispute between the Parties arising from this Lease, whether prior to or following the Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Lease relating to dispute resolution or remedies will survive the Expiration Date.

38.10 Unavoidable Delay.

38.10.1 *Notice*. Performance by either Party under this Lease will not be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay will Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice is timely given under this Section 38.10.1, will commence on the date the condition causing the Unavoidable Delay commences. If Notice is not timely given under this Section 38.10.1, then the extension of time for the Unavoidable Delay will commence on the effective date of the Notice of the Unavoidable Delay under this Section 38.10.1 and will continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay will exercise its reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

38.10.2 *Assumption of Economic Risks*. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE, WILL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, WILL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES

EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

______________________________	______________________________
INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)	INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

39. **INTERPRETATION AND APPLICATION OF LEASE**.

39.1 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

39.2 Counterparts. This Lease may be signed in multiple counterpart originals, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

39.3 Mayoral Implementation. Landlord will implement this Lease through its Mayor. The Mayor is authorized by Landlord to issue approvals, consents, interpretations, and waivers and enter into amendments to this Lease on behalf of Landlord, to the extent that any such action will not materially or substantially change the Project, the use of the Premises, or the terms or conditions of this Lease. Nothing in this Section 39.3 will restrict the submission to Landlord's City Council of any matter within the Mayor's authority under this Section 39.3, in the Mayor's sole and absolute discretion, to obtain Landlord's City Council's express and specific authorization on such matter. The specific intent of this Section 39.3 is to authorize certain actions on behalf of the Mayor, but not to require that such actions be taken by the Mayor, without consideration by Landlord's City Council.

39.4 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts, or otherwise have been or will be given by Tenant or its agents, employees, or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 39.4 will entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant will immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to this Lease, the Premises, or the Project, prior to the date of such termination.

39.5 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

39.6 Survival of Lease. All provisions of this Lease will be applicable to any dispute between the Parties arising from this Lease, whether prior to or following the Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Lease relating to dispute resolution and limitations on damages or remedies will survive the Expiration Date.

39.7 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) will be personally liable to Tenant, or any successor in interest of Tenant, in the event of any Landlord Default or breach by Landlord under this Lease or for any amount of money that may be or become due to Tenant or any successor in interest of Tenant, on any obligations under the terms or conditions of this Lease.

39.8 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

39.9 Tax Consequences. Tenant acknowledges and agrees that it will bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease or a Transfer or Equity Interest Transfer.

39.10 Time of the Essence. As to the performance of any obligation under this Lease of which time is a component, the performance of such obligation within the time specified is of the essence of this Lease.

39.11 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Lease measured in days will be to consecutive calendar days, all references to time periods in this Lease measured in months will be to consecutive calendar months, all references to time periods in this Lease measured in years will be to consecutive calendar years, and all references to time periods in this Lease measured in Business Days will be to consecutive Business Days.

39.12 Entire Agreement. This Lease, the documents referenced in this Lease, and all documents made or entered into at the Close of Escrow under the Disposition Agreement contain all the agreements between the Parties regarding the Premises or Construction of the Project, and the Parties have no other agreements, oral or written, about the Premises, Construction of the Project, or Tenant's use or occupancy of, or any interest of Tenant in, the Premises or the Project.

39.13 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, will be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles.

39.14 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance will to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected by such invalidity. All remaining provisions of this Lease will be valid and be enforced to the fullest extent Law allows.

39.15 Principles of Interpretation. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words “include” and “including” will be construed to be followed by the words: “without limitation.” The word “will” has the same meaning as the word “must” and denotes a mandatory action. The word “may” denotes a permissive action. Each collective noun used in this Lease will be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord’s option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time.

39.16 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any approval by Landlord or Landlord reasonably imposes any conditions to any Landlord approval under this Lease, or where this Lease allows Tenant to take any action without Landlord’s prior approval or consent, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant will cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord’s consent or approval, for the duration of the matter or activity that is the subject to such conditions.

39.17 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by email or electronic means (including digital signatures); and (b) that signatures delivered by email or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

39.18 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference in this Lease and are described as follows:

EXHIBIT A	Definitions
EXHIBIT B	Premises Legal Description
EXHIBIT C	Additional Permitted Exceptions
EXHIBIT D	Notice Addresses
EXHIBIT E	Annual Report Form
EXHIBIT F	Insurance Requirements
EXHIBIT G	Landlord Standard Contract Provisions
EXHIBIT H	Wage Laws and Requirements
EXHIBIT I	Project Description

[*Remainder of page intentionally blank. Signatures on the immediately following page.*]

SIGNATURE PAGE
TO
GROUND LEASE
(10~~1~~7 Ash Street)

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: ________________________________
Christina Bibler
Director
Economic Development Department

Approved as to form on
___________________, 20___.

HEATHER FERBERT,
City Attorney

By: ____________________________
Kevin Reisch
Senior Deputy City Attorney

TENANT:

101 ASH VENTURE LP,
a California limited partnership

By: 101 Ash GP LLC, a California limited liability company, its Administrative General Partner

By: 101 Ash Housing LLC, a Delaware limited liability company, its Sole Member and Manager

By: ___________________________
Sydne Garchik
Authorized Signatory

EXHIBIT A
TO
GROUND LEASE
(10~~1~~7 Ash Street)

DEFINITIONS

1. Additional Rent. All amounts of money this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Residual Receipts Rent.

2. Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "Affiliated" will have the correlative meaning.

3. Affordable Rent. HCD Rent, unless the Project is financed with Tax Credits, then the ~~lesser~~greater of: (i) HCD Rent; or (ii) CTCAC Rent~~; provided, however, for a project financed with Tax Credits, if an Official Rent Determination confirms to City's satisfaction, in its sole discretion, that HCD Rent does not apply to the Project and only CTCAC Rent applies to the Project, then CTCAC Rent~~.

4. Affordable Units. The two hundred forty-~~seven~~nine (24~~7~~9) residential rental units on the Premises that will be subject to rent and income restrictions for a period of ~~not less than 55~~65 years, as specified in this Lease and the Lease Memorandum.

5. Annual Report. A report in substantially the form of **EXHIBIT E** to this Lease or in such other form as subsequently reasonably required by Landlord, together with a current rent roll for the Premises and all Income Certification Forms completed and signed by all Qualifying Households occupying an Affordable Unit during the period covered by the report.

6. Annual Revenue Statement. An annual statement disclosing all of Tenant's income from and expenses of operation of the Premises during the immediately preceding Lease Year, setting forth in reasonable detail the Gross Revenues (including any deductions or offsets applied in determining Gross Revenues) of Tenant from the Premises during the immediately preceding Lease Year, and disclosing the calculation of Residual Receipts attributable to the immediately preceding Lease Year.

7. Application. Any application, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction this Lease allows, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Tenant may from time to time reasonably request for such Construction; or (b) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease.

8. Appraiser. A real estate appraiser who holds a valid real estate appraisal license or certification issued by the California Bureau of Real Estate Appraisers or any successor State agency or department performing the same or similar functions.

9. Approvals. All licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as will be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the use, occupancy, maintenance, or operation of the Premises in accordance with this Lease.

10. Area Median Income. The then current area median income for the County of San Diego, California, Metropolitan Statistical Area, as determined and published by HCD in the California Code of Regulations or if no longer determined and published by HCD, then as established and amended from time to time under Section 8 of the United States Housing Act of 1937.

11. Available. When an Affordable Unit is held available for occupancy by a Qualifying Household. An Affordable Unit will be considered held available for occupancy by a Qualifying Household if Tenant is exercising bona fide good faith efforts to let or relet the Affordable Unit to an appropriate Qualifying Household and the Affordable Unit remains unoccupied until the Affordable Unit is occupied or reoccupied by a Qualifying Household appropriate to the income category of the Affordable Unit.

12. Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

13. Bankruptcy Sale. A sale of any property, or any interest in any property, under Title 11 United States Code section 363 or otherwise in any Bankruptcy Proceeding affecting the owner of such property.

14. Builder. A State licensed general contractor experienced in the Construction and installation of improvements like the Project.

15. Building. All improvements located or to be located on the Premises from time to time.

16. Building Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes).

17. Business Day. Any weekday on which the City is open to conduct regular City functions with City personnel.

18. Capital Carve Out. Any of the following: a Permitted Transfer; a Transfer effectuated solely for estate planning purposes; a Transfer involving solely the assignment of a limited partnership interest in Tenant by one of Tenant's limited partners; the removal of a general partner of Tenant by a limited partner of Tenant in accordance with the terms of the Tenant's limited partnership agreement; or the Refinancing of any indebtedness secured by the Leasehold Estate or associated improvements, so long as and to the extent that the amount of indebtedness is not increased (other than customary costs associated with the Refinancing).

19. Capital Improvements. Any Restoration or addition of any Building, Building Equipment, or exterior finish on any Building.

20. Capital Replacement Account. An interest-bearing account established by Tenant with an Institutional Lender to be held, administered, and disbursed by the Institutional Lender solely for making Capital Improvements to the Premises.

21. Capital Event. Any of the following events, except for a Capital Carve Out, occurring after the Project Completion Date: (a) a full or partial assignment of the Leasehold Estate or Tenant's interests, rights, or obligations under this Lease; (b) a "change in ownership" of real property with respect to the Leasehold Estate, as defined and described in California Revenue and Taxation Code sections 60 through 64; (c) the sale or transfer of any interest in Tenant to a Third Person; (d) a recapitalization of Tenant that results in a change of Control of Tenant; (e) the disposition of any improvements on the Premises to a Third Person; or (f) the Refinancing of any indebtedness secured by the Leasehold Estate or associated improvements.

22. Capital Event Payment. An amount payable by Tenant to Landlord on the occurrence of each Capital Event, equal to two percent (2%) of the ~~Net Transfer Proceeds or two percent (2%) of~~Gross Consideration or the Net Refinancing Proceeds, as applicable, received by Tenant from the Capital Event. Capital Event Payments under this Lease are separate from and not applicable to repayment of the City Note obligation.

23. Capital Event Statement. A statement detailing all financial information used by Tenant in calculating the amount of any Capital Event Payment owed under this Lease after the consummation of a Capital Event, including the calculation of the ~~Net Transfer Proceeds or the Net Refinancing Proceeds, as applicable,~~Gross Consideration pertaining to the Capital Event.

24. Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen, or unforeseen, affecting the Premises, whether or not insured or insurable.

25. Casualty Termination. Termination of this Lease after a Substantial Casualty, when and as this Lease expressly allows such a termination.

26. Certificate of Occupancy. A certificate of occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as may be amended from time to time, and as adopted and amended by Landlord (under its Governmental Authority), from time to time.

27. Certifying Party. Defined in Section 37.

28. City. The City of San Diego, a California municipal corporation.

29. City Note. The Promissory Note Secured by Deed of Trust, in the form of **ATTACHMENT 5** to the Disposition Agreement, signed and delivered by Tenant (as the "Borrower") to be effective upon the Close of Escrow under the Disposition Agreement.

30. City Attorney. City Attorney of the City of San Diego, California.

31. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), and any judgment.

32. Commencement Date. Defined in the preamble to this Lease and corresponding to the date of the Close of Escrow under the Disposition Agreement.

33. Commercial Space. A minimum of 4,000 square feet of commercial space to be Constructed and operated on the first floor of the Premises as part of the Project.

34. Condemnation. Any of the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

35. Condemnation Award. All award(s) paid or payable (whether or not in a separate award or paid through an exchange of real or personal property of value) to either Party or a Lender, after the Commencement Date, because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in any Condemnation proceeding; (c) any interest on such award; and (d) all other amounts payable on account of such Condemnation, including any prepayment premium under any Security Instrument.

36. Condemnation Effective Date. For any Condemnation, the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation.

37. Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including new construction.

38. Construction Commencement Conditions. The following conditions precedent to each Major Construction:

38.1 *Approvals*. Tenant gives Landlord copies of all Approvals required by Law for Tenant to start and complete such Major Construction, including all Approvals (building permits, grading permits, demolition permits, etc.) for any associated, grading, excavation, or demolition, prior to commencement of any part of such Major Construction.

