



Office of the City Manager

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** January 21, 2020

**Item Number:** 17

**Item Description:** Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

**Submitted by:** Kelly Wallace, Interim Director, Health, Housing & Community Services

No changes are being made to the report submitted. The three leases to be approved (attached as Exhibits B, C, and D, dated 1-14-2020) have been revised as a result of review by and discussion with the projects' private construction lender Silicon Valley Bank, and the affordable project's private permanent lender Prudential/Freddie Mac. Changes include more precise definitions of the leasehold interest, expanding certain lender rights in the event of various possible negative outcomes such as property damage, destruction, condemnation, or foreclosure, and confirming that leases will be recorded at closing.

1-14-2020

Exhibit B

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

**by and between**

**CITY OF BERKELEY  
("Landlord")**

**and**

**BRIDGE Berkeley Way LP, a California Limited Partnership**

**("Tenant")**

Dated \_\_\_\_\_, 2020

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

	<b>Page</b>
ARTICLE 1. OVERVIEW AND GENERAL .....	1
<b>1.1 Overview</b> .....	1
<b>1.2 Ground Lease and Possession</b> .....	1
<b>1.3 Ownership of Premises Improvements</b> .....	1
<b>1.4 Changes to Premises and Parcel Map</b> .....	2
<b>1.5 Tenant’s Organizational Documents</b> .....	2
ARTICLE 2. GROUND LEASE TERM .....	2
<b>2.1 Term</b> .....	2
ARTICLE 3. RENT .....	2
<b>3.1 Rent</b> .....	2
<b>3.2 No Cost to Landlord: No Counterclaim, No Abatement</b> .....	2
<b>3.3 Additional Rent</b> .....	2
<b>3.4 Additional Consideration</b> .....	3
ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES .....	3
<b>4.1 Impositions</b> .....	3
<b>4.2 Statement Regarding Possessory Interest Tax</b> .....	4
<b>4.3 Services and Utilities</b> .....	4
ARTICLE 5. DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS .....	4
<b>5.1 General</b> .....	4
<b>5.2 Commencement and Completion of Construction</b> .....	4
<b>5.3 Prior Development Matters</b> .....	5
<b>5.4 Non-Responsibility of Landlord</b> .....	5
<b>5.5 No Change in Project Documents</b> .....	5
<b>5.6 Alterations</b> .....	6
<b>5.7 Construction Standards</b> .....	6
<b>5.8 Protection of Landlord</b> .....	8
<b>5.9 Liens and Stop Notices</b> .....	8
<b>5.10 Notice</b> .....	8
<b>5.11 Miscellaneous</b> .....	8
ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS .....	9
<b>6.1 General</b> .....	9
<b>6.2 Governmental Requirements</b> .....	9
<b>6.3 Tenant’s Right to Contest</b> .....	10
<b>6.4 Nuisance</b> .....	10

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

	<b>Page</b>
<b>6.5 General Use Prohibitions .....</b>	<b>10</b>
<b>6.6 Non-Discrimination.....</b>	<b>10</b>
<b>6.7 General Standards of Maintenance .....</b>	<b>11</b>
<b>6.8 Landlord’s Status as a Landowner .....</b>	<b>11</b>
<b>6.9 Regulatory Approvals Generally.....</b>	<b>11</b>
<b>ARTICLE 7. CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD’S RIGHT OF ENTRY .....</b>	<b>12</b>
<b>7.1 Landlord’s Disclaimers and Tenant’s Acknowledgements.....</b>	<b>12</b>
<b>7.2 Hazardous Materials .....</b>	<b>12</b>
<b>7.3 Landlord’s Right to Enter Premises and Premises Improvements .....</b>	<b>13</b>
<b>ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY .....</b>	<b>13</b>
<b>8.1 Ownership of Premises Improvements During Term .....</b>	<b>13</b>
<b>8.2 Ownership of Premises Improvements at Termination or Expiration .....</b>	<b>13</b>
<b>8.3 Removal and Ownership of Personal Property at Termination or Expiration .....</b>	<b>13</b>
<b>ARTICLE 9. INSURANCE AND INDEMNITY .....</b>	<b>14</b>
<b>9.1 General Insurance Requirements .....</b>	<b>14</b>
<b>9.2 Indemnity.....</b>	<b>15</b>
<b>ARTICLE 10. DAMAGE OR DESTRUCTION.....</b>	<b>16</b>
<b>10.1 Restoration.....</b>	<b>16</b>
<b>10.2 Waiver .....</b>	<b>17</b>
<b>10.3 Determination of Extent of Destruction, Interference with Use .....</b>	<b>17</b>
<b>10.4 Procedures for Repair and Restoration.....</b>	<b>17</b>
<b>ARTICLE 11. CONDEMNATION.....</b>	<b>18</b>
<b>11.1 Definitions. ....</b>	<b>18</b>
<b>11.2 Parties’ Rights and Obligations to be Governed by Ground Lease .....</b>	<b>18</b>
<b>11.3 Total Taking.....</b>	<b>18</b>
<b>11.4 Effect of Partial Taking .....</b>	<b>18</b>
<b>11.5 Restoration of Premises Improvements.....</b>	<b>19</b>
<b>11.6 Waiver of CCP Section 1265.130.....</b>	<b>19</b>
<b>11.7 Award.....</b>	<b>19</b>
<b>11.8 Leasehold Mortgagee Participation.....</b>	<b>19</b>
<b>ARTICLE 12. ASSIGNMENT AND SUBLETTING .....</b>	<b>20</b>
<b>12.1 Assignment. ....</b>	<b>20</b>

