

RD: SSG

DRAFT

GROUND LEASE

BY AND BETWEEN

CITY OF SAN JOSE

(LESSOR)

AND

(LESSEE)

(ARYA -226 BALBACH STREET)

GROUND LEASE

(Arya)

THIS GROUND LEASE ("Lease") is entered into and made effective as of the ____ day of ____, 20__, by and between the **City of San José**, a municipal corporation ("Lessor" or "City") and _____, a California limited partnership ("Lessee").

RECITALS

A. The City is the owner of certain real property located at 500 Almaden Avenue (formerly 226 Balbach Street) in the City of San José, as more particularly described on **EXHIBIT A** attached hereto (the "Property").

B. Lessee intends to develop an affordable housing project on the Property known as the Arya with eighty-seven (87) rental units, consisting eighty six (86) units being income and rent restricted as described in the Affordability Restrictions (as defined below), one (1) unrestricted two-bedroom manager's unit and associated Improvements ("Project").

C. There will be no Non-Residential Space (as defined below) on the leased Property.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained in this Lease, the parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings in this Lease:

(a) "Affordability Restrictions" means the Leasehold Affordability Restrictions dated _____, 20__ and to be recorded against the Lessee's leasehold interest in the Property in the Official Records of Santa Clara County. In the event the Leasehold Affordability Restrictions are terminated or foreclosed or otherwise ineffective, "Affordability Restrictions" shall mean the affordability restrictions dated _____, 2020 to be recorded in the Official Records of Santa Clara County prior to or concurrently with the memorandum of this lease against the City's fee interest in the Property.

(b) "City Loan" shall mean the loan(s) from the City of San José to Lessee.

(c) "Construction Phase" shall mean the time between the recording of the lenders construction permanent deeds of trust and the conversion to permanent financing as described in their loan documents dated on or about_____.

(d) "Dwelling Units" shall mean the units of affordable rental housing, which are intended to be occupied by the Tenants of the Project.

(e) "Default" shall mean an Event of Default as defined in Section 13.

(f) "Improvements" shall mean the buildings, structures and other improvements, including the building fixtures therein, now or hereafter located on the Property.

(g) "Lease" shall mean this ground lease between the Lessee and the Lessor for the Property and shall include all written amendments to this Lease executed by the Parties.

(h) "Lease Term" shall have the meaning provided in Section 2.

(i) "Lease Year" shall mean a period of one calendar year beginning January 1 and ending December 31. The first Lease Year shall commence on the first day of the Lease Term and end on the last day of the following December. The last Lease Year shall begin on January 1 of that year and end on the last day of this Lease.

(j) "Leasehold Mortgage" shall mean any mortgage, deed of trust, security agreement or collateral assignment securing a Loan and encumbering the leasehold interest in the Property.

(k) "Lender(s)" shall mean the beneficiary of a Leasehold Mortgage.

(l) "Lessee" shall mean _____, a California limited partnership and pursuant to Section 15(f), its successors and assigns.

(m) "Limited Partner" shall mean Lessee's limited partners, _____, whose addresses for notice are provided in Section 15.

(n) "Lessor" shall mean the City of San José, a municipal corporation.

(o) "Loans" shall mean collectively: (i) up to \$_____ in construction funding from (ii) up to \$_____ in construction and permanent funding from the City of San José (plus protective advances); (iii) up to \$_____ in construction and permanent funding from the County of Santa Clara (plus protective advances); and (iv) up to \$-_____ in construction and permanent funding from.

(p) "Loan Documents" shall mean all loan agreements, notes, deeds of trust, security documents, including regulatory agreements, use agreements, security

agreements, fixture filings, and financing statements required of the Lessee which are executed by the Lessee in connection with any of the Loans.

(q) "Memorandum of Lease" shall mean the Memorandum of Lease on a form prepared by the Lessor to be entered into between the Lessor and Lessee.

(r) "Non-Residential Space" shall mean any non-residential rental space required for consistency with the Project's planning permit requirements.

(s) "Non-Residential Tenants" shall mean the parties, if any, who are authorized by the Lessee to occupy the Non-Residential Space consistent with this Lease.

(t) "Party" shall mean the Lessor or the Lessee individually.

(u) "Parties" shall mean the Lessor and the Lessee collectively.

(v) "Project" shall have the meaning given in Recital B above.

(w) "Property" shall mean the land leased hereunder, more fully described in the attached **EXHIBIT A**.

(x) "Senior Lender" shall mean the lender who is the beneficiary of the most senior Leasehold Mortgage, whose address for notice is provided in Section 15. Such seniority being determined after taking into account all applicable recorded subordination agreements.

(y) "Taking" means institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States, State of California, County of Santa Clara, City of San José or any other governmental authority, or any other entity under the right of eminent domain..

(z) "Tenants" shall mean the residents of the Project who are authorized by Lessee to occupy the Dwelling Units consistent with the Affordability Restrictions.

2. **LEASE; TERM; RENT; USE; TAXES AND ASSESSMENTS**

(a) Lease of the Property. For and in consideration of the covenants and agreements to be kept and performed by the Lessee, Lessor hereby leases the Property to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Property from the Lessor pursuant to the terms of this Lease. The Lessee or its designee shall construct and operate the Project in compliance with all applicable laws. Concurrently with the execution of this Lease, Lessor and Lessee shall execute the Memorandum of Lease, in substantially the form of the attached **EXHIBIT C**, and

shall record the Memorandum of Lease in the Official Records of the County of Santa Clara. The Lessor shall, in its sole discretion, have the option to record this Lease.

(b) Lease Term. The term of this Lease (the "Lease Term") shall commence on _____ and shall continue from such date until the expiration of sixty-five (65) years plus an option by Lessee to extend the term for an additional twenty (20) years in accordance with the terms below ("Option Period"), unless earlier terminated in accordance with this Lease.