38.2 *Assignment of Construction Documents*. Tenant conditionally assigns the Construction Documents and the Plans to Landlord such that after an Event of Default by Tenant, Landlord may exercise all rights of Tenant under and to such documents, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. Such assignment will include the benefit of all payments made under the Construction Documents, including payments made before the date of such assignment. Landlord's exercise of its rights under the assigned Construction Documents and Plans will be in Landlord's sole and absolute discretion;

38.3 *Character of Major Construction*. Landlord determines, in its reasonable discretion, that such Major Construction, when completed, will not change the use of or reduce the value or utility of the Premises in comparison to the Project description contained in **EXHIBIT I** to this Lease;

38.4 *Construction Documents*. Tenant enters into and gives Landlord copies of all Construction Documents;

38.5 *Construction Surety*. Tenant gives Landlord the Construction Surety for the Major Construction;

38.6 *Funds*. Except in the case of a Lower-Risk Restoration, Tenant gives Landlord written evidence reasonably satisfactory to Landlord of the commitment of funds by or to Tenant to pay all the cost of such Major Construction, as estimated by Tenant's Architect;

38.7 *Insurance*. Tenant delivers to Landlord written evidence of all such insurance coverage this Lease requires for such Major Construction;

38.8 *Lender's Approval of Plans*. Tenant gives Landlord evidence that all Permitted Leasehold Lenders, to the extent required by their respective Security Instruments, have approved the Plans for the Major Construction;

38.9 *Performance by Tenant's Architect and Builder*. Tenant provides Landlord with agreements (subject to the rights of Permitted Leasehold Lenders) from Tenant's Architect and from the Builder to continue to perform for Landlord (if Landlord elects under Section 37.2) all obligations of Tenant's Architect or Builder, as applicable, under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect or Builder is paid for its services in accordance with such contract; and

38.10 *Plans*. Landlord receives and approves the Plans for the Major Construction under Section 10.4.

39. <u>Construction Commencement Date</u>. For each Major Construction, the first date on which Tenant has: (a) satisfied the Construction Commencement Conditions; and (b) either started the physical work of any grading, any demolition or removal of any existing improvements, or any excavation work, or otherwise started the physical work of the Major Construction.

40. <u>Construction Completion Date</u>. For each Major Construction, the first date when all the following events have occurred:

40.1 *Architect's Certificate*. Tenant gives Landlord a certificate from Tenant's Architect certifying that: (a) such Major Construction is substantially complete in accordance with the Plans for such Major Construction, except Tenant Improvements and Construction of an insubstantial nature that, if not completed, will not delay issuance of a temporary Certificate of Occupancy (or equivalent approval) from the Landlord for the Major Construction or the applicable portion thereof or materially interfere with use of the Major Construction as this Lease contemplates; and (b) Tenant attaches to the certificate copies of all Approvals necessary for such Major Construction issued to Tenant;

40.2 *Certificates of Occupancy*. Tenant gives Landlord a copy of the temporary Certificate of Occupancy (or equivalent approval) from Landlord (under its Governmental Authority) for such Major Construction (except Tenant Improvements), to the extent Law requires such a certificate to use or occupy any portion of the Premises following such Major Construction;

40.3 *Survey*. Tenant gives Landlord a survey of the Premises showing the Major Construction as built, certified to Landlord by a licensed surveyor; and

40.4 *Notice of Completion*. Tenant causes a Notice of Completion for such Major Construction to be recorded with the County Recorder.

41. Construction Contract. A current executory agreement between Tenant and a Builder for any Major Construction for a guaranteed maximum price or a stipulated price expressly set forth in such contract, with a commercially reasonable retention amount not to be paid to the Builder until the final payment is due to the Builder, and providing that such final payment will not be paid to the Builder until the Construction Completion Date for the Major Construction to which such contract relates and such contract will comply with all the terms and conditions of this Lease. Each Construction Contract will state that: (a) the Builder acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; (b) Tenant will conditionally assign each Construction Contract to Landlord, such assignment to be effective upon an Event of Default, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease; and (c) the Builder agrees to continue to perform for Landlord all obligations of Builder under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Builder is paid for its services, in accordance with such contract.

42. Construction Documents. All the following documents for each Major Construction, as Tenant may Modify them from time to time, but not in violation of this Lease:

42.1 *Architectural Contract*. A contract between Tenant and Tenant's Architect, relating to Tenant's Architect's preparation of the Plans;

42.2 *Construction Contract*. A Construction Contract between a Builder and Tenant, providing for the Builder's performance of the Major Construction;

42.3 *Other Contracts and Permits*. All other agreements and Approvals in place, as of the Construction Commencement Date for the Major Construction, to which Tenant or anyone claiming through Tenant is a party and relating to the Major Construction.

43. Construction Financing. One or more loans Tenant obtains from one or more Institutional Lenders, the proceeds of which are used and applied solely to pay the reasonable costs of obtaining such loan(s) and the direct hard and soft costs of a single Major Construction or to refinance the outstanding amount of money owed under such a previously obtained loan. For all Major Construction, the applicable Construction Financing, when combined with other funds of Tenant

from sources other than debt secured by the Leasehold Estate that are committed to pay for the costs of such Major Construction, must be sufficient to pay one hundred percent (100%) of the aggregate costs of such Major Construction (together with financing costs) including a contingency amount equal to at least three percent (3%) of the then unexpended actual aggregate costs of such Major Construction.

44. Construction Surety. Payment and performance bonds guaranteeing the performance of the Construction Contract by the Builder and that the Construction and installation of the Major Construction (excluding the installation of FF&E) will be pursued and completed in accordance with the Plans for such Major Construction by the Builder or, on the Builder's default, the surety or guarantor, under this Lease. Such bonds will be in form and substance reasonably acceptable to Landlord, for an amount of money not less than one hundred percent (100%) of the Construction Contract guaranteed maximum price or stipulated price (as approved by the Senior Permitted Leasehold Lender), for the benefit of Tenant, with Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in Code of Civil Procedure section 995.120, with an underwriting limitation, under Insurance Code section 12090, greater than the contract amount of the bond. Each such bond will by its express terms, remain in full force and effect, until the Construction Completion Date for the Major Construction. If the provider of any bond regarding any Major Construction becomes the subject of any Bankruptcy Proceeding, Tenant will promptly provide a substitute bond to Landlord regarding such Major Construction. The Construction Surety will be in addition to any public improvement security required by any Government regarding the Major Construction.

45. Contest. Defined in Section 20.1.

46. Contest Security. Cash in an amount equal to one hundred ten percent (110%) of the amount of money being contested.

47. Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

48. Controlling and Controlled. Exercising or having Control.

49. Cost Certification Statement. A statement detailing all financial information used by Tenant in calculating the total amount of costs attributable to Tenant's Construction of the Project.

50. County. The County of San Diego, California.

51. County Recorder. The Recorder of or for the County.

52. CPI. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties will reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

53. CPI Adjustment Factor. As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Commencement Date.

54. CTCAC. The California Tax Credit Allocation Committee or its successor in function.

55. CTCAC AMI. The median gross income for San Diego County as determined by the Secretary of the Treasury of the United States for purposes of Section 42 of the Internal Revenue Code of 1986 and regulations published from time to time by CTCAC.

56. CTCAC Rent. As applicable:

(a) For each Affordable Unit occupied by a Low Income 80% Household, maximum monthly rent for an individual or household with a household income equal to or less than eighty percent (80%) of the then current CTCAC AMI, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published by from time to time by CTCAC.

(b) For each Affordable Unit occupied by a Low Income 60% Household, maximum monthly rent for an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC AMI, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published by from time to time by CTCAC.

(c) For each Affordable Unit occupied by a Very Low Income Household, maximum monthly rent for an individual or household with a household income equal to or less than fifty percent (50%) of the then current CTCAC AMI, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published by from time to time by CTCAC.

(d) For each Affordable Unit occupied by an Extremely Low Income Household, maximum monthly rent for an individual or household with a household income equal to or less than thirty percent (30%) of the then current CTCAC AMI, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published by from time to time by CTCAC.

57. Debt Service. Payments made in a calendar quarter towards obligations secured by Permitted Leasehold Security Instruments.

58. Default. Any Monetary Default, Project Construction Default, or Non-Monetary Default.

59. Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

60. Deferred Developer Fee. The fee payable to Tenant from Project Revenue obtained by Tenant for Tenant's services related to the initial development of the Project. The amount of this fee will be reflected in the Project Budget (**ATTACHMENT 14** to the Disposition Agreement), as may be modified from time to time before the Commencement Date.

61. Depository. An Institutional Lender designated by the Senior Permitted Leasehold Lender or, if no Permitted Leasehold Lender exists, then by Landlord. A Permitted Leasehold Lender that is an Institutional Lender may designate itself as Depository.

62. Development Criteria. On or after the Construction Completion Date for each Major Construction, such Major Construction will: (a) consist solely of Buildings that are, collectively, completely self-sufficient and erected wholly within the boundary lines of the Premises; (b) be constructed to a standard of quality (including Structure, Building Equipment, FF&E, finishes, materials, circulation, and all other substantial characteristics) that, considered in the aggregate, is substantially equivalent to similar projects in the County; and (c) consist solely of Buildings designed to be used in their entirety for the Permitted Use.

63. Disposition Agreement. Defined in Section 2.

64. Dwelling Units. Collectively, the Affordable Units and the Manager's Units.

65. Environmental Condition. Any of the following events relating to the Premises: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

66. Environmental Claim. Any Claim directly or indirectly relating to or arising from any actual or alleged violation of any Environmental Law or from a Hazardous Substance Discharge.

67. Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

68. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

69. Equity Interest Transfer. Any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Tenant (even though Tenant itself is not the transferor); or (b) any merger, consolidation, sale, lease, or the like with respect to Tenant or a series of such mergers, consolidations, sales, leases, or the like made over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in or of all or substantially all the assets of Tenant.

70. Estoppel Certificate. A written certification of each of the following: (a) the nature of the Certifying Party's interest in the Premises and any Transfers or Security Instruments of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) that this Lease is unmodified and in full force and effect, or, if there have been Modifications, that this Lease is in full force and effect, as Modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, defaults, or failures to perform under any provision of this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, defaults, or failures claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

71. Event of Default. Defined in Section 33.1.

72. Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies for an Event of Default, or otherwise.

73. Extremely Low Income Household. An individual or household with a household income equal to or less than the ~~lesser~~greater of: (a) thirty percent (30%) of the then current Area Median Income adjusted for family size, as published from time to time by HCD; or (b) thirty percent (30%) of the then current CTCAC AMI adjusted for family size, as published from time to time by CTCAC.

74. Federal. Relating to or under the authority of the federal government of the United States of America.

75. Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

76. Fee Lender. Any Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument will not be deemed a Fee Lender.

77. Fee Security Instrument. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Fee Lenders) and containing no provisions (and serving no document containing any provisions) inconsistent with the Statement of Priorities; (c) otherwise complying with this Lease; (d) a copy of which (recorded or unrecorded) is promptly, after being signed, delivered to Tenant and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by a Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

78. FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) used in operating the Premises for the Permitted Use that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, movable equipment, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

78.1 Financial Reporting Statements. Collectively, Annual Revenue Statements, Capital Event Statements, and Cost Certification Statements.

79. Foreclosure Event. Any transfer of title to all or any portion of the Fee Estate or the Leasehold Estate through any: (a) judicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or

remedies under any Security Instrument; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding and any Bankruptcy Sale), in each case (clauses "(a)" through "(e)") whether the transferee is a Lender, a Person claiming through a Lender, or a Third Person.

80. GAAP. Generally accepted accounting principles.

81. Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including Landlord (under its Governmental Authority), any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions thereof having or claiming jurisdiction over the Premises or any activities on or at the Premises.

82. Government Loan. Any loan or advance of funds (excluding the indebtedness evidenced by this Note) disbursed or credited to Tenant by any Government lender to finance any hard or soft costs of the Project, where the loan or advance will be repaid by Tenant to the Government lender from Residual Receipts.

83. Governmental Authority. City's pursuit of actions under its police power land use regulatory authority, other police powers, or other authority under Law.

84. Gross Consideration. The sum of all of the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of other property transferred, or to be transferred; (c) the outstanding amount of any liability assumed, or to be assumed, by the transferee or to which the property interest is subject immediately before and after the Transfer or Equity Interest Transfer; or (d) in the case of a Transfer or Equity Interest Transfer without any of the previously described forms of consideration, the fair market value of the Equity Interest or estate or interest in the property transferred. Any fair market value determination will be as of the date of the subject Transfer or Equity Interest Transfer.

85. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or form of energy from whatever source; provided, however, Hazardous Substance will not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law. Hazardous Substances will not include any reasonably necessary and customary product used to construct the Project in compliance with all applicable Law.

86. Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Premises, or relating to transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under, or in the Premises whether or not caused by a Party or occurring before or after the Commencement Date.

87. HCD. The California Department of Housing and Community Development.

88. HCD Rent. As applicable:

(a) For each Affordable Unit occupied by a Low Income 80% Household, gross monthly rent that does not exceed thirty percent (30%) of the gross income of the household, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(b) For each Affordable Unit occupied by a Low Income 60% Household, gross monthly rent that does not exceed thirty percent (30%) times sixty percent (60%) of Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(c) For each Affordable Unit occupied by a Very Low Income Household, gross monthly rent that does not exceed “affordable rent,” as defined in California Health and Safety Code section 50053(b)(1)(C), for “very low income households,” as defined in California Health and Safety Code section 50105, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(d) For each Affordable Unit occupied by an Extremely Low Income Household, gross monthly rent that does not exceed “affordable rent,” as defined in California Health and Safety Code section 50053(b)(1)(B), for “extremely low income households,” as defined in California Health and Safety Code section 50106, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

89. Housing Commission. The San Diego Housing Commission, a public agency.

90. Immaterial Loss. A Casualty or Condemnation resulting in a Loss of fifty thousand dollars ($50,000) times the CPI Adjustment Factor or less.

91. Income Certification Form. A written certification of a household’s annual and adjusted income under Title 24 Code of Federal Regulations sections 5.609-5.617 consistent with HUD Handbook 4350.3 REV-1, Chapter 5, Sections 1-3, in a form reasonably acceptable to Landlord.

92. Indemnify. Where this Lease states that any Indemnitor will “Indemnify” any Indemnitee from, against, or for a particular Claim, the Indemnitor will indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise), including all loss, cost, claims, liability, penalties, judgments, damages, or other injury, detriment, or expense (including Legal Costs, interest, or penalties) the Indemnitee suffers or incurs: (a) from, as a result, or on account of the Claim; or (b) in enforcing the Indemnitor’s indemnity obligation regarding the Claim. “Indemnified” and “Indemnification” will have the correlative meaning.

93. Indemnitee. Any Person entitled to be Indemnified under this Lease.

94. Indemnitor. A Person agreeing to Indemnify any other Person under this Lease.

95. Institutional Lender. Any of the following that is not a Prohibited Transferee: (a) a State or Federal bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) savings bank (State or Federal); (f) pension, welfare or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Fortune 500 company; (j) a subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 94.

96. Landlord. Initially, means the Landlord named in the Preamble of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor (including a Fee Lender, or anyone acting for a Fee Lender, that has acquired and then disposed of the Fee Estate) will be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

97. Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 33.11: (a) any material breach by Landlord of its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

98. Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

99. Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

100. Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any taxes, or otherwise relating to this Lease or any Party's rights, obligations, or remedies under this Lease, any Transfer, or any Equity Interest Transfer, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

101. Lease Impairment. Any of the following, whether expressly provided for in this Lease or resulting from any future agreement between the Parties or from the unilateral action of either Party: (a) a Modification of this Lease, in whole or in part; (b) subordination of this Lease to any Fee Security Instrument or other encumbrance on the Fee Estate; (c) making or material Modification of any encumbrance affecting the Fee Estate that is Senior in recording priority to

this Lease; (d) Tenant's consent (or failure to object) to: (i) any of the foregoing; (ii) any Bankruptcy Sale of the Fee Estate; (iii) any other matter of a material nature requiring Tenant's consent under this Lease; (e) delivery of any Notice that impairs or may impair, or purports to limit the exercise of, any Permitted Leasehold Lender's rights and remedies under its Permitted Leasehold Security Instrument or this Lease; or (f) Tenant's exercise of any right to treat this Lease as terminated under 11 U.S.C. § 365(h).

102. Lease Memorandum. A memorandum of this Lease in the form of **ATTACHMENT 3** to the Disposition Agreement that will be recorded with the County Recorder against the Leasehold Estate upon the Close of Escrow under the Disposition Agreement.

103. Lease Year. Each of: (a) the period from the Commencement Date through December 31 of the calendar year during which the Commencement Date occurs; and (b) every subsequent period of twelve (12) calendar months beginning on January 1 and ending on the immediately following December 31 during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," "Lease Year 3," etc.

104. Leasehold Estate. Tenant's leasehold estate in the Premises, and all of Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.

105. Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate, or other matter with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Lease or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs will include the salaries, benefits, and costs of attorneys employed in the City Attorney's office who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord for any matter.

106. Lender. A holder of any Security Instrument and its successors and assigns.

107. Lender Protections. For any Lender, all rights, protections, and privileges of such Lender under this Lease, if any, including: (a) any right to receive Notices or to cure Defaults (including, in the case of a Permitted Leasehold Lender, all Permitted Leasehold Lender's Cure Rights); (b) in the case of a Permitted Leasehold Lender, any requirement for Permitted Leasehold Lender's Consent and all provisions for a New Lease; and (c) all other rights, remedies, protections, privileges, and powers of such Lender and anyone claiming through or under such Lender, including (in the case of any Permitted Leasehold Lender) any New Tenant and any Post-Foreclosure Tenant.

108. Living Wage Requirements. Defined in **EXHIBIT H**, Section 2.

109. Loss. Any Casualty or Condemnation.

110. Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

111. Lower-Risk Restoration. Any Restoration after an Immaterial Loss or meeting all the following conditions: (a) Restoration Funds equal or exceed the reasonably estimated cost of Restoration; and (b) such Restoration complies with the Development Criteria and contemplates Restoration generally comparable (in size, structure, configuration, use, and quality) to the Premises as existing before the Loss, to the extent Law permits.

112. Low Income 60% Household. An individual or household with a household income equal to or less than the ~~lesser~~greater of: (a) sixty percent (60%) of the then current Area Median Income adjusted for family size as published from time to time by HCD; or (b) sixty percent (60%) of the then current CTCAC AMI adjusted for family size as published from time to time by CTCAC.

113. Low Income 80% Household. An individual or household with a household income equal to or less than the ~~lesser~~greater of: (a) eighty percent (80%) of the then current Area Median Income adjusted for family size as published from time to time by HCD; or (b) eighty percent (80%) of the then current CTCAC AMI adjusted for family size as published from time to time by CTCAC.

114. Maintenance Deficiency. Defined in Section 9.2.

115. Maintenance Standard. Defined in Section 9.1.

116. Major Construction. Tenant's first Construction undertaken under this Lease consisting of the original Construction of the entire Project or any other Construction (including any coordinated series of related projects) whose estimated cost exceeds five hundred thousand dollars ($500,000) times the CPI Adjustment Factor.

117. Major Construction Period. The period beginning on the Construction Commencement Date for a Major Construction and ending on the Construction Completion Date for such Major Construction.

118. Management Agent. As designated by Tenant from time to time, either Tenant or another Person with experience managing multi-family affordable rental projects substantially similar to the Premises and that is, at the time, managing other financially self-supporting multi-family affordable rental projects substantially similar to the Premises.

119. Manager's Units. The three (3) residential rental units on the Premises, which will not be subject to recorded rent or income restrictions and will be reserved exclusively for use and occupancy by the on-site managers employed by Tenant or the Management Agent, as applicable.

120. Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considered: (a) as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens

of this Lease, the remaining Term, all Permitted Exceptions, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all of the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value will be determined as if the Term were to continue until the Scheduled Expiration Date.

121. Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

122. Minimum Balance. Defined in Section 17.2.

123. Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

124. Modify. Agree to, cause, make, or permit any Modification.

125. Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a Third Person, subject in all applicable cases to Tenant's rights under Section 20; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage or Construction Surety, when and as this Lease requires; or (d) comply with any obligation regarding Prohibited Liens under Section 14.

126. Net Refinancing Proceeds. Any of the following: (1) the gross amount of the proceeds of each loan that is or will be secured by a Permitted Leasehold Security Instrument exceeding the amount of the proceeds of such loan used to pay off all or a portion of principal or interest under a pre-existing loan or loans (if any) secured by a Permitted Leasehold Security Instrument, less the amount of any reasonable and customary fees and costs associated with obtaining the new loan that are actually paid by Tenant and not rebated or refunded to Tenant, the aggregate amount of such fees and costs not to exceed three percent (3%) of the gross new loan proceeds; or (2) the monetary value to Tenant of any loan extension, modification, amendment, or equivalent regarding a pre-existing loan secured by a Permitted Leasehold Security Instrument exceeding the original principal amount of such pre-existing loan, less the amount of any reasonable and customary fees and costs associated with the transaction that are actually paid by Tenant and not rebated or refunded to Tenant.

~~127. Net Transfer Proceeds. With respect to a Transfer, the Gross Consideration for any Transfer, less the amount of the Gross Consideration paid by the transferring Tenant for acquisition of the Leasehold Estate, less the costs of any Capital Improvements made by the transferring Tenant, and less any normal and customary transaction costs, such as brokerage commissions, title insurance, or escrow fees actually paid by Tenant and not rebated to Tenant, the aggregate amount~~

~~of such transaction costs not to exceed three percent (3%) of the Gross Consideration for the Transfer.~~

~~128.~~127. New Lease. A new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term, through and including the Scheduled Expiration Date, considered as if this Lease was not terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly states. Any New Lease will include all rights and privileges of Tenant under this Lease, but will not include any Tenant-Specific Obligations.

~~129.~~128. New Lease Delivery Date. The first date on which both New Tenant and Landlord have entered into (or are deemed to have entered into) a New Lease.

~~130.~~129. New Lease Option Period. If any Expiration Date occurs (except because of: (a) the Scheduled Expiration Date; (b) a Casualty Termination; or (c) a Substantial Condemnation), a period beginning on such Expiration Date and ending three (3) months after Landlord Notifies all Permitted Leasehold Lender(s) of such Expiration Date. The New Lease Option Period will be tolled and extended: (i) during any Bankruptcy Proceeding affecting Landlord or Tenant to the extent such Bankruptcy Proceeding prevents exercise of the New Lease option or entry into the New Lease by the Permitted Leasehold Lender entitled to a New Lease at the time, under Section 27; (ii) during any period when the right of the Permitted Leasehold Lender entitled to a New Lease at the time, under Section 27, to require Landlord to enter into a New Lease is otherwise materially restricted or impaired, other than because of such Permitted Leasehold Lender's act or omission; and (iii) for thirty (30) days after the conclusion of an event described in either clause "(i)" or "(ii)" of this Section 129. All Permitted Leasehold Lenders, considered as a group, will have only a single New Lease Option Period. No individual Permitted Leasehold Lender will have a separate or sequential New Lease Option Period.

~~131.~~130. New Tenant. Either: (a) the Permitted Leasehold Lender that is entitled to and requests (or obtains) a New Lease; or (b) such other Tenant under a New Lease as such Permitted Leasehold Lender will designate by Notice to Landlord, which successor Tenant will be subject to Landlord's prior written consent, in Landlord's reasonable discretion. Any New Tenant will have all the same rights and obligations of Tenant under this Lease, subject to the definition of a New Lease, the occurrence of the New Lease Delivery Date, and the provisions of Section 27.

~~132.~~131. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default or a Project Construction Default: (a) any material breach by Tenant of its obligations under this Lease; (b) Tenant's failure to comply with any material restriction or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a material breach of this Lease by Tenant.

~~133.~~132. Notice. Each approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices will be in writing and be delivered and become effective only in accordance with Section 35.

~~134.~~133. Notice of Completion. The notice described in and ascribed the same name in California Civil Code section 8182.

~~135.~~134. Notice of Default. Any Notice claiming or giving Notice of a Default or alleged Default. Any such Notice of Default is not required to specify any cure period.

~~136.~~135. Notify. Give a Notice.