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

	<b>Page</b>
12.2 Subleases .....	20
ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES .....	21
13.1 Defaults by Tenant .....	21
13.2 Remedies .....	22
13.3 Damages .....	22
13.4 Landlord's Right to Cure Tenant's Default .....	22
13.5 Guarantor Performance Under Completion Guaranty .....	23
ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS .....	23
14.1 Right to Encumber .....	23
14.2 Leasehold Mortgagee as Third Party Beneficiary .....	23
14.3 Notice to Leasehold Mortgagee .....	23
14.4 Right of Leasehold Mortgagee to Cure .....	24
14.5 Limitation on Liability of Leasehold Mortgagee .....	25
14.6 Estoppel Certificates .....	25
14.7 Registration of Leasehold Mortgages .....	25
14.8 New Ground Lease .....	25
14.9 Rights of Investor .....	26
14.10 Transfers .....	26
14.11 [Intentionally Omitted] .....	26
14.12 Further Ground Lease Amendments .....	27
ARTICLE 15. MISCELLANEOUS .....	27
15.1 Holding Over .....	27
15.2 Attorneys' Fees .....	27
15.3 Quiet Possession .....	27
15.4 Force Majeure .....	28
15.5 Notices .....	28
15.6 Waiver .....	28
15.7 Surrender .....	28
15.8 Binding .....	28
15.9 Disclaimer of Partnership .....	29
15.10 Quitclaim .....	29
15.11 Interpretation .....	29
15.12 Severability .....	29

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

	<b>Page</b>
15.13 Computation of Time .....	29
15.14 Legal Advice.....	29
15.15 Time of Essence.....	30
15.16 Nonliability of Officials, Employees, etc.....	30
15.17 Assignment by Landlord .....	30
15.18 Applicable Law .....	30
15.19 Covenants and Conditions.....	30
15.20 Integration .....	30
15.21 Amendments to this Ground Lease.....	30
15.22 Proprietary and Governmental Roles: Actions by City .....	31
15.23 City Manager Authority and Limitations.....	31
15.24 Brokerage Commissions .....	31
15.25 City Non-Discrimination Ordinance.....	31
15.26 Non-Discrimination Against Persons With Disabilities.....	32
15.27 Conflict of Interest Prohibited.....	32
15.28 Nuclear Free Berkeley .....	32
15.29 Required Accessibility Disclosure.....	32
15.30 Oppressive States.....	33
15.31 Berkeley Living Wage Ordinance (LWO).....	33
15.32 Berkeley Equal Benefits Ordinance (EBO).....	34
15.33 Audit .....	35
15.34 City Business License, Payment of Taxes, Tax I.D. Number .....	35
15.35 Survival.....	35
15.36 No Merger of Title .....	35
15.37 Recording of Lease.....	35

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

**Page**

**LIST OF EXHIBITS**

<u>Exhibit A</u>	Premises Legal Description
<u>Exhibit B</u>	Development Site Parcel Map
<u>Exhibit C</u>	Status of Certain DDA Provisions
<u>Exhibit D</u>	Site Reciprocal Easement Agreement (REA 1)
<u>Exhibit E</u>	City Resolution No. AAAA-N.S. [ <b><i>Approving the final Leases</i></b> ]
<u>Exhibit F</u>	Initial Leasehold Mortgages and Mortgagees
<u>Exhibit G</u>	City Financing Documents

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

**1. “Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

**2. “Tenant”**

BRIDGE Berkeley Way

Notice Address:

BRIDGE Berkeley Way LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

**3. “Ground Lease Date”**

The date set forth in the first paragraph below.

**4. “DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to BFHP Hope Center LP pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in



**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to Tenant and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel C of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The **“Permanent Supportive Housing Improvements”** consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Affordable housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.
9. “**Premises Improvements**” The BRIDGE Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.
10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.
11. [Intentionally Omitted]
12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way BRIDGE Affordable Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.
13. “**Leasehold Mortgagee**” Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. “**Leasehold Mortgage**” Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

estate created by this Ground Lease.

15. **“Senior Leasehold Mortgagee”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **[Intentionally Omitted]**
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BFHP Hope Center LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time pursuant to ARTICLE 5 below.
23. **[Intentionally Omitted]**
24. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
25. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
26. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date,

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

together with such changes as Landlord may approve.

27. **“Base Rent”** \$500 for the entire Term.
28. **“Additional Rent”** Is defined in Section 3.3 below.
29. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
30. **“County”** The County of Alameda, California.
31. **“State”** The State of California.
32. **“City”** City of Berkeley, California.
33. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
34. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
35. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS** \_\_\_\_\_

**TENANT'S INITIALS** \_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA or Regulatory Requirements is subject to Landlord's reasonable consent.

