

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this “**Agreement**”) is effective as of May 18, 2022, by and between Housing Authority of the City of Alameda (“**Seller**”) and Island City Development, a California nonprofit public benefit corporation, or its assigns (“**Purchaser**”).

### RECITALS

A. Seller is the owner of the land located in the City of Alameda, CA 94501, and described as Adaptive Reuse Project further described in Exhibit A attached hereto, and as divided into equal .344 acre portions per a to-be-determined survey, and incorporated herein by reference (the “**Land**”). The site currently includes improvements (the “**Improvements**”) situated on the Land.

B. Purchaser desires to procure, and Seller desires to grant, an option to enter into a ground lease with respect to one-half of the Land upon the terms and provisions as hereinafter set forth. The leasehold interest in the Land and the fee interest in any Improvements to be developed on the Land are referred to collectively herein as the “**Property**”.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

### AGREEMENT

1. Grant of Option. For One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Seller does hereby grant to Purchaser the exclusive right and option to acquire the Property (the “**Option**”).

2. Exercise of Option. Purchaser may exercise its Option at any time during the period commencing on the date hereof and expiring on December 31, 2023 (the “**Option Term**”), by giving written notice thereof to Seller. In the event the Purchaser does not exercise its Option during the Option Term, this Agreement shall become null and void and neither party hereto shall have any other liability, obligation or duty hereunder.

3. Contract For Ground Lease. In the event that the Purchaser exercises the Option, unless otherwise mutually agreed, both parties agree to execute a contract in accordance with the following terms and conditions:

(a) Ground Lease. The ground lease for the Land shall have the following terms: (a) have a term of no less than 99 years; (b) have base rent equal to the appraised fair market value of the Land, and (c) such other terms and conditions agreed upon by Seller and Purchaser.

(b) Financing. Seller agrees to provide seller takeback financing for up to 100% of the ground lease base rent; bearing interest at the applicable federal rate; with a term of 55 years (or a lesser term if elected by Purchaser); secured by a mortgage against the Property; subordinate to a senior construction to permanent bank loan and any other loans from governmental agencies;

repaid from residual receipts (after payment of developer fee, general partner management fee of \$25,000 per year with an annual increase of 3%, and an investor asset management fee of \$5,000 per year with an annual increase of 3%); and subject to commercially reasonable terms, including those in favor of an investor, for low income housing tax credit projects.

(c) Closing Date. The closing date shall be on any date during the Option Term as may be selected by Purchaser, provided that Purchaser shall make good faith efforts to provide 30 days prior notice of the closing date.

(d) Closing Costs. The Purchaser and Seller shall each pay their respective costs of closing the purchase in accordance with custom in the city in which the Property is located.

(e) As Is. Except as specifically provided in writing by Seller, Purchaser shall acquire the Property in an "as-is" condition with an ALTA owner's title policy with such endorsements as Purchaser shall reasonably require, subject only to those monetary encumbrances recorded against the Property as agreed to in writing by Purchaser.

(f) Subdivision. Seller and Purchaser shall cooperate in causing the Land to be a separate legal parcel under applicable law, which shall be a condition precedent to closing under this Agreement. At the election of Purchaser, Purchaser may cause the Land to be further subdivided into 2 separate legal parcels or converted to a condominium with 2 condo units, in which case (1) Seller shall reasonably cooperate with such subdivision or conversion efforts, and (2) this Agreement shall be replaced with 2 separate option agreements for the 2 parcels or units, each with the same terms and conditions as in this Agreement.

(g) Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(i) Except as otherwise permitted by Purchaser in writing in its sole discretion, Seller shall (A) maintain and operate the Property in its current condition and operation; (B) not enter into any lease, agreement or contract or a modification thereof (including existing loans or liens on the Property) affecting the Property unless such lease, agreement or contract shall terminate upon transfer of the Property or is approved by Purchaser in its sole discretion; (C) comply with all material contracts, agreements and obligations with respect to the Property; (D) maintain current amounts of fire, extended coverage, hazard and other insurance for the Property; and (E) not sell, assign, dispose of or further encumber the Property.

(ii) Seller shall not commit or permit any act that would diminish or devalue the Property or Purchaser's rights under this Agreement.

(iii) Seller shall within 20 days of the date hereof provide to Purchaser all documents, contracts, agreements and other information regarding the Property that is within the possession or control of Seller.

(iv) During the Option Term, Purchaser and its agents shall have the right, upon reasonable notice and during reasonable times and without unreasonably interfering with the normal operation of the Property, to enter upon the Property to conduct inspections and testing (including surveying and environmental assessments), and to inspect and copy Seller's

books and records with respect to the Property. Seller shall reasonably cooperate with Purchaser in inspecting and evaluating the Property, applying for or obtaining financing for the Property and obtaining entitlements or permits with respect to the Property.

4. General Provisions.

(a) Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all prior negotiations, drafts, and other understandings which the parties may have had concerning the subject matter hereof.

(b) Time. Time is of the essence of this Agreement.