~~137.~~136. Operating Expenses. Actual, reasonable, and customary (for comparable affordable rental housing developments in the County of San Diego, California) costs, fees, and expenses directly incurred, paid, and attributable to the operation, maintenance, or management of the Premises in a calendar quarter, including: (1) the cost of utilities supplied to and used for the Premises and not paid by Premises subtenants, including trash removal, electricity, water, sewer and gas; (2) the cost of all insurance required for the Premises to satisfy the insurance requirements imposed by the Senior Permitted Leasehold Lender or this Lease; (3) Real Estate Taxes applicable to the Premises; (4) maintenance and repair expenses for services, material and labor, including painting, cleaning, pest control, gardening, rubbish removal, and graffiti removal; (5) charges for public services such as sewer charges or license and permit fees; (6) advertising, marketing, and promotion costs; (7) leasing commissions; (8) accounting, audit, and legal expenses incurred in operation of the Premises; (9) the allocable share of expenses of the Premises for maintenance of roads and use of shared facilities; (10) salaries, wages, rent payments or allocation, and other compensation due and payable to the employees or agents of Tenant employed on-site in connection with the maintenance, administration, or operation of the Premises, along with all withholding taxes, insurance premiums, social security payments, and other payroll taxes or payments required in connection with such employees; (11) a monthly fee payable to the Management Agent in an amount not to exceed $217,200 annually (or such other amount reasonably determined by the Parties), subject to annual adjustments equal to the greater of 3% or the annual increase in CPI; (12) costs of security services supplied to the Premises; (13) the cost of social support services and programs offered and available to occupants of Affordable Units provided by service providers approved by Landlord at costs approved by Landlord; (14) the Affordable Unit monitoring fees paid in accordance with the Monitoring Agreement (as defined in the Disposition Agreement); and (15) all other fees and expenses authorized in the annual budget for the Premises approved by Landlord (exclusive of Debt Service and Reserve Deposits). Operating Expenses will not include the following: (i) repairs or replacements paid out of insurance proceeds received by Tenant; (ii) fees, costs, or expenses of refinancing of any loan; (iii) principal or interest payments on the B-Bond (shown in the Project Budget that is **ATTACHMENT 14** to the Disposition Agreement) after the fifteenth (15th) full Lease Year following issuance of the first Certificate of Occupancy for the Project; (iv) depreciation of buildings or other similar non-cash items of expense; or (iv) any legal fees or other expenses, fees, or costs incurred by Tenant in connection with obtaining this Lease or in obtaining any loan. To the extent that any expense is paid out of reserves maintained by the Senior Permitted Leasehold Lender, the Capital Replacement Account, or the Operating Reserve, such expense will not be part of "Operating Expenses." To the extent that all or any portion of the Premises is subleased by Tenant and the subtenant, sublessee, or occupant pays any items described as Operating Expenses in this Section 136, then such items that are paid by such subtenant, sublessee, or occupant will not be Operating Expenses. No expense item will be counted twice in determining Operating Expenses, regardless of whether or not such expense item is applicable to two or more categories of expenses described in this Section 136. Tenant is required to pay Operating Expenses for materials or services upon receipt of such materials or services and, to the extent services are not billed on a monthly basis, the bill for such services will be prorated over the period during which such services were received. Real Estate Taxes and insurance premiums will be prorated on a monthly basis based on the latest information available. If the actual cost of Real Estate Taxes or insurance premiums is different from the information used to make such prorations, then an adjustment in the next month's Operating Expenses will be made based upon the correct information. Under no circumstances will Operating Expenses include expenses not directly related to the Premises' operations, including depreciation, amortization, or accrued principal or interest expense on deferred payment debt. Operating Expenses will be determined on a cash basis.

~~138.~~137. Operating Reserve. An interest-bearing account established by Tenant with an Institutional Lender and maintained by Tenant to fund any shortfalls between Revenue and the actual operating costs of the Premises.

~~139.~~138. Parties. Collectively, Landlord and Tenant.

~~140.~~139. Partnership Fees. Collectively, (i) combined annual asset management and partnership management fees payable to Tenant's general partner, not to exceed $16,250 annually escalated at 3.0% annually, and (ii) an annual investor services fee payable to the Tax Credit Investor or any affiliate of the Tax Credit Investor that is a limited partner in Tenant, not to exceed $16,250 annually escalated at 3.0% annually.

~~141.~~140. Party. Individually, Landlord or Tenant, as applicable.

~~142.~~141. Performance Schedule. The schedule for the performance of certain actions by Landlord or Tenant set forth in **ATTACHMENT 13** to the Disposition Agreement.

~~143.~~142. Permitted Exceptions. All the matters identified in **EXHIBIT C**.

~~144.~~143. Permitted Leasehold Lender. A Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord will not be bound by the assignment or change of address, unless and until the affected Permitted Leasehold Lender has given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be deemed a Permitted Leasehold Lender or affect Landlord in any way. (Only the "lead" Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Lender may be replaced at any time upon Notice from that Lender, but only the designated lead Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender.).

~~145.~~144. Permitted Leasehold Lender's Consent. Any matter expressly referring to "Permitted Leasehold Lender's Consent" means Permitted Leasehold Lender's prior (or, at Permitted Leasehold Lender's option, simultaneous or subsequent) written consent to such matter. If this Lease requires Permitted Leasehold Lender's Consent for a particular matter, then Permitted Leasehold Lender may only reasonably withhold consent; provided, however, Permitted

Leasehold Lender will be entitled to withhold its consent in its sole discretion, if the matter: (i) materially increases or decreases Landlord's obligations under this Lease; (ii) materially increases or decreases Tenant's obligations under this Lease; (iii) eliminates or modifies any Lender Protections; or (iv) will result in a termination of this Lease. When no Permitted Leasehold Lender exists, references to Permitted Leasehold Lender's Consent will be disregarded. Nothing in this definition will require Landlord to obtain (or to confirm that Tenant obtained) any consent from any Permitted Leasehold Lender, except where this Lease expressly requires "Permitted Leasehold Lender's Consent."

~~146.~~145. Permitted Leasehold Lender's Cure. Subject to and in accordance with this Lease, any Permitted Leasehold Lender's: (a) actions taken to cure a Default, whether or not successful; or (b) cure of a Default.

~~147.~~146. Permitted Leasehold Lender's Cure Rights. All rights of Permitted Leasehold Lender(s) under this Lease to effectuate any Permitted Leasehold Lender's Cure.

~~148.~~147. Permitted Leasehold Security Instrument. Any Security Instrument: (a) encumbering the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Permitted Leasehold Lenders) and containing no provisions (and secures no other document containing any provisions) inconsistent with the Statement of Priorities; and (c) held by a Permitted Leasehold Lender that is an Institutional Lender. Tenant will provide Landlord with a copy of each Permitted Leasehold Security Instrument (recorded or unrecorded) promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and notice address.

~~149.~~148. Permitted Transfer. Each of the following: (a) a Transfer where Sydne Garchik, Cathy Coler, or Kelly Moden continuously has Control over the transferee, the transferee is not a Prohibited Transferee, and Tenant is not released from liability under this Agreement following the Transfer; provided that, if the Control over a transferee held or exercised by any of the Persons identified in this clause "(a)" of this Section 148 ends, that event will be considered a Transfer requiring Landlord's approval in Landlord's sole and absolute discretion; (b) a Transfer only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (c) a Transfer involving the assignment of up to a Ninety-Nine and Ninety-Nine Hundredths Percent (99.99%) limited interest in Tenant to a Tax Credit Investor partner in connection with a tax credit syndication; (d) a Transfer by the Tax Credit Investor partner of Tenant of such Tax Credit Investor partner's interest to an entity Controlled by the Tax Credit Investor partner or its Affiliate, and any Transfers of equity interests within Tax Credit Investor, so long as Tax Credit Investor remains controlled by R4 Capital LLC or its Affiliate; (e) any conveyance for Permitted Leasehold Financing purposes, including the grant of a deed of trust to secure the funds necessary for completion of the development of the Project; (f) any Transfer directly resulting from the foreclosure of a deed of trust permitted under clause (e), above; (g) the removal of ~~the~~a general partner or special limited partner of Tenant by the Tax Credit Investor in accordance with the terms of Tenant's limited partnership agreement and the replacement of such removed general partner or special limited partner, as applicable, with a Person approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, and provided that no Landlord approval shall be required to replace such removed partner with an Affiliate of Tax Credit Investor on a temporary basis, not to exceed 180 days, with any subsequent or permanent replacement partner remaining subject to the aforementioned approval of Landlord; or (h) the grant to or exercise by Tenant of an option or right of first refusal to purchase the Property or the limited partner interests of the Tax Credit Investor in accordance with the terms of Tenant's limited partnership agreement upon the exit of the Tax Credit Investor from Tenant's ownership structure on or around the expiration of the tax credit compliance period under United States Internal Revenue Code section 42.

~~150.~~149. Permitted Use. Collectively, (a) the Construction of the Project on the Premises in accordance with this Lease and the related use of vehicles, equipment, and machinery; (b) after the Project Completion Date, operation of the Project in accordance with this Lease; and (c) other related or incidental purposes, subject to Landlord's prior written approval acting in its reasonable discretion.

~~151.~~150. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

~~152.~~151. Plans. Plans and specifications for Major Construction prepared by Tenant's Architect that have received all necessary Approvals regarding the subject Major Construction, submitted in both hard copy and such machine-readable format as is then customary in the architectural profession in the State, using naming conventions and other criteria reasonably approved or required by Landlord, consisting of architectural plans; elevations and sections indicating principal areas, core design, and location; location, number, and capacity of elevators; basic structural system; minimum estimated electrical capacity and distribution system; general type of plumbing system; façade, placement, and orientation; gross and rentable square foot analysis; and principal types of HVAC systems.

~~153.~~152. Post-Foreclosure Tenant. The following Persons: (a) any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including a Permitted Leasehold Lender; and (b) the direct and indirect successors and assigns of any Person identified in clause "(a)." Any Post-Foreclosure Tenant will have all the rights and obligations of Tenant under this Lease.

~~154.~~153. Premises. The real property described in **EXHIBIT B**, including all improvements located on such real property on or after the Commencement Date.

~~155.~~154. Premises Control. For any Permitted Leasehold Lender, any of the following: (a) possession of the Premises by a receiver, trustee, or similar officer appointed in a judicial proceeding commenced by such Permitted Leasehold Lender; (b) possession as mortgagee-in-possession under an affirmative written election to become a mortgagee-in-possession; or (c) acquisition of the Leasehold Estate by a Post-Foreclosure Tenant through a Foreclosure Event initiated by such Permitted Leasehold Lender.

~~156.~~155. Prevailing Wage Law. Defined in **EXHIBIT H,** Section 1.

~~157.~~156. Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

~~158.~~157. Prohibited Lien. Any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the Leasehold Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant). An Equipment Lien is not a Prohibited Lien.

~~159.~~158. Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer or Equity Interest Transfer to such Person is made or is to be made by Tenant, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

~~160.~~159. Project. Tenant's first Major Construction undertaken under this Lease, consisting of the original Construction of the entirety of the improvements generally described in **EXHIBIT I**, including all hardscape, landscaping, and on-site and off-site public and private improvements, all in accordance with Plans approved by Landlord.

~~161.~~160. Project Completion Date. The Construction Completion Date for the Project.

~~162.~~161. Project Completion Deadline. The date immediately preceding the second (2nd) anniversary of the Commencement Date; as specified in the Performance Schedule, however, the Project Completion Deadline may be extended in the Mayor's sole and absolute discretion for up to an additional one hundred eighty (180) days.

~~163.~~162. Project Construction Default. Tenant's failure to cause the Project Completion Date to occur on or before the Project Completion Deadline.

~~164.~~163. Project Revenues. All amounts received by Tenant from the use or occupancy of or the right to use or occupy all or any portion of the Premises or the Project, including all revenue from rent payments by residential tenants or subtenants or commercial/retail tenants or subtenants, any Federal or State housing agency, such as the United States Department of Housing and Urban Development through a "Housing Assistance Payments" contract under Section 8 of the Housing Act of 1937 or otherwise, vending machines, laundry facilities or other amenities of the Project (if any), and all other revenue, income, or receipts of every kind that accrue or are accounted for on an accrual or other basis in conformity with GAAP, exclusive of: (i) any security deposits (unless and until such deposits are payable to Tenant); (ii) interest earned on security deposits; (iii) interest on the Capital Replacement Account or the Operating Reserve when such interest is deposited into the account on which it is earned and reserved exclusively for use in accordance with the purposes of such account under this Lease; (iv) insurance or condemnation proceeds (except as paid to Tenant for loss of rents); (v) any net refinancing proceeds from the refinancing of any loan or debt secured by a Permitted Leasehold Security Instrument; or (vi) the proceeds of capital contributions, development advances, and operating deficit loans funded by Tenant's partners. Project Revenue will be determined on a cash basis.

~~165.~~164. Property Insurance. Defined in **EXHIBIT F**.

~~166.~~165. Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, Depository, or any Lender, excluding any proceeds of Tenant's business interruption insurance that exceed Rent.

~~167.~~166. Qualifying Household. An Extremely Low Income Household, a Very Low Income Household, a Low Income 60% Household, or a Low Income 80% Household, as applicable, based on the affordability level requirements under Section 15.5.