(c) Rent. The Lessee shall pay to the Lessor, at the City of San José, 200 East Santa Clara Street 12th Floor, San Jose, CA 95113, or such other place as Lessor may designate in writing, "Rent" in the amount of One Dollar (\$1.00) per Lease Year. The aggregate amount of Rent in the amount of Sixty-Five Dollars (\$65.00) shall be due and payable by Lessee to Lessor at the earlier of: construction closing or within ten (10) business days after mutual execution of this Lease.

(d) Use of Project. Lessee shall at all times during the Lease Term use or cause the Project to be used for affordable housing purposes as set forth in this Lease, consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Project and the Affordability Restrictions. In the event of foreclosure, the use of the Project need only comply with the Affordability Restrictions remaining after such foreclosure. Lessee agrees to comply with all applicable laws, statutes, rules, orders, ordinances, requirements and regulations of the United States, the State of California, and of any other governmental authority having jurisdiction over the Project, or Property. Lessee further agrees:

(i) not to use the Project for any disorderly or unlawful purpose, but only to provide proper housing and related facilities to Tenants, and to maintain the character of the Project as affordable housing consistent with City's authorization for this Lease under Health and Safety Code Section 33433 as memorialized by the applicable Affordability Restrictions;

(ii) to use reasonable efforts to prevent any Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Property;

(iii) to use reasonable efforts to prevent any Tenant from violating any of the covenants and conditions of this Lease with respect to the Property;

(iv) to take commercially reasonable action, if necessary, to abate any violation of this Lease by any Tenant upon notice from the Lessor.

(e) Taxes and Assessments.

(i) Payment by Lessee. Lessee acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Lessee agrees to pay and discharge, as additional rent for the Property during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest

taxes associated with the Property, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Property or any improvements which are now or hereafter located thereon, or against any of Lessee's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to this Lease on account of any taxable possessory right which Lessee may have acquired pursuant to this Lease. Lessee shall pay or reimburse Lessor, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Lessee hereunder. Nothing herein shall impair Lessee's right to request and receive exemption from the payment of real estate taxes under California Revenue and Taxation Code Section 214(g).

(ii) Lessee's Right to Contest. If Lessee disputes any amount or validity of any liens, taxes, assessments, or charges upon the Land or the Improvements, Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. Lessor agrees to render to Lessee all reasonable assistance, at no expense to Lessor, in contesting the validity or amount of any such liens, taxes, assessments or charges, including joining in the signing of any protests or pleadings which Lessee may deem advisable to file. During any such contest, Lessee shall (by the payment or bonding of such liens, disputed taxes, assessments or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Property.

(iii) Triple Net Lease. This Lease is a triple net lease and the Lessee shall be responsible to pay all costs, charges, taxes, impositions and other obligations related thereto. If Lessor pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Lessor will be entitled to be reimbursed by Lessee the full amount of such payments as additional rent within thirty (30) days of written demand by Lessor. Failure to timely pay the additional rent shall be an Event of Default (as defined in Section 13).

(f) Option Period. The Lease may be extended subject to all of the following: (a) Lessee and any Lenders consent to the extension and the recording of an amended Memorandum of Lease; (b) Lessee and Lenders consent to extend the term

of the Affordability Restrictions recorded against the Leasehold to match the extended Lease term; (c) Lessee's payment of City costs (including title) and transaction fees and (d) execution of all documents and amendments required by the City and recording, if necessary. The Lessee may request the extension of the Lease in writing prior to the 64th anniversary of the above-listed date of commencement of the Lease.

3. **TITLE TO IMPROVEMENTS; MAINTENANCE; INSURANCE**

(a) Title to Improvements. Lessor hereby grants to Lessee, without warranty express or implied, all right, title, or interest that Lessor may have in the Improvements. The Improvements shall be and remain the property of Lessee during the Lease Term provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. When the Lease Term expires or, when the Lease is otherwise terminated under the terms of this Lease, title to the Improvements shall revert to and vest in Lessor without cost to Lessor. It is the intent of the Parties that this Lease and Memorandum of Lease shall create a constructive notice of severance of the Improvements from the Property and without the necessity of a deed from Lessor to Lessee. The Improvements shall be and remain real property and shall be owned in fee by the Lessee for the term of this Lease. At the request of Lessor, and at the end of the Lease Term or when the Lease is otherwise terminated, Lessee agrees to execute a confirmatory quitclaim deed for the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Property and the Improvements free and clear of Lessee's leasehold interest in the Land, ownership interest in the Improvements and all monetary liens and monetary encumbrances not caused or expressly agreed to by Lessor. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Land and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to Lessee during the Lease Term and for the tax years during which the Lease Term begins and ends.

(b) Permits, Licenses and Easements. Lessor agrees that, within ten (10) days after receipt of written request from the Lessee, it shall (at no expense to the Lessor) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work the Lessee may do pursuant to this Lease, and shall also join in any grants of easements for public utilities useful or necessary to the proper economic development of the Property or of the Improvements. Provided however, that any such easements shall be limited to the actual strip of land where the utilities are located and shall include provisions for termination of the easement in the event that it no longer serves the needs of the Project.

(c) Maintenance of the Project. During the Lease Term, Lessee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Project in good repair and tenantable condition, reasonable wear and tear

excepted. Lessor may inspect Project to confirm such obligations have been met. Lessor shall have no obligation to maintain the Project or to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Project. Lessee hereby expressly waives all right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

(d) Utilities. Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Project, and the Lessee shall pay or cause same to be paid currently and as due. This provision does not preclude Lessee from requiring payments of utilities from Tenants consistent with the Affordability Restrictions.

4. **INDEMNIFICATION; HAZARDOUS MATERIALS.**

(a) Indemnification. Lessor shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Property, for any injury or damage to the Improvements, or to any property of Lessee, or to any property of any other person, entity or association on or about the Property or the Improvements. Lessee shall defend, hold harmless and indemnify the Lessor and its officials, officers, agents, contractors, and employees (each an "Indemnified Party" and together, the "Indemnified Parties"), of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Property or the Improvements, including adjoining sidewalks and streets and any of its operations activities thereon or connected thereto; provided, however, that this Section shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Indemnified Parties from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or active negligence by an Indemnified Party.