(c) Successors. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, successors, executors, administrators and assigns of the parties hereto. Seller agrees that Purchaser shall have the right to assign this Agreement or to nominate another person (including, without limitation, a limited partnership controlled by Purchaser) to take title to the Property without Seller's consent.

(d) Amendments. This Agreement may not be amended or modified except by written documents signed by all parties hereto.

(e) Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by, or invalid under, applicable law, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together shall constitute one and the same Agreement.

(g) Notice. Any notice, demand, request, consent or other communication which either party desires or is required to give to any other party shall be in writing and shall be deemed to have been given when either: (a) delivered in person or by facsimile transfer, or (b) sent by overnight courier or first-class registered or certified mail, postage pre-paid, return receipt requested, addressed to such party at the address set forth following each party's signature to this Agreement. Either party may designate another address for itself at any time upon written notice to the other party.

(h) Headings. The titles and headings of the various sections of this Agreement have been inserted only for convenience of reference. They are not part of this Agreement and may not be used to construe or interpret any of the terms hereof.

(i) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SELLER:**

Housing Authority of the City of Alameda,  
a public body corporate and politic

By: Vanessa Cooper  
Vanessa Cooper  
Executive Director

Address:

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Executive Director

**PURCHASER:**

Island City Development,  
a California nonprofit public benefit corporation

By: Vanessa Cooper  
Vanessa Cooper  
President

Address:

Island City Development  
c/o Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Executive Director

## EXHIBIT A

### Legal Description

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

BEING LOTS 1 THROUGH 5, INCLUSIVE AND LOTS 7 THROUGH 10 INCLUSIVE AS SHOWN ON THAT CERTAIN MAP ENTITLED "SUBDIVISION OF THE ORCHARD TRACT IN THE TOWN OF ALAMEDA", FILED December 18, 1873, IN [MAP BOOK 6, PAGE 11](#), ALAMEDA COUNTY RECORDS AND SAID PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the Easterly right of way line of Webster Street (80' wide) with the Southerly right of way line of Pacific Avenue (60' wide), said point also being the Northwesterly corner of Lot 1, of said Orchard Tract; thence Easterly along said Southerly right of way line of Pacific Avenue, South 87° 07' 55" East, 195.00 feet to the Northeasterly corner of Lot 7 of said Orchard Tract; thence leaving said Southerly right of way line of Pacific Avenue, South 2° 07' 54" West, 153.75 feet to the Southeasterly corner of said Lot 7; thence North 87° 07' 55" West, 195.00 feet to the Easterly right of way of Webster Street, said point also being the Southwesterly corner of Lot 5 of said Orchard Tract; thence Northerly along the Easterly right of way line of Webster Street, North 2° 46' 54" West, 153.75 feet to the point of beginning. The above description is also identified as the new legal description of Certificate of Compliance recorded January 13, 2003, [Instrument No. 2003021869](#), [Official Records](#).

[APN: 073-0418-004-01](#)

## SAMPLE GROUND LEASE

This Ground Lease (this “**Lease**”) is made as of July 1, 2020, by and between the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic (the “**Lessor**”) and [APPLICABLE LP], a California limited partnership (the “**Lessee**”) (collectively, the “**Parties**”).

### RECITALS

A. The Lessor owns the Land which is the subject of the Affordable Housing Agreement (as such terms are defined below). The Lessee desires to develop the Land by rehabilitating existing units located thereon and constructing additional units, such that the Land and Improvements will contain ninety-two (92) units of housing comprising ninety-one (91) units that shall be leased in accordance with the Affordable Housing Agreement and one (1) manager’s unit.

B. The Lessor desires to lease the Land to Lessee, and Lessee desires to lease the Land from Lessor, all in accordance with the terms of this Lease.

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

### ARTICLE 1: DEFINITIONS

1.1. Definitions. The following terms shall have the following meanings in this Lease:

- (a) “**Affordable Housing Agreement**” shall mean [draft to follow].
- (b) “**Authorized Officer(s)**” shall mean any officer, director, member, manager, employee or agent of a party that has the authority and capacity to act for or represent such party.
- (c) “**Closing Date**” shall mean the earlier of the date on which (1) the Memorandum is recorded in the Official Records, and (2) the Rent is paid to the Lessor.
- (d) “**Construction**” shall have the meaning assigned in Section 3.1.
- (e) “**Development**” shall mean the Improvements and the Lessee’s leasehold interest in the Land.
- (f) “**Dwelling Units**” shall mean the ninety-two (92) units, comprising ninety-one (91) affordable units and one (1) manager’s unit to be rehabilitated or constructed, leased, operated and maintained in accordance with the Affordable Housing Agreement.
- (g) “**Hazardous Materials**” or “**Hazardous Substances**” means any oil or any fraction thereof or petroleum products or “hazardous substance” as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any “hazardous waste,” “infectious waste” or “hazardous material” as

defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as “toxic” or “hazardous” in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Land, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with Hazardous Materials Laws.

(h) “**Hazardous Materials Laws**” shall mean all applicable laws with respect to Hazardous Materials.