~~168.~~167. Quitclaim Deed. A quitclaim deed reasonably acceptable to Landlord conveying all of Tenant's right, title, and interest in this Lease and the Leasehold Estate to Landlord.

~~169.~~168. Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties, and other Governmental charges and any interest or costs, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over, or under any street that constitutes a portion of the Premises, or any FF&E, Building Equipment, or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. If at any time during the Term, the method of taxation prevailing at the Commencement Date will be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, will be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, will be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

~~170.~~169. Records. All books, records, statements, contracts, and other records of Tenant, any Affiliate of Tenant, or any Management Agent relating in any way to the Construction of the Project, or use, occupancy, or operation of the Premises, including Income Certification Forms completed by all applicants for, or subtenants under, Affordable Unit Subleases, and accounting of Revenues and expenses. All Records will be prepared in accordance with industry standards and otherwise in accordance with GAAP consistently applied.

~~171.~~170. Refinancing. Any transaction resulting in Net Refinancing Proceeds, excluding Construction Financing, the proceeds of which are used and applied solely to pay the costs of the original Construction of the entire Project.

~~172.~~171. Rent. Collectively, the base rent components described in Section 6.1 and all Additional Rent.

~~173.~~172. Rent Revaluation Date. Defined in Section 6.7.

~~174.~~173. Requesting Party. Defined in Section 37.

~~175.~~174. Reserve Deposits. Any deposits to the Capital Replacement Account or the Operating Reserve.

~~176.~~175. Residual Receipts. Project Revenue for a particular Lease Year, less the sum of the following amounts for the same Lease Year: (1) Operating Expenses; (2) Debt Service; (3) Reserve Deposits; and (4) payment of any Deferred Developer Fee. All calculations of Residual Receipts will be made annually, on or before April 30 for the preceding Lease Year, on a cash (not accrual) basis and the components thereof will be subject to verification and approval, on an annual basis, based on conformity with the terms of this Lease. If any annual calculation of Residual Receipts results in a negative number, Residual Receipts will be zero for the subject Lease Year.

~~177.~~176. Residual Receipts Rent. An amount calculated and payable during each Lease Year after Tenant's full payment and satisfaction of the City Note, which amount will equal Landlord's proportionate share of fifty percent (50%) of the Residual Receipts from operation of the Project during the immediately preceding Lease Year. Landlord's proportionate share will be determined by dividing the original principal amount of the City Note by the aggregate total of the original principal amounts of the City Note and any other Government Loans.

~~178.~~177. Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially equivalent to their condition before the Loss, subject to such Construction as Tenant performs in conformity with this Lease or any changes in Law limiting the foregoing.

~~179.~~178. Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

~~180.~~179. Restore. Accomplish a Restoration.

~~181.~~180. Retail Space. A minimum of 25,000 square feet of retail space to be Constructed and operated on the ground level floor of the Building on the Premises Constructed as part of the Project.

~~182.~~181. Revenue. All money, and the monetary value of property or services, received by Tenant from the use or occupancy of or the right to use or occupy all or any portion of the Premises, including all revenue from or relating to rent paid or payable by residential or commercial/retail tenants or subtenants, any Federal or State agency, such as the United States Department of Housing and Urban Development through a "Housing Assistance Payments" contract under Section 8 of the Housing Act of 1937 or otherwise, vending machines, laundry facilities or other amenities of the Premises (if any), and all other revenue, income, or receipts of every kind that accrue or are accounted for on an accrual or other basis in conformity with GAAP, exclusive of: (a) any security deposits (unless and until such deposits are payable to Tenant); (b) interest on security deposits (unless and until such interest is payable to Tenant); (c) the Operating Reserve when such interest is deposited into the account on which it is earned and reserved exclusively for use in accordance with the purposes of such account; (d) insurance or condemnation proceeds (except as paid to Tenant for loss of rents); or (e) any Net Refinancing Proceeds from a Refinancing. Revenue will be determined on a cash basis.

~~183.~~182. Scheduled Expiration Date. 11:59 p.m. on the date ~~immediately preceding~~that is the sixt~~ieth~~y-fifth (6~~0~~5th) anniversary of the ~~Commencement Date~~date of issuance of the final Certificate of Occupancy for the Dwelling Units. The Parties shall confirm the exact Scheduled Expiration Date in writing promptly after the issuance of such Certificate of Occupancy.

~~184.~~183. SDMC. The San Diego Municipal Code.

~~185.~~184. Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender or Fee Lender (as applicable), then all such security instruments so consolidated or restated will constitute a single Security Instrument. A Security Instrument may be either a Fee Security Instrument or a Permitted Leasehold Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

~~186.~~185. Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien to such specified Security Instrument. Priority of liens will be determined under Section 28.1 entitled "Priorities of Multiple Lenders." If only one Security Instrument of a particular type exists, then it will be deemed the "Senior" Security Instrument of such type.

~~187.~~186. State. The State of California.

~~188.~~187. Statement of Priorities. A statement, in or relating to any Security Instrument, substantially in the form and containing all the provisions set forth in Sections 187.1 through 187.3 as applicable to Fee Security Instruments or Leasehold Security Instruments, respectively. Such statement reflects the definitions in this Lease. All such terms will be (deemed) modified in any Security Instrument as appropriate to reflect the definitions in such Security Instrument.

~~188.1~~187.1 *For Fee Security Instruments*. Any Fee Security Instrument attaches solely to the Fee Estate. Any Fee Security Instrument will be subject and subordinate to, and will not encumber or attach to or otherwise affect any of the following (and by accepting its Fee Security Instrument, each Fee Lender unconditionally and irrevocably subordinates and agrees to subordinate its Fee Security Instrument to all the following), unless and until the New Lease Option Period expires without a Permitted Leasehold Lender entitled to request a New Lease requesting a New Lease: (a) this Lease, any New Lease, and the Leasehold Estate under either of them (whether held by Tenant, a Post-Foreclosure Tenant, or a New Tenant); (b) any estate (including an Affordable Unit Sublease and Permitted Leasehold Security Instrument) directly or indirectly arising from this Lease or any New Lease; (c) Tenant's, Post-Foreclosure Tenant's, New Tenant's, and any Permitted Leasehold Lender's rights and remedies under this Lease, whether accruing before or after any Foreclosure Event under a Fee Security Instrument; and (d) any Modification of any of the items described in the foregoing clauses "(a)" through "(c)," whether or not Fee Lender joins in or consents to it. Upon any Foreclosure Event under a Fee Security Instrument, the resulting owner of the Fee Estate will succeed only to the Fee Estate, subject to the items described in clauses "(a)" through "(d)" and, if this Lease terminates, all Affordable Unit Subleases.

~~188.2~~187.2 *For Leasehold Security Instruments*. Any Leasehold Security Instrument attaches solely to the Leasehold Estate. A Leasehold Security Instrument does not encumber the Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Lender's interest in the Fee Estate, or any reversionary interest. Any Foreclosure Event under a Permitted Leasehold Security Instrument will not convey, transfer, extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease), any Fee Security Instrument, or the rights or remedies of any Fee Lender as against Landlord or the Fee Estate. Nothing contained in this Section 187.2 will impair a Permitted Leasehold Lender's Cure Rights or rights to a New Lease, as provided in this Lease. This Section 187.2 will be subject to any written agreements by and among a Permitted Leasehold Lender and a Fee Lender, except to the extent that any such agreement would cause, allow, or result in a Leasehold Security Instrument becoming a Fee Security Instrument or otherwise encumbering the Fee Estate.

~~188.3~~187.3 *For All Security Instruments*. Any Security Instrument is subject to all terms and conditions of this Lease. Notwithstanding anything to the contrary in any Security Instrument, no Lender may receive any Loss Proceeds, except to the extent (and under the conditions) payable to such Lender (or its mortgagor) under this Lease. Upon any Foreclosure Event under any Security Instrument, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) will have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease, unless and until such owner signs, acknowledges, and delivers to the other Party to this Lease an instrument, in recordable form, by which such owner assumes all obligations of Landlord or Tenant under this Lease, as applicable, subject to the other terms and conditions of this Lease. Such instrument of assumption will be delivered: (a) promptly following consummation of the Foreclosure Event; and (b) in any event, before taking possession of the Premises or exercising any rights under this Lease.

~~189.~~188. Structure. Only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of each Building on the Premises, regardless of when constructed or by whom.

~~190.~~189. Subrent. All money due and payable by subtenants under Affordable Unit Subleases and any subleases of all or any portion of the Commercial Space and the Retail Space.

~~191.~~190. Subrent Payment Notice. A Notice from Landlord to any subtenant, directing such subtenant to pay its Subrent to Landlord and not to Tenant.

~~192.~~191. Substantial Casualty. A Casualty that: (a) before the Project Completion Date, results in the cost of Restoration for the Project (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by five hundred thousand dollars ($500,000) times the CPI Adjustment Factor or more; (b) after the Project Completion Date, results in the cost of Restoration for the Premises (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by five hundred thousand dollars ($500,000) times the CPI Adjustment Factor or more; or (c) after the Project Completion Date, under Law, prevents more than fifty percent (50%) of the Premises from being Restored to substantially the same bulk and for substantially the same use(s) as before the Casualty.

~~193.~~192. Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination (with Permitted Leasehold Lender's Consent) puts the remainder of the Premises in a condition that: (a) cannot reasonably be operated for the Permitted Use; (b) requires Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current aggregate Market Value of the Premises; or (c) does not comply with the operating requirements under a necessary Approval held by Tenant.

~~194.~~193. Tax Credit Investor. The Person who owns or has the right to acquire substantially all the limited partnership Equity Interests in Tenant or such Person's successors or assigns permitted by this Lease. The Tax Credit Investor will be subject to the reasonable approval of Landlord. In no event may the Tax Credit Investor be an Affiliate of Tenant or a Prohibited Transferee. Landlord consents to R4 ASCA Acquisition LP, a Delaware limited partnership, or any Affiliate of R4 Capital LLC, a Delaware limited liability company, as the Tax Credit Investor.

~~195.~~194. Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

~~196.~~195. Tenant. 101 Ash Venture LP, a California limited partnership, and its permitted successors or assigns under this Lease.

~~197.~~196. Tenant Improvements. Items that are or are to be installed on the Premises by or for the benefit of Tenant, such as floor coverings, wall coverings, walls and doors that are not load bearing, plumbing fixtures not installed as part of any Construction of the Project, window treatments, and other similar items.

~~198.~~197. Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge regarding the Construction of the Project and, after Construction of the Project, operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is Sydne Garchik.

~~199.~~198. Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

~~200.~~199. Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or owners of Equity Interests in Tenant.

~~201.~~200. Tenant-Specific Default. Any Default that: (a) is not reasonably susceptible of cure by a Permitted Leasehold Lender, such as (to the extent, if any, that it actually constitutes a Default under this Lease) any Default resulting from a Bankruptcy Proceeding affecting Tenant; any prohibited change of management of Tenant; or failure to deliver required financial information solely within Tenant's control; (b) by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates; or (c) consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance satisfying all the following criteria: (i) attaches only to the Leasehold Estate; (ii) is junior to the affected Permitted Leasehold Security Instrument; and (iii) this Lease prohibits.

~~202.~~201. Tenant-Specific Obligation. Any obligation the breach of which would constitute a Tenant-Specific Default.

~~203.~~202. Tenant's Architect. An architect that is: (a) selected by Tenant; (b) not Affiliated with Tenant; (c) licensed as an architect in the State; and (d) reasonably qualified and experienced in overseeing projects similar to the Major Construction for which such architect is engaged. Tenant may replace Tenant's Architect, at any time, with a different architect satisfying the requirements of this definition.

~~204.~~203. Term. Defined in Section 4.

~~205.~~204. Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee, or agent of a Party.

~~206.~~205. Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Tenant by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," will be deemed a Transfer by Tenant even though Tenant is not technically the transferor. A "Transfer" will not, however, include any of the foregoing (provided that the other Party to this Lease has received Notice of such event) relating to any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; (ii) a transfer to any Person that, as of the Commencement Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; or (iii) a Permitted Leasehold Security Instrument.

~~207.~~206. Transferee. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Tenant through an Equity Interest Transfer or acquiring all or any portion of Tenant's interest in this Lease through a Transfer. A Person who is a Prohibited Transferee will never be a "Transferee."

~~208.~~207. Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, Government action or inaction, regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between financial institutions. Unavoidable Delay will not include delay caused by a Party's financial condition, illiquidity, or insolvency.