(b) Hazardous Materials.

(i) Lessee shall not introduce any Hazardous Substance (as defined below), in, on or to the Property except (1) small quantities of common chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct business at the Property or (2) other Hazardous Substance that are necessary for the operation of Lessee's business, provided that Lessee shall at all times comply with all federal, state and local laws, ordinances and regulations now or hereafter in effect relating to the use, storage and disposal of Hazardous Substances. Lessee shall immediately notify Lessor of any release or contamination or any inquiry, test, investigation, or enforcement proceeding by or against Lessee or the Property concerning a Hazardous Substance of which Lessee has knowledge. If Lessee's release, storage, use, disposal or transportation of any Hazardous Substance in, on or adjacent to the Property results in any contamination of the Property or the soil or surface or groundwater in or about the Property, regardless of whether such release, storage, use, disposal or transportation of any such Hazardous Substance occurred

prior to or after the date of this Lease, Lessee shall clean-up or otherwise remediate all such contamination at its expense.

(ii) Lessee shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release and any condition of pollution, contamination or Hazardous Substance-related nuisance on, or under or from the Property as such terms are defined below.

(iii) For purposes of this Section, the following definitions shall apply:

(1) "Hazardous Substance" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including, but not limited to, all of those materials and substances set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Property.

(2) "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements.

(3) "Release" shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substances.

5. ALTERATIONS.

(a) Lessee shall construct the Project pursuant to and in compliance with all the terms and conditions set forth in this Section.

(b) General Construction Standards. Any alterations, improvements or repair work to the Project shall be accomplished expeditiously and diligently. Lessee shall pay (or cause to be paid) all costs and expenses associated therewith. Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby.

(c) Compliance Laws; Issuance of Permits. All improvements to the Property shall be constructed in strict compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction.

(d) Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

(e) Conditions to Commencement of Construction. In no event shall Lessee commence any construction on the Property until the following conditions have been satisfied or waived by Lessor, in addition to other conditions and requirements imposed by this Lease:

(i) Lessee has obtained building permits and all other governmental approvals necessary for the construction of the improvements.

(ii) Lessee has sufficient funds, or has obtained adequate financing, necessary for construction of any such improvements;

(iii) Lessee has notified all contractors and posted required notices that the fee interest in the Property is not subject to mechanics liens.

(f) Rights of Access. Following 24 hours notice, except in the case of emergency and subject to the statutory rights of Tenants, representatives of Lessor shall have the reasonable right of access to the Property and the improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease. This limitation of access shall not apply to the City's inspectors or other employees and officers acting within their legal authority.

(g) Notice of Completion. Within ten (10) days of completion of any construction, Lessee shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion (the "Notice of Completion") with respect to the

improvements, and Lessee shall deliver to Lessor, at no cost to Lessor, two (2) sets of the final as-built plans and specifications of the Improvements.

6. **MORTGAGE LOANS**

(a) Loan Obligations. Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Loan Documents to operate the Project as set forth therein.

(b) Liens and Encumbrances Against Lessee's Interest in the Leasehold Estate. Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with the Affordability Restrictions, and all other regulatory agreements and liens related to the Loans.

(c) Cost of Loans to be Paid by Lessee. Lessee shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Loans.

(d) Proceeds of Loans. It is expressly understood and agreed that all Loan proceeds shall be paid to and become the property of Lessee, and that the Lessor shall have no right to receive any such Loan proceeds.

(e) Notice and Right to Cure Defaults Under Loans. Upon the recording of a Memorandum of Lease, Lessor may record in the office of the Recorder of the County in which the Property is situated a request for notice of any default under each Loan. In the event of default by the Lessee under a Loan, the Lessor shall have the right, but not the obligation, to cure the default, not including a default on a loan made by the City of San José. Any payments made by the Lessor to cure a default (collectively, the "cure payment") shall be treated as rent due from the Lessee which shall be paid within thirty (30) days of the date on which the payment was made by the Lessor.

7. **PERMITTED MORTGAGES AND LENDER RIGHTS**

Lessor hereby consents and agrees as follows:

(a) Consent to Mortgage. Lessor hereby consents to the Loans identified pursuant to Section 1(n) and any deeds of trust securing such Loans and encumbering the leasehold.

(b) Preservation of Leasehold Benefits. After the recordation of the deeds of trust securing the Loans against the leasehold estate and during the term of such Loans, Lessor agrees:

(i) Voluntary Leasehold Termination. That Lessor will not voluntarily cancel or surrender the Lease or amend the Lease to increase the obligations of Lessee or the rights of Lessor thereunder or voluntarily encumber its fee interest in the land beyond its recording of the Memorandum of Lease, the City 60% AMI Restriction without the prior written consent of Lenders;

(ii) Effect of Lessee Waiver. That Lessor will not enforce against any Lender any waiver or election made by Lessee under the Lease which has a material adverse effect on the value of the Leasehold without the prior written consent of Lenders;

(iii) Notice to Lender. That Lessor will send to each Lender a copy of any notice given by Lessor to Lessee under the Lease at such address that have been provided to Lessor in writing in accordance with Section 15(b), Notice;

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

(1) Obligations of New Lessee. That, following any foreclosure or assignment described in Section 8(e) the new Lessee shall be personally obligated only for performance of obligations under the Lease for the period commencing as of the date of such foreclosure or assignment and ending as of the date of any assignment of the Lease to a successor Lessee;

(2) Assignment by New Lessee. That, following any foreclosure or assignment described in Section 7(b)(iv) or the execution of a new lease pursuant to Section 8(d), the new Lessee shall have the right to assign the Leasehold subject to the written consent of Lessor, which consent shall not be unreasonably withheld or delayed;

(c) Insurance or Condemnation Proceeds. That Lessor will pay to Lessee and Lenders jointly any proceeds from insurance or condemnation of the Property that are payable to Lessee under the Lease, for disposition as provided in the Lenders' mortgages; and

(d) Insurance and Condemnation Proceedings - Notice. That Lessor will provide reasonable prior notice to Lender of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Property and will permit Lender to participate therein as an interested party.