(i) “**Improvements**” shall mean the buildings, structures (including, without limitation, the Dwelling Units) and other improvements, including the building fixtures therein, now or hereafter located on the Land.

(j) “**Investor Limited Partner**” shall mean Enterprise Housing Credit Investments, LLC, as nominee, and its successors and assigns.

(k) “**Land**” or “**Leased Premises**” shall mean the real property located at [APPLICABLE PROJECT ADDRESS], City of Alameda, County of Alameda, State of California, as further described on the attached Exhibit A and incorporated hereby.

(l) “**Lease**” shall mean this Ground Lease between the Lessee and the Lessor and shall include any and all amendments made to this Lease.

(m) “**Lease Term**” shall mean the period commencing on the Closing Date and expiring on [APPLICABLE LEASE END DATE], unless this Lease is terminated earlier in accordance with the provisions of this Lease.

(n) “**Lease Year**” shall mean a period of one (1) calendar year beginning January 1 and ending December 31. The first Lease Year shall commence on the date of this Lease 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.

(o) “**Lender**” or “**Lenders**” shall mean each and all of the lenders now or hereafter providing the Loans (as defined in Section 4.1) to the Lessee.

(p) “**Lien**” or “**Liens**” shall have the meaning assigned in Section 4.2(a).

(q) “**Loan**” or “**Loans**” shall have the meaning assigned in Section 4.1.

(r) “**Memorandum**” shall mean that certain Memorandum of Ground Lease to be recorded to evidence the leasehold created by this lease, substantially in the form of Exhibit B attached hereto.

(s) “**Partnership Agreement**” shall mean the partnership agreement forming and governing the Lessee, as amended and/or restated from time to time.

(t) “**Property**” shall mean the Land and Improvements.

(u) “**Tenant(s)**” shall mean the households that lease the Dwelling Units from Lessee.

## **ARTICLE 2. LEASE OF THE LAND; RENTAL PROVISIONS; TAXES AND ASSESSMENTS**

### 2.1. Lease of the Land.

(a) The Lessor, for and in consideration of the covenants and agreements to be kept and performed by the Lessee, leases the Land to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Land from the Lessor pursuant to the terms of this Lease.

(b) Notwithstanding anything to the contrary set forth in this Lease, Lessee is and shall be deemed to be the sole owner of (i) the Improvements and (ii) all attachments, appliances, equipment, machinery and other articles used in connection with the Property or the Improvements (the “**Personal Property**”); and Lessee shall be the sole party entitled to all of the tax attributes of ownership of the Improvements and Personal Property during the Lease Term, including, without limitation, the right to claim deductions for depreciation or cost recovery thereof and the right to claim any low-income housing tax credits described in Section 42 of the Internal Revenue Code, as amended (the “**IRC**”) and the right to amortize capital costs and to claim any other federal tax benefits attributable to the Development.

(c) It is expected that the Development will qualify for an allocation of federal low-income housing tax credits under Section 42 of the IRC, which shall be allocated to Lessee as the owner of the Improvements and Personal Property. In the event of any conflict between the terms of this Lease and the requirements of Section 42 of the IRC or the terms of the TCAC Regulatory Agreement, the terms of Section 42 of the IRC and the terms of the TCAC Regulatory Agreement shall control in all respects.

### 2.2. Term. The term of this Lease shall be the Lease Term.

2.3. Prepaid Rent. The Lessee shall pay to the Lessor, at Lessor’s address, as provided in Section 10.2, or such other place as the Lessor may designate in writing, as of the Closing Date, prepaid rent (“**Rent**”) for the full Lease Term in the amount of [INSERT APPLICABLE RENT AMOUNT], which Rent is due and payable in one single payment on the Closing Date. The Rent shall be paid by the delivery of that certain Loan Agreement between Lessor and Lessee and that certain Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Lessee in favor of Lessor.

2.4. Use of Development and Assurances of Lessee. The Lessee agrees and warrants:

(a) The Development shall be used only for the purposes allowed by the Affordable Housing Agreement, as applicable;

(b) That the Lessee will use commercially reasonable efforts to prevent any Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Development and that the Lessee will not itself use the Development for any disorderly or unlawful purpose;

(c) That the Lessee will use commercially reasonable efforts to prevent any Tenant from violating any of the covenants and conditions of this Lease with respect to the Development;

(d) That the Lessee will take commercially reasonable action, if necessary, to abate any violation of this Lease by any Tenant upon notice from the Lessor;

(e) The Lessee shall comply, at its sole cost and expense, with any documents, agreements, covenants and restrictions recorded against the Land senior to the Memorandum of Ground Lease, including, without limitation, those relating to environmental remediation and inspection (other than any restriction or requirement which is no longer enforceable against the Land, whether as a result of the execution and delivery of a subordination agreement and subsequent foreclosure by the senior lender, or otherwise);

(f) Subject to any applicable laws of the State of California and the rights of Tenants, that the Lessee will permit the Lessor and its agents to inspect the Development or any part thereof at any reasonable time during the Lease Term; and

(g) Subject to the rights to contest the same set forth elsewhere in this Lease, that the Lessee shall keep the Property free from any and all liens and encumbrances, except those set forth in Section 4.2 or as otherwise approved by Lessor in its sole discretion.