## **ARTICLE 2. GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

## **ARTICLE 3. RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

#### **ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the Permanent Supportive Housing Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

## **ARTICLE 5. DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost



overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“**CEQA**”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In

any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the “**Notice of Completion**”), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of “**As Built**” drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## **ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord’s prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord’s overall governmental purposes and Tenant understands that Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant’s expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually “**Law**” and collectively “**Laws**”), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices

to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

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

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;

C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;

D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or

G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease,

transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

## ARTICLE 7.

### CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

#### **7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.
3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.
4. All references to "Development" means the "Premises."
5. All references to "Term" shall mean "Term" as defined in this Ground Lease.
6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by



Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible

or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of

the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## **ARTICLE 11. CONDEMNATION**

### **11.1 Definitions.**

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full

force and effect. Any exercise of Tenant's right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant's judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party. For purposes of this Section, Landlord's interest in the land and air space shall be valued subject to this Ground Lease (i.e., as if this Ground Lease remained in full force and effect).

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

**ARTICLE 12.  
ASSIGNMENT AND SUBLETTING**

**12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord’s written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant’s obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant’s governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant’s obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord’s consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord’s consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except as to residential tenancies in connection with the Permitted Use and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord’s prior written consent, which may be withheld for any reason whatsoever in Landlord’s



sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

**ARTICLE 13.  
TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements or Site REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee

under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

## **ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgage shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord and Tenant shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon

written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgagee in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the

payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this

Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 [Intentionally Omitted]**

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

## **ARTICLE 15. MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, “**Force Majeure**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant’s inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant’s interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.



**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord ("**Quitclaim Deed**"). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment

shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord’s prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant’s failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley’s Living Wage Ordinance (“LWO”). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to

maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

### **15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide

its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_ No \_\_\_

Certified Woman Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Minority Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_ No \_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_



**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

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

**PARCEL ONE:**

Parcel C, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_.

Being a portion of APN 057-2053-022-01

**EXHIBIT B**

**DEVELOPMENT SITE PARCEL MAP**

***[Draft to be attached—final to be included before signing]***

## EXHIBIT C

### STATUS OF CERTAIN DDA PROVISIONS

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
- x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.

2. The following DDA provisions are terminated:

- a. Section 3.7 (No Change in Project Documents).
- b. Section 3.8 (Additional Permits and Approvals).
- c. Article VII (Assignment and Transfers).
- d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
- e. Section 9.3 (Enforced Delay).
- f. Section 9.19 (Right of Entry to Perform Studies).

3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:

- a. Section 4.5 (Condition of Property) remains in full force and effect.
- b. Section 4.6 (Costs of Escrow and Closing).
- c. Section 4.7 (Obligations After Lease).
- d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
- e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
- f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
- g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
- h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
- i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

**EXHIBIT D**

**SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)**

***[to be provided]***



**EXHIBIT E**

**RESOLUTION NO. AAAA-N.S.**

***[to be attached]***





**EXHIBIT F**

**INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES**

***[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]***

**EXHIBIT G**

**CITY FINANCING DOCUMENTS**

***[to be provided]***





1-14-2020

Exhibit C

**GROUND LEASE  
2012 BERKELEY WAY  
(*Berkeley Way Permanent Supportive Housing Apartments*)**

**by and between**

**CITY OF BERKELEY  
("Landlord")**

**and**

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

	<b>Page</b>
ARTICLE 1. OVERVIEW AND GENERAL .....	1
<b>1.1 Overview</b> .....	1
<b>1.2 Ground Lease and Possession</b> .....	1
<b>1.3 Ownership of Premises Improvements</b> .....	1
<b>1.4 Changes to Premises and Parcel Map</b> .....	2
<b>1.5 Tenant’s Organizational Documents</b> .....	2
ARTICLE 2. GROUND LEASE TERM .....	2
<b>2.1 Term</b> .....	2
ARTICLE 3. RENT .....	2
<b>3.1 Rent</b> .....	2
<b>3.2 No Cost to Landlord: No Counterclaim, No Abatement</b> .....	2
<b>3.3 Additional Rent</b> .....	2
<b>3.4 Additional Consideration</b> .....	3
ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES .....	3
<b>4.1 Impositions</b> .....	3
<b>4.2 Statement Regarding Possessory Interest Tax</b> .....	4
<b>4.3 Services and Utilities</b> .....	4
ARTICLE 5. DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS .....	4
<b>5.1 General</b> .....	4
<b>5.2 Commencement and Completion of Construction</b> .....	4
<b>5.3 Prior Development Matters</b> .....	5
<b>5.4 Non-Responsibility of Landlord</b> .....	5
<b>5.5 No Change in Project Documents</b> .....	5
<b>5.6 Alterations</b> .....	6
<b>5.7 Construction Standards</b> .....	6
<b>5.8 Protection of Landlord</b> .....	8
<b>5.9 Liens and Stop Notices</b> .....	8
<b>5.10 Notice</b> .....	8
<b>5.11 Miscellaneous</b> .....	8
ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS .....	9
<b>6.1 General</b> .....	9
<b>6.2 Governmental Requirements</b> .....	9
<b>6.3 Tenant’s Right to Contest</b> .....	10
<b>6.4 Nuisance</b> .....	10