(e) Right to Pay Taxes and Cure Defaults. The Lenders and the Lessee's tax credit limited partner ("Limited Partner"), if any, shall have the right (but not the obligation) to pay any taxes payable by Lessee with respect to the Property, and to

cure any monetary or non-monetary default by Lessee under any mortgage or other encumbrance on the Property or the Leasehold.

(f) Right of Lender and Limited Partner to Cure.

(i) Notwithstanding any Default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given each Lender and Limited Partner written notice of such Default and such Lenders and/or Limited Partner shall have failed to remedy such Default or remove the Lessee's General Partner, acquire Lessee's leasehold estate created by this Lease, commence foreclosure or commence other appropriate proceedings, in each case as set forth in, and within the time specified by, this Section.

(ii) Any Lender which has an outstanding Leasehold Mortgage and Limited Partner, as applicable, shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of default. Any Lender and its agents and contractors shall have a right to enter the Property upon prior written notice reasonably delivered to the Lessor for purposes of accomplishing the foregoing, so long as such Lender indemnifies and holds Lessor harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from Lessor's active negligence or willful misconduct). Each Lender shall have ninety (90) days after receipt of notice from Lessor describing such Default to cure the Default; provided, however, that if it is not reasonably possible to effect a cure within ninety (90) days, no Default shall occur under this Lease so long as Lender and/or Limited Partner shall give notice to the Lessor thereof, commence such cure within the ninety (90) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to Lessor and further provided, if it is necessary for Lender to obtain possession of the Property in order to effect cure, the period within which Lender is permitted to effect cure shall be extended by the time that is required for Lender to obtain such possession, provided the Lender (1) diligently prosecutes such possession, (2) cures such Defaults that do not require possession, subject to Section 8(c), and (3) after gaining title to the Property or entering into a new lease pursuant to Section 8(d) below, the Lender or its transferee cures all non-monetary Defaults of Lessee hereunder capable of cure by such Lender.

(iii) All payments so made and all things so done as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by a Lender or Limited Partner.

(iv) If any Lender is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting foreclosure, or other proceedings shall be extended for the period of such prohibition; provided that any Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this

Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Lender shall not interfere with Lessor's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(v) Limited Partner shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of default. Each Limited Partner and its agents and contractors shall have a right to enter the Property upon prior written notice reasonably delivered to the Lessor for purposes of accomplishing the foregoing, so long as such Limited Partner indemnifies and holds Lessor harmless from any and all liability arising from such entry upon the Property (except to the extent of liability arising from Lessor's active negligence or willful misconduct). Each Limited Partner shall have ninety (90) days after receipt of a notice from Lessor describing such Default to cure the Default; provided, however, that if it is not reasonably possible to effect a cure within ninety (90) days, no Default shall occur under this Lease so long as such Limited Partner shall give notice to the Lessor thereof, commence such cure within the ninety (90) day period and thereafter diligently prosecute cure to completion in accordance with a schedule of cure reasonably acceptable to Lessor and further provided, if it is necessary for Limited Partner to remove General Partner in order to effect a cure, the period within which Limited Partner is permitted to effect such cure shall be extended by the time that is required for Limited Partner to complete such removal, provided the Limited Partner (1) diligently prosecutes such removal, (2) cures such Defaults that do not require such removal of General Partner, subject to Section 8(c), and (3) after removing the General Partner, the Limited Partner causes Lessee to cure all non-monetary Defaults of Lessee hereunder capable of cure.

(vi) If Limited Partner is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from commencing or prosecuting the removal of the General Partner, the times specified for commencing or prosecuting such removal shall be extended for the period of such prohibition; provided that any Limited Partner shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease (other than Lessee's indemnity and similar obligations to Lessor) and shall thereafter continue to pay currently such monetary obligations when the same fall due; provided, further, that Limited Partner shall not interfere with Lessor's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(g) Limitation on Liability of Lender after Foreclosure. No assumption of obligations by Lender shall be inferred from or result from foreclosure or as the result of any other action or remedy for default provided for by such Leasehold Mortgage or other instrument. No Lender or its designee or transferee shall be or become liable to Lessor under such circumstances unless it enters into new lease pursuant to Section 8(d) or assumes liability under another written instrument executed by Lessor and Lender or its designee or transferee.

(h) Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) business days' prior written notice by the other Party or a Lender, it will execute and deliver to the other Party or to such Lender a statement in writing certifying (a) that this Lease is unmodified or stating that it is modified by amendments or riders signed by the parties, and listing those amendments, and that the Lease, as amended, is in full force and effect; (b) the date through which the Rent has been paid; and (c) stating whether or not, to the current actual knowledge of the certifier, that the Lessee or Lessor, as the case may be, is in default of any covenant, agreement or condition under the provisions of this Lease and, if so, specifying each such default. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, or Lessee, as the case may be, in this Lease or by any prospective Lender or investor or permitted assignee of any Leasehold Mortgage.

(i) Notice to Lessor of Leasehold Mortgages. Lessee shall provide written notice to Lessor of the name and address of each Lender, and the Limited Partner prior to the execution of this Lease and written notice of any changes in such parties and their addresses within 10 days of Lessee's receipt thereof.

8. **ADDITIONAL MORTGAGEE PROTECTION PROVISIONS**

(a) No Modifications. Lessor and Lessee shall not amend or modify this Lease in any material respect nor shall Lessee exercise any option or make any election by the Lessee without the prior written consent of the Lenders and during the Limited Partner's Tax Credit compliance period not to exceed seventeen years from the date of this Lease, the Limited Partner.