2.5. Taxes and Assessments.

(a) Payment of Taxes and Assessments. Except as provided in Section 2.5(e), the Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay the public officers charged with their collection, prior to delinquency and before any fine, penalty, interest, or other charge may be added to them for non-payment, all applicable real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied or imposed upon, or due and payable in connection with, or which become a lien upon, the Land, the Improvements, or any part of the Land or Improvements, or upon this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon the Land, the Improvements, or any part of the Land or Improvements, or upon this Lease. The Lessee shall have the right to obtain, and shall have the sole responsibility for obtaining, any affordable housing property tax exemption for such Land and Improvements which Lessee may elect to obtain, provided that Lessor shall cooperate with Lessee in obtaining the same. Lessor

hereby agrees that Lessor shall not agree to any assessment or additional real property taxes without the consent of Lessee.

(b) Payment of Fees. Except as provided in Section 2.5(e), the Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay, prior to delinquency and before any fine, penalty, interest, or other charge may be added to them for non-payment, all license and permit fees, charges for public utilities of any kind, and any and all governmental charges relating to the use or occupancy of the Improvements.

(c) Copies of Notices to Lessee. The Lessor agrees to send to the Lessee and designated Lenders copies of any and all notices received by it in respect to any taxes, assessments, charges, or fees for which the Lessee is liable pursuant to this Section 2.5.

(d) Lessee's Right to Contest. If the Lessee disputes the amount or validity of any liens, taxes, assessments, charges, penalties or claims, including liens or claims of materialmen, mechanics or laborers, upon the Land or the Improvements, regardless of whether such amounts are payable by the Lessor or the Lessee, the 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 reasonably possible. The Lessor agrees to render to the Lessee all reasonable assistance, at no expense to the Lessor, in contesting the validity or amount of any such taxes, assessments or charges, including joining in the signing of any protests or pleadings which the Lessee may deem advisable to file. During any such contest, the Lessee shall (by the payment of such disputed taxes, assessments, or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of the Lessor's title, reversionary interest or other interest in or to the Land.

(e) Lessor Obligations. The provisions of this Lease shall not be deemed to require the Lessee to pay any municipal, county, state, or federal income or gross receipts or excess profits taxes assessed against the Lessor, or any municipal, county, state, or federal capital levy, estate, succession, inheritance, gift or transfer taxes of the Lessor, or franchise taxes imposed upon any owner in fee of the Land. Any rebate made on account of any taxes or charges paid by the Lessor and not reimbursed by the Lessee shall belong and be paid to the Lessor; otherwise such rebate shall belong to the Lessee.

2.6. Assignment of Lessee's Leasehold Interest. The Lessee shall not assign its interest in this Lease without the written consent of the Lessor, which may be withheld in its sole and absolute discretion.

### **ARTICLE 3: MAINTENANCE; USE OF PREMISES**

#### **3.1. Title to Improvements and Liens Thereon.**

(a) During the Term. Title to the Improvements on the Land shall be granted to Lessee pursuant to a grant deed in the form attached hereto as Exhibit C recorded in the Official Records on the Closing Date; and the Lessee shall hold title to all such Improvements until the expiration of the Lease Term or other termination of this Lease; provided, however, that the 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 the Lessor, which may be withheld in Lessor's sole and absolute discretion. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Land.

(b) After the Term. Upon the expiration of the Lease Term or other termination of this Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to the Lessor. The Lessor agrees that the Lessee, at any time prior to the sixtieth (60th) day after the expiration or other termination of this Lease, may remove from the Land any and all equipment which Lessee has furnished for maintenance or management purposes, provided that the Lessee shall repair any physical damage to the Land or Improvements caused by the removal of such equipment and property. The Lessee agrees to execute, at the request of the Lessor at the end of the Lease Term, a quitclaim deed of the Improvements to the Lessor to be recorded at the Lessor's option and expense and any other documents that may be reasonably required by the Lessor or the Lessor's title company to provide the Lessor title to the Land and the Improvements free and clear of this Lease and all monetary liens and monetary encumbrances not caused or agreed to by the Lessor.