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

	<b>Page</b>
6.5 General Use Prohibitions .....	10
6.6 Non-Discrimination.....	11
6.7 General Standards of Maintenance .....	11
6.8 Landlord’s Status as a Landowner .....	11
6.9 Regulatory Approvals Generally.....	11
ARTICLE 7. CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD’S RIGHT OF ENTRY .....	12
7.1 Landlord’s Disclaimers and Tenant’s Acknowledgements.....	12
7.2 Hazardous Materials .....	12
7.3 Landlord’s Right to Enter Premises and Premises Improvements .....	13
ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY .....	13
8.1 Ownership of Premises Improvements During Term .....	13
8.2 Ownership of Premises Improvements at Termination or Expiration .....	13
8.3 Removal and Ownership of Personal Property at Termination or Expiration .....	13
ARTICLE 9. INSURANCE AND INDEMNITY .....	14
9.1 General Insurance Requirements .....	14
9.2 Indemnity.....	15
ARTICLE 10. DAMAGE OR DESTRUCTION.....	16
10.1 Restoration.....	16
10.2 Waiver .....	17
10.3 Determination of Extent of Destruction, Interference with Use .....	17
10.4 Procedures for Repair and Restoration.....	17
ARTICLE 11. CONDEMNATION.....	18
11.1 Definitions. ....	18
11.2 Parties’ Rights and Obligations to be Governed by Ground Lease .....	18
11.3 Total Taking.....	18
11.4 Effect of Partial Taking .....	18
11.5 Restoration of Premises Improvements.....	19
11.6 Waiver of CCP Section 1265.130.....	19
11.7 Award.....	19
11.8 Leasehold Mortgagee Participation.....	19
ARTICLE 12. ASSIGNMENT AND SUBLETTING .....	20
12.1 Assignment. ....	20



**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

	<b>Page</b>
12.2 Subleases .....	20
ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES .....	21
13.1 Defaults by Tenant .....	21
13.2 Remedies .....	22
13.3 Damages .....	22
13.4 Landlord's Right to Cure Tenant's Default .....	22
13.5 Guarantor Performance Under Completion Guaranty .....	23
ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS .....	23
14.1 Right to Encumber .....	23
14.2 Leasehold Mortgagee as Third Party Beneficiary .....	23
14.3 Notice to Leasehold Mortgagee .....	23
14.4 Right of Leasehold Mortgagee to Cure .....	24
14.5 Limitation on Liability of Leasehold Mortgagee .....	25
14.6 Estoppel Certificates .....	25
14.7 Registration of Leasehold Mortgages .....	25
14.8 New Ground Lease .....	25
14.9 Rights of Investor .....	26
14.10 Transfers .....	26
14.11 Permitted Use Requirements .....	27
14.12 Further Ground Lease Amendments .....	27
ARTICLE 15. MISCELLANEOUS .....	27
15.1 Holding Over .....	27
15.2 Attorneys' Fees .....	27
15.3 Quiet Possession .....	27
15.4 Force Majeure .....	28
15.5 Notices .....	28
15.6 Waiver .....	28
15.7 Surrender .....	28
15.8 Binding .....	29
15.9 Disclaimer of Partnership .....	29
15.10 Quitclaim .....	29
15.11 Interpretation .....	29
15.12 Severability .....	29

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

	<b>Page</b>
15.13 Computation of Time .....	29
15.14 Legal Advice.....	30
15.15 Time of Essence.....	30
15.16 Nonliability of Officials, Employees, etc.....	30
15.17 Assignment by Landlord .....	30
15.18 Applicable Law .....	30
15.19 Covenants and Conditions.....	30
15.20 Integration .....	30
15.21 Amendments to this Ground Lease.....	31
15.22 Proprietary and Governmental Roles: Actions by City .....	31
15.23 City Manager Authority and Limitations.....	31
15.24 Brokerage Commissions .....	31
15.25 City Non-Discrimination Ordinance.....	31
15.26 Non-Discrimination Against Persons With Disabilities.....	32
15.27 Conflict of Interest Prohibited.....	32
15.28 Nuclear Free Berkeley .....	33
15.29 Required Accessibility Disclosure.....	33
15.30 Oppressive States.....	33
15.31 Berkeley Living Wage Ordinance (LWO).....	34
15.32 Berkeley Equal Benefits Ordinance (EBO).....	34
15.33 Audit .....	35
15.34 City Business License, Payment of Taxes, Tax I.D. Number .....	35
15.35 Survival.....	35
15.36 No Merger of Title .....	35
15.37 Recording of Lease.....	35