(b) Loss Payee Endorsement. Lessor agrees that Lessee may add the names of each Lender to the "Loss Payable Endorsement" of any insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are applied in the manner specified in the applicable Leasehold Mortgage.

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

(d) New Lease After Lessee Default. Lessor agrees that in the event of termination of this Lease by reason of any Event of Default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or its property, or by any other reason Lessor will enter into a new lease of the Property with the Senior Lender or its designee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the rent, and upon the terms, provisions,

covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

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

(ii) The Senior Lender shall perform and observe all covenants herein contained on Lessee's part to be performed upon and following the effective date of the new lease, and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Senior Lender; provided however, that the Senior Lender shall not be personally obligated for performance of obligations under the Lease occurring prior to the execution of the new lease;

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

(iv) The rights granted any Lender to a new lease shall survive any termination of this Lease for a period of thirty (30) days. Nothing herein contained shall require any Lender to enter into a new lease pursuant to this Section 8(d).

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

(f) No Cancellation. Unless and until Lessor has received notice from all Lenders that the Lenders elect not to demand a new lease as provided in Section 8(d), or until the thirty (30) day period therefore has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Lenders.

(g) Insurance Proceeds. The proceeds from any insurance policies available to Lessee or arising from a condemnation if such condemnation proceeds would be payable to Lessee shall be paid to and held by the Senior Lender and distributed pursuant to the provisions of this Lease and the Leasehold Mortgage, but

such Senior Lender may to the extent provided in its loan documents reserve the right to apply to its Leasehold Mortgage debt all, or any part, of Lessee's share of the proceeds pursuant to the debts secured by such Leasehold Mortgage.

(h) Notices of Proceedings. Lessee shall give all Lenders and Lessor notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Property, and any Lender shall have the right to intervene therein and shall be made a party to such proceedings. If any Lender shall not elect to intervene or become a party to the proceedings, Lessee shall provide such Lender with notice of such proceeding and a copy of any award or decision made in connection with such proceeding.

9. **INSURANCE**

(a) Required Insurance Coverage. Lessee shall at all times during the Lease Term maintain in full force and effect, at Lessee's sole cost and expense, the insurance set forth on **EXHIBIT B** attached hereto.

(b) Proceeds of Insurance. For so long as any Loan on the Project is outstanding, all fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Project damaged or destroyed if: (i) the Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible, and (ii) to the extent required, each Lender with an outstanding Loan permits such repair or rebuilding, provided that the extent of Lessee's obligation to restore the Project shall be limited to the amount of the insurance proceeds. If the Project is not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Loans. If no Loan is outstanding, all insurance proceeds received under the policies set forth in this Article shall be used, to the extent possible, for reconstruction or repair in a manner consistent with the provisions of Section 7(c) and Section 10(b).

10. **CONDEMNATION, DAMAGE OR DESTRUCTION OF THE PROJECT**

(a) Condemnation. If the Project or the Property or any part thereof shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, the Lessor and the Lessee shall request that awards and other payments on account of a taking of the Project and the Property (less costs, fees and expenses incurred by the Lessor and the Lessee in connection with the collection thereof) shall be divided by the presiding court between loss of value of the fee interest in the Property and loss of value of the Project. In any case, such awards and payments shall be applied as follows, provided that Lessee's portion of any such award or payment shall be subject to the terms of the Leasehold Mortgage executed in connection with the Senior Loan:

(i) Net awards and payments received on account of a partial taking of the Project, other than a taking for a temporary use not exceeding one (1) year shall be allocated and paid in the following order of priority:

(1) If the Lessee and Senior Lender reasonably believe restoration is economically feasible, and unless the Lessee is then in default and the opportunity to cure has expired under the Loan Documents, first, to pay the cost of restoration of the Project, provided that the extent of the Lessee's obligations to restore the Project shall be limited to the amount of the net award and payment received on account of the taking.

(2) Second, or first if: (i) the Lessee and Senior Lender do not reasonably believe that restoration is economically feasible, or (ii) the Lessee is in default and the opportunity to cure has expired under the Loan Documents, to any Lenders (in the order of their respective lien priority, if there is more than one Lender) in an amount equal to the decrease (if any) in the value of the security for their respective Loans as a result of the partial taking (calculated as set forth below in this subsection, less amounts payable to or recovered by the Lender pursuant to such taking, but not to exceed the unpaid balance of their Loans. For purposes of this subsection, the amount of decrease in the value of the security for a Loan shall be the amount, if any, necessary to reduce the outstanding principal of said Loan such that the Loan to Value Ratio (as defined below) of said Loan immediately following the taking is equal to the Loan to Value Ratio of said Loan immediately preceding the taking. Loan to Value Ratio shall mean that fraction the numerator of which is the sum of the principal amount of the Loan plus the principal amounts of all Loans higher in lien priority to the Loan and the denominator of which is the appraised value of the Project immediately following the taking or immediately preceding the taking, as applicable. The values of the Project immediately preceding the taking and immediately following the taking shall be determined by an MAI or SRI appraiser selected by the Lessee.

(3) The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in Section 10(a)(ii) – (vii); provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Property or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

(ii) Net awards and payments received on account of a partial or total taking of only the Lessor's fee interest in the Property or the reversionary interest in the Improvements (that is, a taking of Lessor's fee interest in the Property or the Lessor's reversionary interest in the Improvements that has no effect on the value of the Lessee's leasehold interest in the Property or the Lessee's fee interest in the Improvements), including severance damages, shall be paid to the Lessor, which amount shall be free and clear of any claims of the Lessee, or any other persons claiming rights to the Property through or under the Lessee, other than Lenders to which the Lessor has subordinated its interest in the Property.