3.2. Plans and Specifications; Construction. The Lessee hereby agrees to construct the initial Improvements substantially in accordance with the plans and specifications mutually agreed to by the Parties prior to the date hereof, together with such modifications thereto as may be permitted or approved by the Lenders and the Investor Limited Partner, as required, subject to the Lessor's approval rights provided in this Section 3.1 (collectively, the "**Construction**"). Lessee agrees that the Construction and all maintenance and repair work, alterations, replacements and additions to be performed following completion of the initial Improvements shall be of good and workmanlike quality. Lessee shall obtain the prior written consent of Lessor (which shall not be unreasonably withheld, delayed or conditioned) with respect to: (A) any modifications to the plans and specifications for the Construction (which plans and specifications were previously approved by Lessor) that result in changes to the height, footprint or envelope of any Improvements, the number of units, the unit mix with respect to the number of bedrooms, or any change order (or series of change orders) that changes the cost of the Construction by \$100,000 or more; and (B) any alterations (or series of related alterations) to the Improvements following completion of the Construction with an aggregate estimated cost in excess of \$100,000. The Lessee shall have no authority, express or implied, to create or place a lien or encumbrance of any kind upon the Lessor's fee interest in the Land. Subject to Section 2.5(d), the Lessee covenants and agrees promptly to pay all sums legally due and payable by the Lessee on account of any labor performed or materials supplied on the Land on which any lien is or can be legally asserted against the Lessee's interest in the Improvements or leasehold interest in the Land. In the event any mechanics' or materialmen's lien is filed against the Land, subject to Section 2.5(d), the Lessee at its expense shall promptly cause such lien to be removed by bonding or otherwise, and the Lessee shall hold the Lessor harmless from any and all such asserted claims or liens. The Lessee shall give the Lessor fifteen (15) days prior written notice of the commencement of any Construction so that the Lessor may file a notice of nonresponsibility.

3.3. Permits, Licenses and Easements. The 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 Land or of the Improvements, provided that such work or grants are consistent with the plans previously approved by the Lessor for the Development. In the event that the Lessee desires to seek a change of zoning of the Land to permit a greater density of the development of the Land or desires to seek a variance under land use regulations or laws applicable to the Development, the Lessor agrees to cooperate fully with the Lessee, in its capacity as the Lessor (at no expense to the Lessor), in obtaining such rezoning or variance and to execute all applications or other documents which may be necessary or appropriate in connection therewith.

3.4. Use of Development. The Lessee shall at all times during the Lease Term use or cause the Development to be used for the purposes set forth in this Lease, consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Development. Subject to the next sentence, the Lessee agrees to comply with all applicable and lawful 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 Development. The Lessee may, in good faith and on reasonable grounds, dispute the applicability of, or the validity of any charge, complaint or action taken pursuant to or under color of, any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as speedily as reasonably possible.

3.5. Maintenance of the Development. Subject to Sections 6.1 and 6.2, during the Lease Term, the Lessee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Development in good repair and tenantable condition.

3.6. Utilities. The 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 Development, and, subject to Section 2.5(d), the Lessee shall pay or cause same to be paid currently and as due.

#### **ARTICLE 4: MORTGAGE LOANS**

4.1. Loans Regarding the Development. To the extent loans (“**Loans**”) are required to fund the acquisition, construction, operation, repair, restoration, refinance and/or transfer of the Development from time to time, the provisions of Section 4.2 shall apply.

4.2. Liens and Encumbrances Against Lessee’s Interest in the Leasehold Estate.

(a) The Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with deeds of trust, mortgages, regulatory agreements, and memoranda of option (collectively, “**Liens**”).

(b) The Lessor’s right to terminate this Lease shall be subject to the following provisions.

(i) The Lessor shall not agree to any mutual termination or cancellation of this Lease, nor accept any surrender of this Lease, nor consent to any amendment or modification of this Lease, without the prior written consent of the Investor Limited Partner and each of the Lenders which has an outstanding Loan.

(ii) Notwithstanding any Event of Default (as defined in Section 9.1(a)) by the Lessee under this Lease, the Lessor shall have no right to terminate this Lease by reason of any such Event of Default unless the Lessor shall have given each of the Lenders which has an outstanding Loan written notice of such Event of Default at the addresses given to the Lessor by those Lenders, and unless each such Lender shall have failed to remedy such Event of Default or acquire the Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings, all as set forth in, and within the times specified by, this Section 4.2.

(iii) Any Lender which has an outstanding Loan 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 the Lessee by the terms of this Lease, to prevent termination of this Lease. Each Lender shall have ninety (90) days after receipt of notice from the Lessor describing an Event of Default to cure the Event of Default; provided, however, that if the Event of Default is not reasonably susceptible to cure by a Lender within such period, such Lender shall have such longer period, not to exceed an additional one hundred eighty (180) days, as may be reasonably necessary to cure the Event of Default, so long as such Lender is diligently prosecuting such cure to completion (the "**Initial Cure Period**"). All payments so made by a Lender and all things so done by a Lender shall be as effective to prevent a termination of this Lease referenced in Section 9.1 as the same would have been if made and performed by the Lessee instead of by the Lender(s).

(iv) In addition to the Initial Cure Period, if the default is such that possession of the Land may be reasonably necessary to remedy the default, any Lender which has an outstanding Loan shall have a reasonable time after the expiration of the Initial Cure Period within which to remedy such default, provided that (i) such Lender shall have fully cured any Event of Default in the payment of any monetary obligations of the Lessee under this Lease within the first ninety (90) days of the Initial Cure Period and shall continue to pay currently such monetary obligations when the same are due (subject to the cure rights contained in this Lease); (ii) such Lender shall have acquired the Lessee's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within the Initial Cure Period, and shall be diligently prosecuting the same; and (iii) and after acquiring possession of the Land, such Lender shall diligently prosecute to completion such cures as may be reasonably possible to remedy nonmonetary defaults existing under this Lease.