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

**Page**

**LIST OF EXHIBITS**

<u>Exhibit A</u>	Premises Legal Description
<u>Exhibit B</u>	Development Site Parcel Map
<u>Exhibit C</u>	Status of Certain DDA Provisions
<u>Exhibit D</u>	Site Reciprocal Easement Agreement (REA 1)
<u>Exhibit D1</u>	Hope Center Reciprocal Easement Agreement (REA 2)
<u>Exhibit E</u>	City Resolution No. AAAA-N.S. [ <b><i>Approving the final Leases</i></b> ]
<u>Exhibit F</u>	Initial Leasehold Mortgages and Mortgagees
<u>Exhibit G</u>	City Financing Documents

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

1. **“Landlord”** CITY OF BERKELEY, a Charter city

Notice Address:  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:  
City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”** BFHP Hope Center LP

Notice Address:

BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”** The date set forth in the first paragraph below.

4. **“DDA”** That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

partially assigned to Tenant pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel **A** of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

Permanent Supportive Improvements. The “**Permanent Supportive Housing Improvements**” consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Supportive housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. “**Premises Improvements**” The Permanent Supportive Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.

11. “**REA 2**” or “**Hope Center REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1**.

12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Permanent Supportive Housing Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_,

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.

13. **“Leasehold Mortgagee”** Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. **“Leasehold Mortgage”** Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold estate created by this Ground Lease.
15. **“Senior Leasehold Mortgagee”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **“BFHP”** Berkeley Food and Housing Project, a California religious] corporation
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

pursuant to ARTICLE 5 below.

23. **[Intentionally Omitted]**
24. **“Premises Substantial Completion”**                      Obtaining a temporary certificate of occupancy for the Premises and Project.
25. **“Premises Substantial Completion Date”**                      The earlier of 40 months following the commencement of Project construction and July 31, 2024.
26. **“Guarantor” and “Completion Guaranty”**                      Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
27. **“Base Rent”**    \$500 for the entire Term.
28. **“Additional Rent”**    Is defined in Section 3.3 below.
29. **“Interest Rate”**    The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
30. **“County”**    The County of Alameda, California.
31. **“State”**    The State of California.
32. **“City”**    City of Berkeley, California
33. **“Code”**    The Internal Revenue Code of 1986, as amended from time to time.
34. **“CPI”**    The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
35. **“City Financing Documents”**    See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS**\_\_\_\_\_

**TENANT'S INITIALS**\_\_\_\_\_



**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Permanent Supportive Housing Apartments)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

## **ARTICLE 2. GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

## **ARTICLE 3. RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

#### **ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

## **ARTICLE 5. DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost

overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“**CEQA**”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In



any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the “**Notice of Completion**”), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of “**As Built**” drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## **ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord’s prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord’s overall governmental purposes and Tenant understands that, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant’s expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually “**Law**” and collectively “**Laws**”), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices

to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

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

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;

C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;

D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or

G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that

Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

## ARTICLE 7.

### CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

#### **7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.
3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.
4. All references to "Development" means the "Premises."
5. All references to "Term" shall mean "Term" as defined in this Ground Lease.
6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants,

and *[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]*, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election,

require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use,

generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) or if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding



the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. **Loss Adjustment and Disbursement Procedures.** Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the

Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## **ARTICLE 11. CONDEMNATION**

### **11.1 Definitions.**

A. **"Condemnation"** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **"Date of taking"** means the date the condemnor has the right to possession of the property being condemned.

C. **"Award"** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **"Condemnor"** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties' Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise

its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect. Any exercise of Tenant's right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant's judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

**ARTICLE 12.**  
**ASSIGNMENT AND SUBLETTING**

**12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord’s written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment. Further, any Developer's departure from Tenant (or Tenant's general partner or managing member) requires Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except to residential tenancies in connection with the Permitted Use and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall

not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

**ARTICLE 13.  
TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at

the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

## **ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any

such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgagee in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.



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

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgagee or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or

damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements

by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be affordable housing.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

## **ARTICLE 15. MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall

surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord (“**Quitclaim Deed**”). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the

foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

#### **15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

#### **15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.



**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

### **15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("**LWO**"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

### **15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

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

**PARCEL ONE:**

Parcel A, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

**EXHIBIT B**

**DEVELOPMENT SITE PARCEL MAP**

***[Draft to be attached—final to be included before signing]***

## EXHIBIT C

### STATUS OF CERTAIN DDA PROVISIONS

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).



- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
- x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.

2. The following DDA provisions are terminated:

- a. Section 3.7 (No Change in Project Documents).
- b. Section 3.8 (Additional Permits and Approvals).
- c. Article VII (Assignment and Transfers).
- d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
- e. Section 9.3 (Enforced Delay).
- f. Section 9.19 (Right of Entry to Perform Studies).