(iii) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee; provided, however, that if such taking for temporary use has resulted in any damage to or destruction of the Project, such net awards and payments shall be first applied to pay the cost of restoration thereof if the Lessee determines that restoration is feasible. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to the Lessor.

(iv) Net awards and payments received on account of a total taking of the Project shall be allocated and paid in the following order of priority:

(1) First, to any Lenders with then-outstanding Loans secured by the Project (in the order of their respective lien priority, if there is more than one Lender), in an amount equal to the unpaid balance secured by their respective Loans to the extent there are sufficient funds to make such payments;

(2) The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in Section 10(a) above; provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Property or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

(v) The Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Project (other than funds received from Lenders). The Lessor shall receive that portion of the balance equal to the balance multiplied by a fraction the numerator of which is the number of years elapsed from the date of the Lease to the date of the taking, and the denominator of which is the Lease Term. The Lessee shall receive the balance after deduction of the Lessor's portion.

(vi) The Lessee shall receive any award granted for or allocated to trade fixtures, moving expenses or loss of business.

(vii) If the Project is taken or condemned during the last five (5) years of the Lease Term under circumstances described in Section 10(a) above, the Lessee may elect to terminate the Lease and proceeds of any payment or award shall be distributed in accordance with the provisions of Section 10(a) above.

(b) Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Project. Subject to Section 10(a), if any Loans remain outstanding, the Senior Lender will administer the condemnation or casualty insurance process pursuant to its Loan Documents. If the Loans have been paid in full, and if the Project or any part of it is to be repaired or reconstructed, after damage or destruction of the Project or its condemnation, all proceeds collected under any and all policies of insurance referred to in Section 9 covering such damage or destruction, or all compensation received for such taking by the exercise of the power of eminent domain,

shall be paid into a special fund to be created and held by an insurance trustee. The insurance trustee shall be such commercial bank or trust company as shall be designated by Lessee and approved by Lessor, which approval shall not be unreasonably withheld or delayed. The insurance trustee shall hold such proceeds in trust and shall disburse same to Lessee as follows: from time to time as the work of restoration progresses, Lessee shall submit to the insurance trustee a certificate of Lessee, signed by an executive officer thereof and approved by an architect selected by Lessee and approved by Lessor (the "Architect"), which certificate shall (i) accurately describe the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith, (ii) certify that Lessee has not theretofore received payment for such work, and (iii) contain or be accompanied by a statement by Lessor that the work for which Lessee is requesting payment has been performed in accordance with City approved plans and specifications. Within five (5) days after receipt of any such certificate, the insurance trustee shall pay to Lessee, from the funds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which Lessee is requesting payment, as shown on such certificate. Upon completion of such work, the balance of the funds, including any interest thereon, if applicable, shall be paid to Lessee within five (5) days after the delivery to the insurance trustee of a certificate of the Lessee, signed by an executive officer thereof and approved by the Architect, stating that the work has been completed and setting forth the total cost thereof. Any surplus of such insurance or condemnation proceeds remaining after the completion of all payments for such repairing or reconstructing shall be disbursed to Lessee.

(c) Legal Proceedings.

(i) If proceedings shall be instituted: (1) for the exercise of the power of eminent domain, or (2) as a result of any damage to or destruction of the Project, the Lessee, the Lessor, and any Lender with a then-outstanding Loan shall be made parties to those proceedings, and if not made parties by the petitioning party, shall be brought into the proceedings by appropriate proceedings of other parties so that adjudication may be made of the damages, if any, to be paid to the Lessee, the Lessor and the Lenders as compensation for loss of their rights in the Improvements or the Property, or for damage to or destruction of the Project. Should the Lessor or the Lessee receive notice of institution of any proceedings subject to Section 7(d) or (h), the Party receiving such notice shall notify the other Party and any Lender in accordance with Section 15(b) of this Lease, not later than thirty (30) days after receiving such notice.

(ii) The Lessor and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all claims and demands for damages on account of damage to or destruction of the Project, or for damages on account of the taking or condemnation of the Improvements or the Property.

11. **LESSEE COVENANTS**

Lessee covenants and agrees for itself, and its successors and assigns, that:

(a) Use of Site. During the term of this Lease, Lessee and such successors and assigns shall comply with the following requirements:

(i) Permitted Uses. Lessee shall devote the Property to, exclusively and in accordance with, the uses specified in this Lease.

(ii) Non-Discrimination. The Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(iii) Non Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size and design.

(iv) Access for Disabled Persons. Comply with all applicable laws providing for access for persons with disabilities, including but not limited to the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(b) Demolition of Improvements. Upon the end of the Lease Term, if Lessor requests, Lessee shall demolish the Improvements leaving the Property free and clear of such Improvements.

(c) Financial Information. During the Lease Term, Lessee shall provide to Lessor copies of (i) federal income tax returns of Lessee and its general partner(s) within one hundred twenty (120) days after the end of Lessee's fiscal year, (ii) audited income and expense statements, a balance sheet, and a statement of all changes in financial position, all signed by authorized parties of Lessee, for Lessee and its general partner(s), each within one hundred twenty (120) days after the end of Lessee's fiscal years, provided, that the financial statements of the general partners of Lessee do not need to be audited and (iii) such additional financial information as may be reasonably requested by Lessor.

12. QUIET ENJOYMENT

Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Lease Term, subject only to the provisions of this Lease, the Affordability Restrictions, and all applicable requirements of law.

13. **DEFAULTS AND REMEDIES**

(a) Any one or more of the following events shall constitute an "Event of Default:"

(i) Failure to make any payment required under this Lease, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nonpayment; or

(ii) Failure of the Lessee to observe and perform any material covenant, condition or agreement hereunder on its part to be performed, and (1) continuance of such failure for a period of ninety (90) days after receipt by the Lessee of written notice specifying the nature of such default, or (2) if by reason of the nature of such default the same cannot be remedied within said ninety (90) days, the Lessee fails to provide a schedule of cure to the Lessor, acceptable to Lessor, and after receipt of said notice to cure, and to proceed with diligence to cure in accordance with said schedule; or

(iii) A general assignment by the Lessee for the benefit of creditors; or

(iv) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or

(v) The appointment of a receiver or other custodian to take possession of substantially all of Lessee's assets or of this leasehold which appointment is not withdrawn or dismissed within ninety (90) days; or

(vi) The Lessee becomes insolvent or declares it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Project; or

(vii) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within ninety (90) days.