(v) Any Event of Default under this Lease which by its nature cannot reasonably be remedied by a Lender shall be deemed to be remedied if (i) within the Initial Cure Period, or prior thereto, such Lender shall have acquired the Lessee's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) the Lender shall diligently prosecute any such proceedings to completion, (iii) the Lender shall have fully cured any other Event of Default in any obligation of the Lessee hereunder reasonably susceptible to cure by the Lender which does not require possession of the Land or shall diligently be prosecuting such cure to completion, and (iv) after gaining possession of the Land, the Lender shall thereafter perform all

existing obligations of the Lessee hereunder which are reasonably capable of performance by such Lender.

(vi) If any Lender is prohibited, stayed or enjoined by any law or by any bankruptcy, insolvency, action, process, injunction or other judicial proceedings of any court, including without limitation, a court having jurisdiction over the Lessee, 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 Lender shall have fully cured any Event of Default in the payment of any monetary obligations of the Lessee under this Lease, including without limitation any monetary obligations to third parties which have become liens against the Property or any portion thereof, and shall continue to pay currently such monetary obligations when the same fall due (subject to the cure rights contained in this Lease).

(vii) The Lessor shall concurrently give to each Lender who has provided to the Lessor an address for notices, and which has an outstanding Loan, a duplicate copy of all notices which the Lessor may from time to time give to the Lessee pursuant to this Lease. No notice by the Lessor to the Lessee hereunder shall be effective unless and until a copy of the notice shall have been given to each of the Lenders as set forth in this Section 4.2(b)(vii). Each notice required to be given by Lessor to a Lender shall be addressed as described above and shall otherwise be given in the manner, and with the effect, described in Section 10.2.

(viii) Neither the foreclosure of a Lien, nor any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage securing the Loan, nor any conveyance of the leasehold estate created hereby from the Lessee to a Lender Party through or in lieu of any such foreclosure, shall require the consent of the Lessor or constitute a breach of any provision of this Lease. In the event any Lender, or its designee, or any purchaser at foreclosure or recipient of an assignment of the leasehold interest hereunder (as applicable, a “**Lender Party**”), becomes the Lessee under this Lease by such means or pursuant to any new lease obtained under Section 4.2(b)(ix), the Lessor shall recognize the Lender Party as the Lessee hereunder or under such new lease and the Lender Party shall be personally liable under this Lease or such new lease only for the period of time that the Lender Party remains the Lessee thereunder, provided that the Lender Party attorns to the Lessor and agrees to be subject to the restrictions of this Lease. If a Lender (or its designee) becomes the Lessee under this Lease or any such new lease, the Lender (or its designee) shall have the right thereafter to assign or sublease this Lease or such new lease without obtaining the Lessor’s consent, provided that any assignee: (i) shall take the leasehold estate subject to all of the provisions of this Lease or such new lease, and (ii) shall assume and agree to perform all obligations of the Lessee under this Lease; any other assignment or sublease of this Lease by a Lender Party (other than a Lender or its designee) who becomes a Lessee shall be subject to the consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. Nothing in this Section 4.2(b)(viii) shall be construed to obligate any Lender to remedy any default of the Lessee, and any failure of any Lender to complete any such cure after commencing the same shall not give rise to any liability of any Lender (or its designee) to the Lessor or the Lessee.

(ix) If the Lessor terminates this Lease by reason of any Event of Default (as defined herein), or if this Lease shall otherwise terminate, whether by operation of law or

otherwise, Lessor shall give prompt written notice of such termination to each Lender. The Lessor shall, upon written request from any Lender, given by the requesting Lender to Lessor not later than the sixtieth (60th) day after Lessor gives each Lender written notice that this Lease has terminated, execute and deliver a new lease of the Property and Improvements (or, with respect to such Improvements, a deed therefor, if requested by such Lender) to such Lender Party; provided, however, that such Lender shall, as a condition precedent to the Lessor's execution of such new lease, pay to Lessor any delinquent rent or other delinquent amount payable by the Lessee to Lessor under this Lease. Such new lease shall have a term equal to the unexpired balance of the Lease Term as it exists immediately prior to such termination with the same agreements, covenants, interests and conditions (except for any requirements which have been fulfilled by the Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease with respect to encumbrances of the Lessor's interest in the Property or encumbrances of the Lessee's interest in the Property permitted or caused by the Lessor, together with any provisions legally required in the event the applicable Lender Party is a governmental entity. No Lender Party shall be liable for any defaults by Lessee hereunder arising prior to acquiring the leasehold interest; provided, however, that, with respect to any non-monetary and continuing defaults, such Lender Party shall, within ninety (90) days after the execution of such new lease cure any non-monetary Events of Default by the Lessee which are reasonably susceptible to cure by the Lender Party (or, if any such non-monetary Event of Default is not reasonably susceptible to a cure by such Lender within such ninety (90) day period, such Lender shall have such additional period of time within which to cure such non-monetary Event of Default as may be reasonably required by such Lender to cure such Event of Default, so long as such Lender is diligently prosecuting such cure to completion). The Lender Party shall be personally obligated only for performance of obligations under this Lease commencing as of the date of such foreclosure, enforcement or assignment and ending as of the date of any assignment of this Lease to a successor Lessee in accordance with this Lease. Upon execution and delivery of such new lease by the Lessor and the Lender Party, the Lessor, at the expense of the Lender Party, shall cooperate in taking such action as shall be necessary to cancel and discharge this Lease (which has been superseded) and to remove the Lessee from Property. If more than one (1) Lender timely gives Lessor a written request for such a new lease, then Lessor shall enter into such new lease with the Lender holding, immediately prior to such termination, the Lien which is senior, in terms of lien priority (determined by also taking all valid subordination agreements into account), to the Liens held by the other requesting Lenders.