~~209.~~208. Utilities Allowance. An allowance for utilities services costs as established from time to time by the Housing Authority of the County of San Diego, California, or its successor.

~~210.~~209. Very Low Income Household. An individual or household with a household income equal to or less than the ~~lesser~~greater of: (a) fifty percent (50%) of the then current Area Median Income adjusted for family size as published from time to time by HCD; or (b) fifty percent (50%) of the then current CTCAC AMI adjusted for family size as published from time to time by CTCAC.

EXHIBIT B
TO
GROUND LEASE
(10~~1~~7 Ash Street)

PREMISES LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 533-424-14-00)

LOTS A, B, C, D, E, F, G, H, I, J AND K IN BLOCK 195 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY. EXCEPTING FROM SAID LOT K THE NORTHERLY ONE-HALF THEREOF.

PARCEL 2: (APN: 533-424-11-00)

LOT L AND THE NORTHERLY ONE-HALF OF LOT K IN BLOCK 195 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXHIBIT C
TO
GROUND LEASE
(10~~1~~7 Ash Street)

PERMITTED EXCEPTIONS

Permitted Exceptions will include all the following, as they existed on the Commencement Date:

1. Taxes not on Rolls.

2. The lien of property taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease.

3. Any adverse claim based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created.

4. The fact that concrete sidewalk improvements or streetlights encroach onto said land.

5. Zoning, environmental, municipal, building, and all other laws, regulations, or similar matters imposed by any federal, state, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises or any portion thereof.

6. Any Application made at Tenant’s request or any Approval issued because of any such Application.

7. This Lease and the Lease Memorandum.

8. Each Permitted Leasehold Security Instrument.

9. Matters consented to or otherwise caused by Tenant.

10. All exceptions to title insurance coverage in the Developer’s Title Policy (defined in the Disposition Agreement).

EXHIBIT D
TO
GROUND LEASE
(10~~1~~7 Ash Street)

NOTICE ADDRESSEES

Tenant:

101 Ash Venture LP
c/o MRK Partners
2006 N. Sepulveda Blvd. #526
Manhattan Beach, CA 90266
Attn: Legal
Email: kwebster@mrkpartners.com

With a courtesy copy to:

Downs, Pham & Kuei LLP
235 Montgomery Street, Suite 1169
San Francisco, CA 94104
Attn: Irene Kuei
Email: ~~ikuei@downspham.com~~ikuei@downspham.com

With a courtesy copy to Tax Credit Investor:

R4 ASCA Acquisition LP
c/o R4 Capital LLC
780 Third Avenue, 16th Floor
New York, New York 10017
Attention: Marc Schnitzer
Email: mschnitzer@R4cap.com

And to:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
Attention: Kristen Cassetta
Email: kristen.cassetta@hklaw.com

[*continued on following page*]

Landlord:

City of San Diego
Attention: Director, Economic Development Department
1200 Third Ave, 14th Floor
San Diego, CA 92101
Email: cbibler@sandiego.gov

With a courtesy copy to:

San Diego City Attorney's Office
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Attn: Kevin Reisch
Email: kreisch@sandiego.gov

EXHIBIT E

TO

GROUND LEASE

(10~~1~~7 Ash Street)

ANNUAL REPORT FORM

[Attached behind this cover page]

Annual Report

The undersigned, ___________________________________, as the authorized representative of _________________ ("Tenant"), has read and is thoroughly familiar with the provisions of that certain Ground Lease, dated as of ______________, 20__ ("Lease"), between the City of San Diego, a California municipal corporation ("Landlord"), and Tenant. All terms indicated to be defined terms by initial capitalization in this report that are not specifically defined in this report will have the meanings given to the same terms, respectively, in the Lease.

As of the date of this Annual Report, the following percentage of completed Affordable Units on the Premises are (i) occupied by Qualifying Households or (ii) are currently vacant and are Available for such occupancy and have been held continuously Available for such occupancy since the later of: (y) the date a Certificate of Occupancy was issued for the Affordable Unit or (z) a Qualifying Household vacated such Affordable Unit, as indicated:

Number of Affordable Units occupied by Qualifying Low Income 80% Households: _____________

Number of Affordable Units occupied by Qualifying Low Income 60% Households: _____________

Number of Affordable Units occupied by Qualifying Very Low Income Households: _____________

Number of Affordable Units occupied by Qualifying Extremely Low Income Households: _____________

Cumulative average affordability level of all occupied Affordable Units as of December 31 of the year addressed in this Annual Report (per Section 15.5 of the Lease): _____________

Number of Vacant Affordable Units: _____________

Number of Qualifying Households who commenced occupancy of Affordable Units during the preceding reporting period: _____________

Attached to this Annual Report is a list containing, among other information, the identities of all occupants of each Affordable Unit, the rent paid for each Affordable Unit, the income level of the Qualifying Household occupying each Affordable Unit, the calculation of the average affordability level of all occupied Affordable Units identified above, and an Income Certification Form for all Qualifying Households who moved into a Affordable Unit since the filing of the last Annual Report. The information contained in this Annual Report and the attached list is true and accurate based on information submitted to Tenant and is certified in writing as true and accurate under penalty of perjury under the laws of the United States of America and the laws of the State of California by each subtenant.

The undersigned certifies that: (1) a review of the activities of Tenant during such reporting period and of Tenant's performance under the Lease has been made under the supervision of the undersigned; and (2) to the best knowledge of the undersigned, based on the review described in clause "(1)", Tenant is not in default under any of the terms or provisions of the Lease.

TENANT:

Dated: __________________________ ________________________________

EXHIBIT F
TO
GROUND LEASE
(10~~1~~7 Ash Street)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.**

1.1 *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Tenant in conducting the Permitted Use on the Premises, with minimum limits for bodily injury and property damage of two million dollars ($2,000,000). Such insurance will be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which will be subject to pre-approval by Landlord, which pre-approval will not be unreasonably withheld.

1.2 *Builder's Risk Insurance*. During any Construction on the Premises, Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject Construction, including cost of debris removal, but excluding foundation and excavations. Such insurance will also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Premises.

1.3 *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of two million dollars ($2,000,000) for any one occurrence and four million dollars ($4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit will apply separately to the Premises.

1.4 *Property Insurance.* Insurance providing coverage for the Premises and all improvements on or to the Premises against loss, damage or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements on the Premises (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance will include coverage for explosion of steam and pressure boilers and similar apparatus located on or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal. Property Insurance will also include rental or business interruption insurance in an amount, at least, equal to the average gross annual Revenue of the Premises for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.

1.5 *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of one million dollars ($1,000,000) per accident for bodily injury or disease, covering all employees of Tenant.

2. **Nature of Required Insurance**. The contents of this **EXHIBIT F** are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Builder's Risk Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements will be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy will specify the amount(s) of the total insurance allocated to the Premises or the Project, which amount(s) will equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with these Insurance Requirements.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Insurance Requirements will contain (by endorsement or otherwise) the following provisions:

3.1 *Insured*. Liability Insurance policies will name the Landlord Parties as "additional insured." Builder's Risk Insurance policies will name Landlord as a "loss payee." The coverage afforded to the Landlord Parties will be at least as broad as that afforded to Tenant regarding the Premises or the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2 *Primary Coverage*. Any insurance or self-insurance maintained by the Landlord Parties will be excess of all insurance required to be maintained by Tenant under these Insurance Requirements and will not contribute with any insurance required to be maintained by Tenant under these Insurance Requirements.

3.3 *Contractual Liability*. Liability Insurance policies will contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's obtaining or failing to obtain such contractual liability coverage will not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.4 *Deliveries to Landlord*. Evidence of Tenant's maintenance of all insurance policies required by these Insurance Requirements will be delivered to Landlord before the Commencement Date. Builder's Risk Insurance coverage will commence at the time of Builder mobilization for the Project. No later than thirty (30) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant will deliver to Landlord evidence of Tenant's maintenance of all insurance required by these

Insurance Requirements. Each insurance policy required by these Insurance Requirements will be endorsed to state that coverage will not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance written notice of such action is delivered to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company" will not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Insurance Requirements.

4. **Waiver of Certain Claims.** Tenant will cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance or Automobile Liability Insurance coverage in satisfaction of these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

4.1 *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

4.2 *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.

4.3 *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Tenant in satisfaction of these Insurance Requirements will be fully paid for and non-assessable.

4.4 *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance will provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons, but will not exclude suits between named insured Persons and additional insured Persons.

4.5 *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements will be declared to and approved by Landlord. Tenant will pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements will provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts of money paid by Landlord toward self-insured retentions under insurance policies covering the Landlord Parties under these Insurance Requirements will be reimbursed to Landlord by Tenant in the same manner as insurance costs are reimbursed to Landlord from Tenant under Section 4.8.

4.6 *No Separate Insurance*. Tenant will not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements, unless the Landlord Parties are made additional insured under such insurance coverage.

4.7 *Insurance Independent of Indemnification*. These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and will not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor will the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

4.8 *Landlord Option to Obtain Coverage*. During the continuance of an Event of Default arising from the failure of Tenant to carry any insurance required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord will be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. All amounts of money becoming due and payable to Landlord under this Section 4.8 that are not paid within fifteen (15) days after Notice to Tenant of such amount will accrue Default Interest from the date of the Notice. Any election by Landlord to purchase or not to purchase insurance otherwise required by these Insurance Requirements to be carried by Tenant will not relieve Tenant of any Tenant Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

EXHIBIT G
TO
GROUND LEASE
(10~~1~~7 Ash Street)

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant certifies that Tenant is aware of, and will comply with, all of the following Landlord requirements in performance of this Lease:

1.1 Tenant Certification for Americans with Disabilities Act ("**ADA**") and State Access Laws and Regulations. Tenant will comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Tenant will comply with the most restrictive requirement (i.e., that which provides the most access). Tenant also will comply with the Landlord's ADA Compliance/Landlord Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Tenant warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any subcontract agreement relating to this Lease contains language which indicates the subcontractor's agreement to abide by the provisions of the Landlord Council Policy 100-04 and any applicable Federal and State access laws and regulations.

1.2 Compliance with Landlord's Equal Opportunity Contracting Program ("**EOCP**"). Tenant will comply with Landlord's EOCP requirements. Tenant will not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant will provide equal opportunity in all employment practices. Tenant will ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 will be interpreted to hold Tenant liable for any discriminatory practice of its subcontractors. Prior to commencing Construction and in accordance with the Schedule of Performance, Tenant will contact the Landlord's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

1.3 Equal Benefits Ordinance Certification. Unless an exception applies, Tenant will comply with the Equal Benefits Ordinance codified in SDMC section 22.4308.

1.4 Equal Pay Ordinance. Unless an exception applies, Tenant will comply with the Equal Pay Ordinance codified in SDMC sections 22.4801 through 22.4809. Tenant will certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant will require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5 Product Endorsement. Tenant will comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to Landlord as a user of a good or service will require the prior written approval of the Mayor.

1.6 Business Tax Certificate. Unless the Landlord Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a Business Tax Certificate and provide a copy of its Business Tax Certificate to Landlord before this Lease is signed.

EXHIBIT H
TO
GROUND LEASE
(10~~1~~7 Ash Street)

<u>WAGE LAWS AND REQUIREMENTS</u>

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding $25,000 and alteration, demolition, repair, and maintenance work performed or funded under this Lease cumulatively exceeding $15,000 is subject to the State prevailing wage law set forth in California Labor Code sections 1720 through 1862, and in undertaking any and all such work, Tenant and Tenant's contractors and subcontractors will comply with California Labor Code sections 1720 through 1862 and the requirements set forth in Section 1 of this **EXHIBIT H** (collectively, "**Prevailing Wage Law**").

1.1 <u>Compliance with Prevailing Wage Requirements</u>. Under Prevailing Wage Law, Tenant and Tenant's contractors and subcontractors will all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with Landlord and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant and Tenant's contractors and subcontractors will all post a copy of the prevailing rate of per diem wages determination at each job site and will make this information available to all interested Persons upon request. Tenant and Tenant's contractors and subcontractors will all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage will be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate will become effective on the date following the expiration date of the previous wage rate and will apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate will apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate will apply to the balance of the Term.

1.2 <u>Penalties for Violations</u>. Tenant and Tenant's contractors and subcontractors will all comply with California Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with

California Labor Code section 1775 will be in addition to all other applicable penalties allowed under California Labor Code sections 1720-1861.