(viii) No Default by a party shall be deemed to have occurred under this Lease unless another party first delivers to the non performing party a written request to perform or remedy (the "Notice of Default"), stating clearly the nature of the obligation which such non performing party has failed to perform. If Lessee is afforded a cure period for such failure, the Notice of Default shall state the applicable cure period, if any, provided hereunder.

(b) Remedy of Default by Lessee. At any time after the occurrence of an Event of Default hereunder, Lessor, subject in all respects to the provisions of this Lease with respect to Lenders and the Limited Partner including notice and cure rights in Sections 7 and 8, may terminate this Lease by giving Lessee written notice thereof, setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenants or others are not in default thereunder and attorn to Lessor as their lessor. Upon the exercise of Lessor's remedies pursuant to this Section, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's estate and Lessee's rights hereunder.

14. **ASSIGNMENTS AND TRANSFERS; RIDERS**

(a) Lessee shall have the right to sublease any of the Dwelling Units in the Project, subject to the requirements of the Affordability Restrictions, then effective, at any time during the Lease Term without the prior consent of Lessor.

(b) Subject to the provisions allowing assignment of the Lease in Sections 7 and 8, Lessee shall not assign this Lease or sublease any portion of the Property except as provided above without the prior written consent of Lessor, which consent shall be within Lessor's sole and absolute discretion. The Lessee's acceptance of and repayment of the Loans shall not be considered a transfer. Notwithstanding the above, the following transfers shall not constitute assignments of this Lease and shall not require any consent of Lessor: (i) a transfer by Lessee to any entity which controls, is controlled by or is under common control with Lessee, (ii) a transfer by Lessee to any entity which results from a merger of, or reorganization of, or consolidation with, Lessee, (iii) a transfer by Lessee to any entity engaged in a joint venture with Lessee,

or (iv) a transfer of interests within Lessee (collectively, "Permitted Transfer"). Lessee shall notify Lessor in writing within ten (10) days after any Permitted Transfer. Upon any Permitted Transfer, the permitted transferee shall comply with all the terms and conditions contained herein.

(c) In the event that a regulatory entity or governmental lender, including but not limited to the California Tax Credit Allocation Committee, or the California Department of Housing and Community Development, requires the Lessor to execute a leasehold rider, that contains requirements or procedures that conflict with the terms of this Lease, as determined by the Lessor, the parties agree that the terms of the leasehold rider shall control.

(d) In the event that a regulatory entity or governmental lender, including but not limited to the California Tax Credit Allocation Committee, or the California Department of Housing and Community Development requires the Lessor to execute a leasehold rider containing a warranty regarding the Lessor's fee title, the Lessee will provide, at its own cost, an updated title policy for the Lessor to be dated as of the date of the rider. Additionally, in the event that the rider requires the Lessor to make warranties or issue estoppel certificates regarding the construction of the Project, the Project's compliance with the law, or any similar matter concerning the leasehold estate, the Lessee agrees to provide within fifteen (15) calendar days of a request from the Lessor an estoppel certificate to the Lessor regarding the subject of that warranty or estoppel certificate required to be provided by the Lessor under the leasehold rider.

15. MISCELLANEOUS

(a) Instrument Is Entire Agreement. This Lease including the above recitals, the attached Exhibits which are hereby incorporated, and the Affordability Restrictions constitute the entire agreement between the Parties with respect to the matters set forth in this Lease. This Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, previously entered into between the Lessor and the Lessee relating to the lease of the Property by the Lessor to the Lessee.

(b) Notice. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Each party may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party:

If to the Lessor:

City of San Jose
200 East Santa Clara Street, 12th Floor
San Jose, CA 95113
Attn: Project Development
Re: The Aurora 226 Balbach

If to the Lessee:

c/o SAHA
1835 Alcatraz Avenue
Berkeley, CA 94703
Attn: Chief Executive Officer
Re: Arya

If to Limited Partner:

If to Lender:

with a copy to:

(c) Recording. The parties agree that the Memorandum of Lease shall be recorded in the Office of the Recorder in Santa Clara County at the time of execution of this Lease.

(d) Non-Waiver of Breach. Neither the failure of the Lessor or the Lessee to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Lessor or the Lessee to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment (i) of any covenant contained in this Lease or of any of the rights or remedies of the Lessee or the Lessor under this Lease, or (ii) or the right in the future of the Lessor or the Lessee to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions of this Lease.

(e) Effective Date. This Lease shall be effective upon mutual execution by the Parties.

(f) Lease Binding on Successors. This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee, and their respective permitted successors and assigns and, as provided in this Lease, Lenders of the Lessee.

(g) Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent or of partnership, joint venture or association or of buyer and seller between the Lessor and the Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act or acts of the Parties, shall be deemed to create any relationship between the Lessor and the Lessee other than the relationship of landlord and tenant.

(h) No Merger. There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Property, by reason of the fact that this Lease or such interest in the Lease, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a leasehold mortgage to a leasehold mortgagee who shall hold the fee estate in the Property or any interest of the Lessor under this lease.

(i) Gender and Number. Words of any gender used in this Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

(j) Titles. The titles and article, section or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

(k) Severability. If any provision of this Lease or the application of any provision to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or

circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(l) Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

(m) Amendments. This Lease may not be amended or modified without the prior written consent of Lessor, Lessee, and the Senior Lender, if any.