(x) If a Lender subsequently transfers its interest under this Lease after acquiring such interest by foreclosure or deed in lieu of foreclosure and, in connection with any such transfer, the Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure all or any portion of the purchase price given to the Lender for such transfer, then such mortgage or deed of trust shall be considered a Lien hereunder (with Lender entitled to the protections provided under Section 4.2 of this Lease or the new lease) and the Lender's transferee shall be entitled to receive the benefit of and to enforce the provisions of this Lease or the new lease.

(xi) Unless each of the Lenders otherwise consents in writing, the Lessor and the Lessee each hereby waives, and agrees not to assert or otherwise take the benefit of, that portion of Section 365(d)(4), or any other applicable provisions, of the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.), which provides for the deemed rejection of a lease in certain circumstances, so long as the trustee is paying the rent due under this Lease.

(xii) The Lessor shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any Lender or any proposed lender, for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such Lender 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 Lender or proposed lender. The Lessor agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Lease Term or rent under this Lease nor otherwise in any material respect adversely affect any rights of the Lessor under this Lease.

(xiii) In no event shall any election by Lessee to terminate this Lease in connection with any casualty, condemnation or similar event have any force or effect unless the Investor Limited Partner and each Lender then holding a Lien consents to such termination, in writing, in its sole and absolute discretion.

(c) Any leasehold mortgage created pursuant to Section 4.2(a) shall be subject to the provisions of this Lease and all rights of the Lessor under this Lease.

(d) Each Lender that desires to benefit from Section 4.2 shall deliver to Lessor a written request for notices of default under this Lease, receipt of which shall be acknowledged by Lessor upon receipt. For purposes of this provision, Lessor agrees and acknowledges that Bank of America, N.A., a national banking association, and California Municipal Finance Authority, a California nonprofit public benefit corporation, have requested notices of default under this Lease at the following addresses:

Bank of America, N.A.  
800 5<sup>th</sup> Avenue, Floor 34, WA1-501-34-42  
Seattle, WA 98104  
Attention:     []

California Municipal Finance Authority  
2111 Palomar Airport Road, Suite 320  
Carlsbad, CA 92011  
Attention:     []

(e) Rights of Investor Limited Partner. The Investor Limited Partner shall have the same notice and cure rights as any Lender (including monetary obligations) as set forth in Section 4.2 above for so long as it is a partner of Lessee; provided, however, that (I) the requirement that a Lender acquire the Lessee's leasehold estate hereunder or commence foreclosure or other appropriate proceedings prior to or within the Initial Cure Period, as set forth in Section 4.2(iv)(ii) above, shall be met by the Investor Limited Partner by commencing the removal and substitution of the general partner of Lessee in appropriate proceedings in accordance with the terms of the Partnership Agreement as it exists of the date hereof (together with any subsequent amendments to such removal and substitution rights in the Partnership Agreement) and shall continue diligently prosecuting the same, and further provided that the Investor Limited

Partner shall not have the right to enter into a new lease under Section 4.2(iv)(ix). The address for any notices to the Investor Limited Partner, as of the date hereof, is provided in Section 10.2 below.

4.3. Cost of Loans to be Paid by Lessee. The Lessee affirms that it shall bear all of the costs and expenses in connection with (a) the preparation and securing of the Loans, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with the Loans.

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

4.5. Notice and Right to Cure Defaults Under Loans. Upon the recording of the Memorandum, the Lessor may record in the Official Records a request for notice of any default under each Loan.

4.6. Standstill. Notwithstanding anything to the contrary set forth in this Lease, as long as Lessee or any member, partner, majority shareholder, or other constituent part of Lessee is affiliated with, controlled by or under common control with Lessor, Island City Development or any other affiliate of Lessor, Lessor shall not exercise any remedies under this Lease (including without limitation, terminating this Lease) as a result of any default of Lessee under this Lease.

## ARTICLE 5: INSURANCE

### 5.1. Required Insurance Coverage.

(a) Fire and Extended Coverage Endorsement. The Lessee shall during the Lease Term keep the Development insured against loss or damage by a standard all risk policy in amounts such that the proceeds of such insurance shall not be less than the replacement value of the Development, or should insurance in such amount not be reasonably and commercially available, such lesser amount as may be acceptable to the Lessor. The amount of such insurance shall be adjusted by reappraisal of the Improvements by the insurer or its designee at least once every five (5) years during the Lease Term, if requested by the Lessor. If an all risk policy insuring the full replacement value of the Development is not reasonably and commercially available, the Lessee shall use best efforts to obtain and maintain an extended coverage endorsement that ensures the full replacement value of the Development as soon as such coverage becomes commercially and reasonably available, subject to the approval of the Lenders.