1.3 Payroll Records. Tenant and Tenant's contractors and subcontractors will all comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Tenant and Tenant's contractors and subcontractors will all comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR will include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Tenant and Tenant's contractors and subcontractors will all furnish the records specified in California Labor Code section 1776 directly to the State Labor Commissioner in the manner required in California Labor Code section 1771.4. Tenant is responsible for ensuring that Tenant's contractors and subcontractors submit certified payroll records to Landlord, the State Labor Commissioner, and DIR.

1.4 Apprentices. Tenant and Tenant's contractors and subcontractors will all comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Tenant will be held responsible for its compliance and the compliance of Tenant's contractors and subcontractors with California Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant and Tenant's contractors and subcontractors will all comply with California Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Tenant will include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Tenant and Tenant's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Lease or any contract or subcontract, respectively, Tenant and Tenant's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant will include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the California Business and Professions Code or by section 10164 or 2103.5 of the California Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation will not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under California Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of California Labor Code section 1771.1(a) will be subject to cancellation, provided that a contract for public work will not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and will provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant will timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant will record a notice of completion in accordance with California Civil Code section 8182, et seq., with the County Recorder, and concurrently deliver a copy of such recorded notice of completion to Landlord.

2. **LIVING WAGES.** This Lease is subject to all requirements of the City's Living Wage Ordinance, codified in SDMC Chapter 2, Article 2, Division 42 and described in Section 2 of this **EXHIBIT H** (collectively, "**Living Wage Requirements**"). Tenant will require all its contractors, sublessees, operators, licensees, and concessionaires subject to the Living Wage Requirements to comply with the Living Wage Requirements.

2.1 Payment of Living Wages. Under SDMC section 22.4220(a), Tenant and its contractors, subcontractors, sublessees, operators, licensees and concessionaires will ensure that all workers who perform work under this Lease are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies. Copies of the living wage rates are available on the City website at https://www.sandiego.gov/purchasing/programs/livingwage.

Tenant and its contractors, subcontractors, sublessees, operators, licensees, and concessionaires will post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with SDMC section 22.4225(e). Living wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

2.2 Compensated Leave. Under SDMC section 22.4220(c), Tenant and its contractors, subcontractors, sublessees, operators, licensees, and concessionaires will provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

2.3 Uncompensated Leave. Tenant and its contractors, subcontractors, sublessees, operators, licensees, and concessionaires must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of the worker's immediate family when the worker has exhausted all accrued compensated leave.

2.4 Enforcement and Remedies. Landlord will take any one or more of the actions listed in SDMC section 22.4230 should Tenant or its contractors, subcontractors, sublessees, operators, licensees, and concessionaires be found to be in violation of any Living Wage Requirements.

2.5 Payroll Records. Tenant and its contractors, subcontractors, sublessees, operators, licensees, and concessionaires will submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Tenant is responsible for ensuring its contractors, subcontractors, sublessees, operators, licensees, and concessionaires submit certified payroll records to the City.

2.6 Certification of Compliance. SDMC section 22.4225 requires Tenant to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days after the Commencement Date. Each contractor, subcontractor, sublessee, operator, licensee, and concessionaire must fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days after contracting for the work or services at the Premises.

2.7 Annual Compliance Report. Tenant and its contractors, subcontractors, sublessees, operators, licensees, and concessionaires must file an annual report under SDMC section 22.4225(d) documenting compliance with Living Wage Requirements. Records documenting compliance must be maintained for a minimum of three (3) years after final payment on the service contract or agreement.

2.8 Exemption from Living Wage Ordinance. Under SDMC section 22.4215, certain work or services performed under this Lease may be exempt from Living Wage Requirements. For a determination on this exemption, Tenant must complete the Living Wage Ordinance Application for Exemption.

3. **DIFFERENT PER DIEM WAGE RATES.** If both Prevailing Wage Law and Living Wage Requirements are applicable to particular work or services, Tenant and Tenant's contractors, subcontractors, and concessionaires must determine which per diem rate is highest for each

classification of work or services between the applicable prevailing wage rate and living wage rate and must pay the higher of the two rates to their employees. Living Wage Requirements may apply to work that is not subject to Prevailing Wage Law.

EXHIBIT I
TO
GROUND LEASE
(10~~1~~7 Ash Street)

PROJECT DESCRIPTION

1. General

The 10~~1~~7 Ash Street project is a proposed affordable housing, commercial, and retail project located at 10~~1~~7 Ash Street in Downtown San Diego. Construction of the Project on the Premises, consisting of approximately 272,671 square feet of building space in the aggregate, will be in accordance with the approved plans and specifications and all related development requirements.

Lessee will be responsible for providing all parking appropriate and necessary for the development and successful operation of the Project along with appropriate landscaping, all in accordance with applicable zoning and all other applicable Laws and City requirements. All improvements on the Property must be of high architectural quality, well landscaped, and effectively and aesthetically designed. The shape, scale, exterior design, and exterior finish of all Improvements must be visually and physically related to, and must enhance, the adjacent neighborhood.

2. Project

Tenant will be responsible for development, and operation throughout the Term, of the following uses on the Premises:

a. The Dwelling Units;
b. The Commercial Space;
c. The Retail Space; and
d. External hardscape and landscaped areas including newly created and accessible amenities on the mezzanine level exterior.

EXHIBIT B

REVISED CITY NOTE FORM

[provided starting on next page]

PROMISSORY NOTE SECURED BY DEED OF TRUST

(101 Ash Venture LP, a California limited partnership)

Principal Amount: Forty-Five Million Six Hundred Thousand Dollars ($45,600,000)

Date of this Note: ~~____________~~September ___, ~~20__~~2026

Borrower: 101 Ash Venture LP, a California limited partnership

Lender: The City of San Diego, a California municipal corporation

Maturity Date: See Section 6 below

Interest Rate: ~~4~~5% per annum (see Section 4 below)

FOR VALUE RECEIVED, 101 ASH VENTURE LP, a California limited partnership ("**Borrower**"), whose address is [will insert full business address, including city, state, zip before Borrower's signature], promises to pay, at the times stated in this Promissory Note Secured by Deed of Trust ("**Note**"), to the order of THE CITY OF SAN DIEGO, a California municipal corporation ("**Lender**"), a principal amount not to exceed Forty-Five Million Six Hundred Thousand Dollars ($45,600,000), together with interest on the unpaid principal balance of this Note this from time to time outstanding at the annual rate set forth in Section 4 from the date of this Note shown at the top-right corner of this page until fully paid at the Office of the City Treasurer, 1200 Third Avenue, Suite 100, San Diego, California 92101, or at such other place as Lender may designate to Borrower in writing.

1. **Reference to Loan Documents**. This Note is made by Borrower to the order of Lender under that certain Ground Lease Disposition Agreement, dated ~~______________, 20__, by and~~August 18, 2025, between Borrower and Lender ("**Disposition Agreement**"). Additionally, Borrower and Lender entered into that certain Ground Lease on the same date as the date of this Note ("**Lease**"), allowing Borrower's construction of the Project (defined in the Lease) and long-term use and occupancy of the real property at 10~~1~~7 Ash Street, San Diego, California 92101 ("**Property**").

2. **Definitions**. All initially capitalized words, terms, or phrases, if not specifically defined in this Note, will have the same definition contained in the Lease. In addition, the following terms are defined as follows:

(a) Borrower. Defined in the Preamble of this Note.

(b) City Deed of Trust. That certain Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing, effective the same date as the date of this Note, made by Borrower, as trustor, to Chicago Title Company, as trustee, for the benefit of Lender, as beneficiary.

(c) Default. Each of the following events constitute a "Default" under this Note: (a) Borrower's failure to pay any installment or other sum due under this Note as and when due and payable (whether by extension, acceleration or otherwise) following thirty (30) calendar days' written notice from Lender to Borrower of such failure to pay; or (b) any breach of any other promise or obligation in any of the Loan Documents or in any other instrument now or hereafter securing the indebtedness evidenced by this Note, subject to applicable notice and opportunity to cure provisions in the subject instrument or agreement. If the cure of any Default under this Note that is not based on a default under any other document cannot reasonably be made within thirty (30) days and Borrower promptly and diligently commences to cure such default within thirty (30) days, then the period to cure will be extended for up to an additional thirty (30) days after Lender's Default notice, as long as Borrower diligently and continuously proceeds to cure such Default to Lender's satisfaction.

(d) Default Rate. An annual interest rate (instead of the rate specified in Section 4) equal to the lesser of: (a) eight percent (8%); or (b) the maximum interest rate allowed by law under the circumstances.

(e) Disposition Agreement. Defined in Section 1.

(f) Government Loan. Defined in the Lease.

(g) Lease. Defined in Section 1.

(h) Lease Year. Defined in the Lease.

(i) Lender. Defined in the Preamble of this Note.

(j) Loan Documents. Collectively, this Note, the Disposition Agreement, the Lease, and the City Deed of Trust.

(k) Maturity Date. Defined in Section 6.

(l) Occupancy Date. The date on which the City issues a final certificate of occupancy allowing the use and occupancy of the residential apartment units within the Project.

(m) Project. Defined in the Lease.

(n) Property. Defined in Section 1.

(o) Residual Receipts. Defined in the Lease.

3. **No Disbursement of Loan Proceeds**. Consistent with the Disposition Agreement, Borrower acknowledges that this Note memorializes Borrower's obligation to repay debt owed by Borrower to Lender in exchange for Lender's up-front contribution of the value of the existing vacant office building on the Property toward the Project as of the date of this Note (i.e., "carryback financing"). Therefore, except for Lender's up-front contribution of the value of the existing vacant office building on the Property, Borrower acknowledges that it is not entitled to any disbursement, deposit, advance, or other fund distribution, in cash or any other form, of any principal amount under this Note.

4. **Interest**. ~~Simple~~Compound interest on the unpaid principal balance of this Note will accrue from the date of this Note at the rate of ~~four~~five percent (~~4~~5%) per annum.

5. **Method of Calculating Interest**. Interest will be computed based on a 365-day year (or 366-day year in the case of a leap year) and the actual number of days elapsed.

6. **Payment of Principal and Interest**. All principal and interest under this Note will be due and payable on or before the Maturity Date (defined below in this Section 6). All principal and interest under this Note will be paid by Borrower in annual payments to Lender in an amount equal to Lender's proportionate share of fifty percent (50%) of the Residual Receipts from operation of the Project each Lease Year. Lender's proportionate share will be determined by dividing the original principal amount of this Note by the aggregate total of the original principal amounts of this Note and any other Government Loans. Each annual Residual Receipts payment becoming due to Lender under this Note will be paid to Lender on or before the last day of March, beginning with the earlier of the following: (a) the Lease Year immediately following the Lease Year in which the Deferred Developer Fee is fully paid to Borrower (as "Developer" under the Disposition Agreement); or (b) the Lease Year in which the fifteenth (15th) anniversary of the Occupancy Date occurs. Residual Receipts payments under this Note will continue until the principal amount of this Note and all accrued and unpaid interest on such principal amount have been paid in full or until the Maturity Date, whichever is earlier. Any unpaid principal amount, all accrued and unpaid interest, and all other amounts due under this Note will be due and payable on the earlier of: (a) the fifty-fifth (55th) anniversary of the Occupancy Date; or (b) the Expiration Date of the Lease ("**Maturity Date**"), regardless of whether or not Residual Receipts prior to the Maturity Date are sufficient to pay such amounts. Nothing in this Note is intended to limit repayment of this Note to the amount of available Residual Receipts. All sums due under this Note are payable in lawful money of the United States.

7. **Borrower's Reporting Obligation**. With each annual payment of Residual Receipts under Section 6, Borrower will provide Lender an annual Residual Receipts report in form and substance reasonably acceptable to Lender. On or before April 30 of each Lease Year, commencing with the first Lease Year in which an annual Residual Receipts payment is owed under Section 6, Borrower will provide Lender an annual financial statement with respect to the operation of the Project during the immediately preceding Lease Year that has been reviewed by an independent certified public accountant, together with an expressed written opinion of such independent certified public accountant that such financial statements present the financial position, results of operations, and cash flows of the Project fairly and in accordance with generally accepted accounting principles, all at Borrower's expense.