3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:

- a. Section 4.5 (Condition of Property) remains in full force and effect.
- b. Section 4.6 (Costs of Escrow and Closing).
- c. Section 4.7 (Obligations After Lease).
- d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
- e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
- f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
- g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
- h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
- i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

**EXHIBIT D**

**SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)**

***[to be provided]***



**EXHIBIT D1**

**HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)**

***[to be provided]***



**EXHIBIT E**

**RESOLUTION NO. AAAA-N.S.**

***[to be attached]***





**EXHIBIT F**

**INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES**

***[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]***

**EXHIBIT G**

**CITY FINANCING DOCUMENTS**

***[to be provided]***





1-14-2020

Exhibit D

**GROUND LEASE  
2012 BERKELEY WAY  
(*Berkeley Way Hope Center Temporary Housing*)**

**by and between**

**CITY OF BERKELEY  
("Landlord")**

**and**

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

	<b>Page</b>
ARTICLE 1. OVERVIEW AND GENERAL .....	1
<b>1.1 Overview</b> .....	1
<b>1.2 Ground Lease and Possession</b> .....	1
<b>1.3 Ownership of Premises Improvements</b> .....	1
<b>1.4 Changes to Premises and Parcel Map</b> .....	2
<b>1.5 Tenant’s Organizational Documents</b> .....	2
<b>1.6 Assignment of Ground Lease to BFHP LLC</b> .....	2
ARTICLE 2. GROUND LEASE TERM.....	2
<b>2.1 Term</b> .....	2
ARTICLE 3. RENT .....	3
<b>3.1 Rent</b> .....	3
<b>3.2 No Cost to Landlord: No Counterclaim, No Abatement</b> .....	3
<b>3.3 Additional Rent</b> .....	3
<b>3.4 Additional Consideration</b> .....	3
ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES.....	3
<b>4.1 Impositions</b> .....	3
<b>4.2 Statement Regarding Possessory Interest Tax</b> .....	4
<b>4.3 Services and Utilities</b> .....	4
ARTICLE 5. DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS.....	5
<b>5.1 General</b> .....	5
<b>5.2 Commencement and Completion of Construction</b> .....	5
<b>5.3 Prior Development Matters</b> .....	5
<b>5.4 Non-Responsibility of Landlord</b> .....	6
<b>5.5 No Change in Project Documents</b> .....	6
<b>5.6 Alterations</b> .....	6
<b>5.7 Construction Standards</b> .....	7
<b>5.8 Protection of Landlord</b> .....	8
<b>5.9 Liens and Stop Notices</b> .....	8
<b>5.10 Notice</b> .....	9
<b>5.11 Miscellaneous</b> .....	9
ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS .....	10
<b>6.1 General</b> .....	10
<b>6.2 Governmental Requirements</b> .....	10
<b>6.3 Tenant’s Right to Contest</b> .....	10

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

	<b>Page</b>
<b>6.4 Nuisance</b> .....	10
<b>6.5 General Use Prohibitions</b> .....	11
<b>6.6 Non-Discrimination</b> .....	11
<b>6.7 General Standards of Maintenance</b> .....	11
<b>6.8 Landlord’s Status as a Landowner</b> .....	12
<b>6.9 Regulatory Approvals Generally</b> .....	12
<b>ARTICLE 7. CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD’S RIGHT OF ENTRY</b> .....	12
<b>7.1 Landlord’s Disclaimers and Tenant’s Acknowledgements</b> .....	12
<b>7.2 Hazardous Materials</b> .....	12
<b>7.3 Landlord’s Right to Enter Premises and Premises Improvements</b> .....	13
<b>ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY</b> .....	14
<b>8.1 Ownership of Premises Improvements During Term</b> .....	14
<b>8.2 Ownership of Premises Improvements at Termination or Expiration</b> .....	14
<b>8.3 Removal and Ownership of Personal Property at Termination or Expiration</b> .....	14
<b>ARTICLE 9. INSURANCE AND INDEMNITY</b> .....	15
<b>9.1 General Insurance Requirements</b> .....	15
<b>9.2 Indemnity</b> .....	16
<b>ARTICLE 10. DAMAGE OR DESTRUCTION</b> .....	16
<b>10.1 Restoration</b> .....	16
<b>10.2 Waiver</b> .....	18
<b>10.3 Determination of Extent of Destruction, Interference with Use</b> .....	18
<b>10.4 Procedures for Repair and Restoration</b> .....	18
<b>ARTICLE 11. CONDEMNATION</b> .....	19
<b>11.1 Definitions</b> .....	19
<b>11.2 Parties’ Rights and Obligations to be Governed by Ground Lease</b> .....	19
<b>11.3 Total Taking</b> .....	19
<b>11.4 Effect of Partial Taking</b> .....	19
<b>11.5 Restoration of Premises Improvements</b> .....	19
<b>11.6 Waiver of CCP Section 1265.130</b> .....	20
<b>11.7 Award</b> .....	20
<b>11.8 Leasehold Mortgagee Participation</b> .....	20
<b>ARTICLE 12. ASSIGNMENT AND SUBLETTING</b> .....	20