(n) Counterparts. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

This document continues on the following page.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

Approved as to form:	LESSOR:
	CITY OF SAN JOSE, a municipal corporation
By: _____	By: _____
S. Shasta Greene	[Deputy] Director of Housing
Sr. Deputy City Attorney	

Signatures continue on the following page.

LESSEE:

_____, a California limited partnership

By: Satellite AHA Development, Inc.,

a California nonprofit public benefit corporation

Its: General Partner

By: _____

Susan Friedland,

Chief Executive Officer

Deleted: .

Deleted: ¶
¶

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT THE MOST NORTHERLY POINT OF LOT 27, BLOCK 5, OF RANGE NO. 3 WEST, ACCORDING TO A MAP OF THE PROPERTY OF J. BALBACH, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK "D" OF MISCELLANEOUS RECORDS, PAGE 622, SAID POINT BEING A POINT IN THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET, 50 FEET WIDE) DISTANT 102.80 FEET WESTERLY FROM THE POINT OF INTERSECTION OF SAID SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET) WITH THE WESTERLY LINE OF ALMADEN AVENUE (FORMERLY ORCHARD STREET, 60 FEET WIDE) AND FROM SAID POINT OF BEGINNING RUNNING SOUTHERLY AND PARALLEL WITH SAID LINE OF ALMADEN AVENUE, 156.08 FEET TO THE MOST EASTERLY POINT OF SAID LOT 27; THENCE AT RIGHT ANGLES WESTERLY ALONG THE SOUTH LINE OF SAID LOT 27 AND ITS WESTERLY PROLONGATION 115 FEET, MORE OR LESS, TO A POINT IN A LINE PARALLEL WITH AND 140.00 FEET EAST OF THE WESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET, 60 FEET WIDE); THENCE NORTHERLY ALONG SAID PARALLEL LINE 118.81 FEET, MORE OR LESS, TO A POINT OF CURVATURE OF A 20-FOOT RADIUS CIRCULAR CURVE TO THE RIGHT, THE RADIUS POINT OF SAID CURVE BEING THE INTERSECTION OF A LINE PARALLEL WITH AND 160.00 FEET EAST OF THE WESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET, 60 FEET WIDE) AND A LINE PARALLEL WITH AND 20 FEET SOUTH OF THE SOUTH OF THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET); THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 76° 34', MORE OR LESS, AN ARC LENGTH OF 26.73 FEET TO A POINT OF TANGENCY WITH THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET); THENCE EASTERLY ALONG THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET) 102.43 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 264-31-109

T-29649.003/1608164

Exhibit A

12/20/2019

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EXHIBIT B

INSURANCE REQUIREMENTS

Lessee, at Lessee's sole cost and expense, shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the Lease by the Lessee, its agents, representatives, employees, subcontractors, suppliers or any third party.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. Property insurance against loss by fire or hazards included within the term "extended coverage," (excluding earthquake coverage) which insurance shall be "all risk" insurance in form and substance. If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance is also required. The City is to be named loss payee on the policy.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

II. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Property insurance shall be in an amount at least equal to the full replacement value of the buildings, improvements, furniture, furnishings, fixtures, equipment and other items (whether personality or fixtures). If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of

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Exhibit B

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1973, as amended, flood insurance's limit shall be in an amount equal to 100% of the appraised value of the Property.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

III. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

IV. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Lessee; products and completed operations of the Lessee; premises owned, leased or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
 - b. The Lessee's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Lessee's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
 - d. Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

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2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

V. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

VI. Verification of Coverage

Lessee shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required endorsements shall be attached to the certificate of insurance which shall be provided by the Lessee's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

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Exhibit B

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EXHIBIT C

FORM OF MEMORANDUM OF GROUND LEASE

RECORDING REQUESTED BY:
City of San Jose

When Recorded mail to:
City of San José
Housing Department
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attn: Project Development
Re: The Arya– 226 Balbach

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Documentary Transfer Tax _____

City _____ County _____

Declarant

**MEMORANDUM OF GROUND LEASE
AND RESCISSION OF MEMORANDUM OF OPTION**

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is dated as of _____, 20____, by and among the City of San José, a municipal corporation ("Lessor") and _____, a California limited partnership ("Lessee") with respect to that certain unrecorded Ground Lease of even date herewith (the "Lease"), between Lessor and Lessee with respect to the real property located at 226 Balbach Street in the City of San José, County of Santa Clara and more particularly described in the attached **EXHIBIT A** (the "Property").

This Memorandum is a result of the exercise of the Option provided in the unrecorded option agreement dated _____, 20____, for which a memorandum of option was recorded on the Property on _____, 2020 in the Official Records of Santa Clara County as Document Number _____. That memorandum of option is hereby rescinded.

Pursuant to the Lease, Lessor has leased to Lessee and Lessee has leased from Lessor the Property and Lessor grants to Lessee, all the improvements

Exhibit C

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constructed or to be constructed on the Property for the term of the Lease which improvements are and shall remain real property. The Lease commences on _____ and shall continue for a term of _____ (____) years from the commencement, or sooner termination pursuant to the terms of the Lease.

This Memorandum is subordinated to the _____ City of San José affordability restrictions to be recorded concurrently herewith.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

Mail Tax Statements to: _____

Attn: _____

This document continues on the following page.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed.

LESSOR:

Approved as to Form:

CITY OF SAN JOSE, a municipal corporation

By: _____
S. Shasta Greene
Sr. Deputy City Attorney

By: _____
Jacky Morales-Ferrand
Director of Housing

Signatures continue on the following page.

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Exhibit C

LESSEE:

_____ a California limited partnership

Deleted: ¶

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Exhibit C

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On _____ before me, _____, Notary Public, personally

DATE

NAME OF NOTARY

appeared _____

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY

T-29649.003/1608164

Exhibit C

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On _____ before me, _____, Notary Public, personally

DATE

NAME OF NOTARY

appeared _____

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY

T-29649.003/1608164

Exhibit C