8. **Sale and Refinancing**. In addition to and separate from any payments made to Lender under Section 6, Lender will be entitled to receive the following payments:

(a) Sale. Upon the Transfer of all or any portion of Borrower's interest in the Property (other than subleases to Qualifying Households or Commercial/Retail subtenants in accordance with the Lease, Transfers or Permitted Encumbrances allowed under the Disposition Agreement, or Permitted Transfers allowed under the Lease), all outstanding amounts under this Note will be immediately due and payable to Lender.

(b) Refinancing Revenue. At the closing of a Refinancing (other than any Refinancing resulting in complete payoff of this Note) and after payment of all outstanding Deferred Developer Fee, any outstanding interest on Deferred Developer fee, and outstanding subordinate B bonds (as identified in the Project Budget in **ATTACHMENT 14** of the Disposition Agreement) principal and interest there on, any outstanding payment required to be paid to the tax credit investors (as required under the Developer Entity Documents approved by the Lender under the Disposition Agreement) and any outstanding interest and principal on general partner loans, a payment will be made to Lender, to reduce outstanding amounts under this Note, in an amount equal to the lesser of: (1) fifty percent (50%) of the Net Refinancing Proceeds; or (2) the outstanding balance of this Note.

(c) Reporting. Borrower must provide Lender with notice, in accordance with Section 18, of each Transfer of all or any portion of Borrower's interest in the Property and each Refinancing, including the calculation of resulting Net Refinancing Proceeds.

9. **Lender's Audit Rights**. Until two (2) years after the Maturity Date, Lender will have the right to perform an audit from time to time related to the information contained in or related to any report submitted by Borrower in compliance with Sections 7 and 8. The respective rights and obligations of Lender and Borrower related to any such audit will conform to the audit procedures described in the Lease pertaining to the specific matter that is the subject of the audit.

10. **Application of Payments**. Each payment under this Note will be credited in the following order: (a) costs, fees, charges and advances paid or incurred by Lender under this Note or the City Deed of Trust or otherwise payable to Lender by Borrower under this Note or the City Deed of Trust, in such order as Lender, in Lender's sole and absolute discretion, elects; (b) interest that accrued under this Note during the most recent Lease Year; (c) unpaid interest that accrued under this Note during any preceding Lease Year; and (d) principal due under this Note.

11. **Prepayment**. The principal and interest under this Note may be prepaid at any time, without premium or penalty; provided, however, that any such prepayment will have no effect on the application of the Lease to the Property.

12. **Secured by Deed of Trust**. On and after the "Close of Escrow" under the Disposition Agreement, this Note will be secured by the City Deed of Trust.

13. **Interest on Default**. From and after a Default or the Maturity Date (either as defined in this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance of this Note will automatically accrue interest at the Default Rate.

14. **Default**. On and following any Default, Lender may, in Lender's sole and absolute discretion, declare this Note (including all accrued interest) due and payable immediately, regardless of the Maturity Date. The Tax Credit Investor (defined in the Disposition Agreement) has the right, but not the obligation, to cure any Default under this Note within the time provided to Borrower in this Note for such cure.

15. **Collection Costs**. Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim regarding this Note; and (c) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce or collect payment of all or any part of any amount due under this Note.

16. **Exculpation**. Notwithstanding anything to the contrary contained in this Note, in the event of any Default under this Note, Lender's monetary remedies under this Note and the City Deed of Trust will be limited to realizing upon the assets of Borrower, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by this Note or secured by the City Deed of Trust, and Borrower will not be personally liable for the payment of any portion of the indebtedness evidenced by this Note, except to the extent of: (a) all losses sustained by Lender arising from or related to waste, fraud, or misrepresentation by Borrower or Borrower's members, managers, partners, stockholders, trustees, beneficiaries, or principals; (b) all rental income or other income arising with respect to the Property, insurance proceeds, or condemnation awards received by Borrower or Borrower's members, managers, partners, stockholders, trustees, beneficiaries, or principals and not applied in accordance with the provisions of this Note or the City Deed of Trust, except to the extent that Borrower is so authorized by Lender in writing, or subject to an involuntary bankruptcy, receivership, or other similar judicial proceeding that legally prevents Borrower from applying such income in accordance with the provisions of this Note or the City Deed of Trust; (c) the fair market value, as of the date of a Default, of any personal~~ty~~ property or fixtures wrongfully removed from the Property by Borrower after such date; (d) all legal costs and expenses reasonably incurred by Lender regarding Borrower's Default after giving Notice to Borrower of such Default, other than those customarily incurred by a lender in realizing upon such lender's lien in an uncontested foreclosure sale after an undisputed Default; (e) the full amount (including penalties and interest) of any and all taxes, assessments, or other charges that Borrower fails to pay and are or may become a lien or liens on all or any portion of the Property with priority over the lien of the City Deed of Trust, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying such taxes, assessments, or other charges; (f) all amounts owing to Lender under indemnity or other provisions contained in the Loan Documents (other than the payment of principal, accrued interest or late charges evidenced by this Note); (g) the amount, if any, by which the sum of all amounts realized by Lender through the sale (or other reasonable disposition) of all assets pledged or assigned to Lender under the City Deed of Trust is exceeded by the obligations secured by the City Deed of Trust, but only to the extent that any such deficiency is directly attributable to Borrower's failure to insure any such asset(s) in accordance with the requirements of the Loan Documents, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying the premiums for such insurance; (h) all losses sustained by Lender arising from or related to the violation or alleged violation of any criminal or environmental laws by Borrower, including the Fraud Enforcement and Recovery Act of 2009; or (i) all losses sustained by Lender arising from or related to any breach by Borrower of the terms or conditions of the Loan Documents pertaining to Transfers. All action(s) as may be necessary at law or in equity for Lender to realize upon the assets of Borrower in the event of any Default under this Note, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by this Note or secured by the City Deed of Trust, may be instituted or pursued by Lender without violating this Section 16.

17. **Waiver**. Borrower, endorsers, and all other Persons liable or to become liable on this Note waive presentment, protest, demand, notice of protest, demand and dishonor, and all other notices or matters of a like nature. No extension of time for payment of this Note made by agreement between Lender and any Person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change, or affect the original liability of Borrower under this Note, either in whole or in part. The provisions of this Note and the obligations of Borrower

under this Note are absolute, and Borrower waives any and all rights to offset, deduct, or withhold any payments or charges due under this Note for any reason whatsoever.

18. **Notice**. Any notice required to be provided under this Note will be given in writing and sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified mail, postage prepaid, return receipt requested through the United States Postal Service; or (c) by a nationally recognized overnight (one business day) delivery service, marked for next day business delivery. All notices will be addressed to the Person to whom such notice is to be given at the property address stated in the Disposition Agreement for such Person or to such other address as a Person may designate by written notice. All notices will be effective on the earliest of: (i) actual receipt; (ii) rejection of delivery; (iii) if sent by certified mail, the fourth (4th) day on which regular United States Postal Service mail delivery service is provided after the date of mailing; or (iv) if sent by overnight delivery service, on the next day on which such service makes next business day deliveries after the date of sending. Any attorney representing Lender or Borrower may give any Notice on behalf of the party they represent.

19. **Forbearance Not a Waiver**. If Lender delays in exercising or fails to exercise any of Lender's rights under this Note, that delay or failure will not constitute a waiver of any Lender rights or of any breach, Default, or failure of condition under this Note. No waiver by Lender of any of Lender's rights or of any such breach, Default, or failure of condition will be effective, unless the waiver is expressly stated in a separate writing signed by Lender.

20. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note nor any proceeds of this Note, nor assign or delegate any of Borrower's rights or obligations under this Note, without Lender's prior written consent in each instance, which consent may be given, withheld, delayed, or conditioned in Lender's sole and absolute discretion. Lender, in Lender's sole and absolute discretion, may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.

21. **Governing Law**. This Note will be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts of laws principles.

22. **Usury**. To the extent that the indebtedness evidenced by this Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the acceleration of maturity of the unpaid principal balance, or otherwise, will the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money owed under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, will involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled will be reduced to the limit of such validity. If, under any circumstances, Lender will ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest will be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under

this Note, such excess will be refunded to Borrower. This provision will control every other provision of all agreements between Borrower and Lender.

23. **Non-Revolving Credit**. This Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Note at any time may be evidenced by an unpaid balance acknowledgment of Lender on this Note or by the internal accounting records of Lender regarding this Note or the Disposition Agreement.

24. **Statute of Limitations Waiver**. The pleading of any statute of limitations as a defense to the obligations or enforcement of the obligations evidenced by this Note is waived by Borrower to the fullest extent permissible by law.

25. **Time Is of the Essence**. Time is of the essence with respect to all obligations of Borrower under this Note.

26. **Joint and Several Liability**. If more than one Person signs this Note as Borrower, their liability under this Note will be joint and several.

27. **Cross-Default**. Any Default by Borrower as to any other agreement between or among Lender and Borrower will, in Lender's sole and absolute discretion, constitute a Default under this Note.

28. **Interpretation Principles**. No inference in favor of or against either Lender or Borrower will be drawn from the fact that such Person has drafted any part of this Note. Both Lender and Borrower have both participated substantially in the negotiation, drafting, and revision of this Note, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Note may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which will govern all language in this Note. The words "include" and "including" in this Note will be construed to be followed by the words: "without limitation." The word "will" has the same meaning as the word "must" and denotes a mandatory action. The word "may" denotes a permissive action. Each collective noun in this Note will be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Note, refers to such document, as modified from time to time (excepting any modification that violates this Note), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Note includes the word "and,' except where the content clearly requires otherwise." Every reference in this Note to a law, statute, regulation, order, form, or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

29. **Severability**. If any provision of this Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other Persons or circumstances, will not be affected thereby, the provisions of this Note being severable in any such instance.

30. **Acknowledgment**. PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS NOTE AND HAS CONSULTED WITH LEGAL COUNSEL OF BORROWER'S INDEPENDENT SELECTION REGARDING BORROWER'S OBLIGATIONS UNDER THIS NOTE. BORROWER AGREES

TO THE TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.\

31. **HUD Provisions**. As long as HUD is the insurer or holder of the Senior Note (as such term and other capitalized terms in this Section 31 are defined in the form Subordination Agreement, HUD-92420M) among Borrower, Lender, and CBRE HMF, Inc. on FHA Project No. **129-35128**, the following provisions ("**HUD Provisions**") shall be in full force and effect:

(1) any payments due under the Subordinate Note shall be payable only (i) from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;

(2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and approved in writing by HUD.

(3) this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;

(4) interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;

(5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;

(6) the terms and provisions of this Subordinate Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Subordinate Note may not be modified or amended without the written consent of HUD; and

(7) in the event of any conflict between the terms of the Subordinate Note and the HUD Provisions, the terms of the HUD Provisions shall control.

[Remainder of page intentionally blank]

32. **Tax Credit Investor Notice/Cure**. R4 ASCA Acquisition LP, a Delaware limited partnership ("Tax Credit Investor"), shall have the right, but not the obligation, to cure any event of default or breach hereunder or under the City Deed of Trust, and any cure tendered by the Tax Credit Investor shall be accepted or rejected on the same basis as if tendered by Borrower. Lender shall provide a courtesy copy of any notice sent to Borrower under this Note or the City Deed of Trust to Tax Credit Investor at the following address:

R4 ASCA Acquisition LP
c/o R4 Capital LLC
780 Third Avenue, 16th Floor
New York, New York 10017
Attention: Marc Schnitzer
Email: mschnitzer@R4cap.com

With a copy to:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
Attention: Kristen Cassetta
Email: kristen.cassetta@hklaw.com

[Remainder of page intentionally blank]

~~32.~~33. **Incorporation of Defined Terms**. All terms, phrases, and words indicated to be defined terms by initial capitalization in this Note that are not specifically defined in this Note will have the meaning ascribed to the same term, phrase, or word, respectively, in the Disposition Agreement or, if not defined in the Disposition Agreement, in the City Deed of Trust, or if not defined in the City Deed of Trust, in the Lease.

Made and entered into in San Diego, California, on ~~_____________~~September ___, 20___.

BORROWER:

101 ~~ASH VENTURE~~Ash Venture LP,
a California limited partnership

By: 101 Ash AGP LLC,
a California limited liability company,
its Administrative General Partner

By: ___________________________________
Sydne Garchik
Manager

By: 101 Ash ~~Housing~~MGP LLC,
a California limited liability company,
its Managing General Partner

By: Pacific Southwest Community Development Corporation, a California nonprofit public benefit corporation,
its Sole Member and Manager

By: ___________________________
~~Sydne Garchik~~
~~Authorized Signatory~~
Juan P. Arroyo
Executive Vice President