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

	<b>Page</b>
12.1 Assignment .....	20
12.2 Subleases .....	21
ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES .....	21
13.1 Defaults by Tenant .....	21
13.2 Remedies .....	22
13.3 Damages .....	23
13.4 Landlord's Right to Cure Tenant's Default .....	23
13.5 Guarantor Performance Under Completion Guaranty .....	23
ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS .....	24
14.1 Right to Encumber .....	24
14.2 Leasehold Mortgagee as Third Party Beneficiary .....	24
14.3 Notice to Leasehold Mortgagee .....	24
14.4 Right of Leasehold Mortgagee to Cure .....	24
14.5 Limitation on Liability of Leasehold Mortgagee .....	25
14.6 Estoppel Certificates .....	26
14.7 Registration of Leasehold Mortgages .....	26
14.8 New Ground Lease .....	26
14.9 Rights of Investor .....	27
14.10 Transfers .....	27
14.11 Permitted Use Requirements .....	27
14.12 Further Ground Lease Amendments .....	27
ARTICLE 15. MISCELLANEOUS .....	28
15.1 Holding Over .....	28
15.2 Attorneys' Fees .....	28
15.3 Quiet Possession .....	28
15.4 Force Majeure .....	28
15.5 Notices .....	29
15.6 Waiver .....	29
15.7 Surrender .....	29
15.8 Binding .....	29
15.9 Disclaimer of Partnership .....	29
15.10 Quitclaim .....	29
15.11 Interpretation .....	30



**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

	<b>Page</b>
15.12 Severability.....	30
15.13 Computation of Time .....	30
15.14 Legal Advice.....	30
15.15 Time of Essence.....	30
15.16 Nonliability of Officials, Employees, etc.....	30
15.17 Assignment by Landlord .....	31
15.18 Applicable Law.....	31
15.19 Covenants and Conditions.....	31
15.20 Integration .....	31
15.21 Amendments to this Ground Lease.....	31
15.22 Proprietary and Governmental Roles: Actions by City .....	31
15.23 City Manager Authority and Limitations.....	32
15.24 Brokerage Commissions.....	32
15.25 City Non-Discrimination Ordinance.....	32
15.26 Non-Discrimination Against Persons With Disabilities.....	32
15.27 Conflict of Interest Prohibited.....	33
15.28 Nuclear Free Berkeley .....	33
15.29 Required Accessibility Disclosure.....	33
15.30 Oppressive States.....	34
15.31 Berkeley Living Wage Ordinance (LWO).....	34
15.32 Berkeley Equal Benefits Ordinance (EBO).....	35
15.33 Audit .....	35
15.34 City Business License, Payment of Taxes, Tax I.D. Number .....	36
15.35 Survival.....	36
15.36 No Merger of Title .....	36
15.37 Recording of Lease.....	36

**TABLE OF CONTENTS**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

**Page**

**LIST OF EXHIBITS**

<u>Exhibit A</u>	Premises Legal Description
<u>Exhibit B</u>	Development Site Parcel Map
<u>Exhibit C</u>	Status of Certain DDA Provisions
<u>Exhibit D</u>	Site Reciprocal Easement Agreement (REA 1)
<u>Exhibit D1</u>	Hope Center Reciprocal Easement Agreement (REA 2)
<u>Exhibit E</u>	City Resolution No. AAAA-N.S. <b><i>[Approving the final Leases]</i></b>
<u>Exhibit F</u>	Initial Leasehold Mortgages and Mortgagees
<u>Exhibit G</u>	City Financing Documents

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BFHP Hope Center LP

Notice Address:

BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to Tenant pursuant to that certain Partial

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel B of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

**“Permanent Supportive Housing Improvements”** consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The **“BRIDGE Improvements”** consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. **“Permitted Use”** Homeless and community services, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. **“Premises Improvements”** The Temporary Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. **“REA 1” or “Site REA” or “Berkeley Way REA”** That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D.**

11. **“REA 2” or “Hope Center REA”** That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1.**

12. **“Regulatory Requirements”** Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Hope Center Temporary Housing), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.

13. **“Leasehold Mortgage”** Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. **“Leasehold Mortgage”** Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold estate created by this Ground Lease.
15. **“Senior Leasehold Mortgage”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **“BFHP”** Berkeley Food and Housing Project, a California religious corporation
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

pursuant to ARTICLE 5 below.

23. **“Lease Transfer Agreement” or “Transfer Agreement”** Lease Transfer Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LLC, a California limited liability company (“**BFHP LLC**”), together with such changes as City may approve.
24. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
25. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
26. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
27. **“Base Rent”** \$500 for the entire Term.
28. **“Additional Rent”** Is defined in Section 3.3 below.
29. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
30. **“County”** The County of Alameda, California.
31. **“State”** The State of California.
32. **“City”** City of Berkeley, California.
33. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
34. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
35. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS** \_\_\_\_\_

**TENANT'S INITIALS** \_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Hope Center Temporary Housing)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)



Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein, or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

**1.6 Assignment of Ground Lease to BFHP LLC.**

A. Following Premises Substantial Completion, Tenant may convey its interest in this Ground Lease and the Premises Improvement to BFHP LLC pursuant to the Lease Transfer Agreement, in which event Tenant and BFHP LLC shall enter into an assignment of this Ground Lease ("**Lease Assignment**") and grant deed ("**Grant Deed**"), each substantially in form attached to the Transfer Agreement, or in such other form as Landlord may approve in its reasonable discretion (the "**Assignment**"). Concurrently with the effective date of the Assignment, Tenant shall record in the Official Records of Alameda County (i) the Lease Assignment (or memorandum thereof) and (ii) Grant Deed, and upon recording thereof (except as provided in the Transfer Agreement) Tenant shall be released from any and all obligations under this Ground Lease arising after the effective date of the Assignment. Tenant will pay all costs of recording, including any County documentary transfer tax or City conveyance tax, the cost of any title insurance it may require and any escrow to implement the transaction.

B. Nothing in this Section shall prevent Tenant from entering into a temporary sublease with BFHP LLC to operate the Temporary Housing Improvements pursuant to this Ground Lease and the Regulatory Agreement prior to the transfer of this Ground Lease and the Temporary Housing Improvements to the BFHP LLC pursuant to the Lease Transfer Agreement as described in Section 1.6A.

**ARTICLE 2.  
GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

**ARTICLE 3.  
RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, “**Rent**”) shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** “**Additional Rent**” means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant’s obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord’s rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant’s right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days’ advance written notice of Landlord’s intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute “**Additional Rent**” under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant’s receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

**ARTICLE 4.  
TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively,

**“Impositions”**). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises , the Premises Improvements and on Tenant’s interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant’s leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term (**“Utilities”**). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Permanent Supportive Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

**5.3 Prior Development Matters.**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act ("**CEQA**") with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 "**Material Change**" means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

**5.6 Alterations.**

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. "**Alterations**" include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. "**Material Alterations**" means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord's prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord's prior written consent, which may be granted or denied in Landlord's reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably

requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord's disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord's approval of Tenant's contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other

governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord.** Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices.** Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements,

Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice.** Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous.**

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the "**Notice of Completion**"), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of "**As Built**" drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.



**ARTICLE 6.**  
**USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord's overall governmental purposes and Tenant understands that, except as provided in ARTICLE 14, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

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

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;

C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;

D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or

G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person. City understands and agrees that the shelter beds in the Temporary Housing Improvements may be restricted to men, or persons identifying as men.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and

any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

## ARTICLE 7.

### CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant"..

#### **7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or

which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

3. All references to “**Hazardous Materials**” shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.

4. All references to "Development" means the "Premises."

5. All references to “Term” shall mean “Term” as defined in this Ground Lease.

6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant’s Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

### **7.3 Landlord’s Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord’s entry on the

Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

## **ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to or against to the extent caused by Tenant or subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

**ARTICLE 9.  
INSURANCE AND INDEMNITY**

**9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an “insured contract” for the performance of Tenant’s indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker’s Compensation Insurance, including Employer’s Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant’s contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker’s compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises

Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.



2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

**ARTICLE 11.  
CONDEMNATION**

**11.1 Definitions.**

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect. Any exercise of Tenant’s right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of

taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

## **ARTICLE 12. ASSIGNMENT AND SUBLETTING**

### **12.1 Assignment.**

A. Except as provided in Section 1.6 and the Lease Transfer Agreement, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, "control" means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except as provided in Subsection 1.6B, to residential tenancies and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

## **ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that

curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination

under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

**ARTICLE 14.  
MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgage in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

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

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by



such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against the Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the

date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be as specified by the zoning or applicable City conditions of approval.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material

respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

## **ARTICLE 15. MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

### **15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from

the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord (“**Quitclaim Deed**”). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to

be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall

be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground

Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or

accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.



**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

### **15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

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

**PARCEL ONE:**

Parcel B , as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

**EXHIBIT B**

**DEVELOPMENT SITE PARCEL MAP**

***[Draft to be attached—final to be included before signing]***

## EXHIBIT C

### CERTAIN DDA PROVISIONS

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
- x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.

2. The following DDA provisions are terminated:

- a. Section 3.7 (No Change in Project Documents).
- b. Section 3.8 (Additional Permits and Approvals).
- c. Article VII (Assignment and Transfers).
- d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
- e. Section 9.3 (Enforced Delay).
- f. Section 9.19 (Right of Entry to Perform Studies).

3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:

- a. Section 4.5 (Condition of Property) remains in full force and effect.
- b. Section 4.6 (Costs of Escrow and Closing).
- c. Section 4.7 (Obligations After Lease).
- d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
- e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
- f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
- g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
- h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
- i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and



Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

**EXHIBIT D**

**SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)**

***[to be provided]***



**EXHIBIT D1**

**HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)**

***[to be provided]***



**EXHIBIT E**

**RESOLUTION NO. AAAA-N.S.**

***[to be attached]***



**EXHIBIT F**

**INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES**

***[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]***



**EXHIBIT G**

**CITY FINANCING DOCUMENTS**

***[to be provided]***