(b) Liability and Property Damage Insurance. During the Lease Term, the Lessee shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Development. The limits of such insurance shall be not less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage. The limits of the insurance shall be adjusted once every five (5) years if and as reasonably required by the Lessor.

(c) Workers' Compensation Insurance. The Lessee shall carry or cause to be carried workers' compensation insurance covering all persons employed in connection with the

Development and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against the Lessor or the Lessee.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction, the cost of which exceeds (\$50,000), the Lessee shall require any contractor to provide builders' risk insurance for not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury or property damage insuring the interests of the Lessor, the Lessee and any contractors and subcontractors.

5.2. Insurance Policies and Premiums.

(a) All liability policies required by this Lease or any Loan Document shall name the Lessor as an additional insured. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to the Lessor.

(b) To the extent obtainable, any policy of insurance shall provide that any change or cancellation of said policy must be made in writing and sent to the Lessee and the Lessor at their respective principal offices at least thirty (30) days before the effective date of change or cancellation.

5.3. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than "A VII".

5.4. Proceeds of Insurance.

(a) 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 Development damaged or destroyed if (1) 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 (2) each Lender with an outstanding Loan permits such repair or rebuilding, provided that the extent of the Lessee's obligation to restore the Development shall be limited to the amount of the insurance proceeds.

(b) If the Development is not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Loans and Lessee's Partnership Agreement (in the order of the Lenders' respective lien priority, if there is more than one Lender, and the terms of the Loans having priority over Lessee's Partnership Agreement) and the Property shall be left in its original condition as of the commencement of the Lease Term.

(c) In the event that no Loan is outstanding, all insurance proceeds received under the policies set forth in this Article 5 shall be paid to the Lessee, provided that the Lessee shall apply such proceeds, to the extent possible, for reconstruction or repair in a manner consistent with the provisions of Section 6.2.

5.5. Indemnification. The Lessee shall indemnify and hold harmless the Lessor, its trustees, officers, employees, agents, contractors, servants, directors, stockholders, partners or principals from all claims, actions, demands, costs, expenses and reasonable attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of the

Lessee, its agents, contractors, servants, employees, or invitees, arising from or relating to ownership or operation of the Development, except for that caused by Lessor's gross negligence or willful misconduct.

## ARTICLE 6: CONDEMNATION OF THE DEVELOPMENT

6.1. Condemnation. If the Development or the Land 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 Development and the Land (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 Land and loss of value of the Development. In any case, such awards and payments shall be applied as follows:

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

(i) If the Lessee reasonably believes 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 Development, provided that (1) the extent of the Lessee's obligations to restore the Development shall be limited to the amount of the net award and payment received on account of the taking, and (2) each Lender with an outstanding Loan permits such repair or rebuilding. The Lessee shall furnish to the Lessor evidence reasonably satisfactory to the Lessor of the total cost of the restoration of the Development.

(ii) Second, or first if (i) the Lessee does not reasonably believe that restoration is economically feasible, (ii) the Lessee is in default and the opportunity to cure has expired under the Loan Documents, or (iii) any Lender does not permit restoration, 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 Section 6.1(a)(ii)), 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 Section 6.1(a)(ii), 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 Development immediately following the taking or immediately preceding the taking, as applicable. The values of the Development immediately preceding the taking and immediately following the taking shall be determined by an MAI or SRI appraiser selected by the Lessee and who is reasonably satisfactory to the Lessor and the Lenders.

(iii) The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in Section 6.1(e); provided, however, if the taking has no effect on

the value of the Lessor's fee interest in the Land, the balance shall be paid exclusively to the Lessee.

(b) Net awards and payments received on account of a partial or total taking of only the Lessor's fee interest in the Land (that is, a taking of the Lessor's fee interest in the Land that has no effect on the value of the Lessee's leasehold interest in the Land 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 Land through or under the Lessee.

(c) 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 Development, 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 after the end of the Lease Term shall be paid to the Lessor.

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

(i) First, to any Lenders with then-outstanding Loans secured by the Development (in the order of their respective lien priority, if there is more than one Lender), in accordance with any Loan Documents, an amount equal to the unpaid balance secured by their respective Loans (including, without limitation, all principal amounts outstanding, all accrued interest, and all costs, fees and advances) to the extent there are sufficient funds to make such payments;

(ii) The remaining balance, if any, (the "**Balance**") shall be divided between the Lessor and the Lessee in the manner specified in Section 6.1(d)(iii); provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Land, the balance shall be paid exclusively to the Lessee.

(iii) Next, as between the Lessor and the Lessee, the Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Development (other than funds received from the Lenders). Then the Lessor shall receive an amount equal to the Balance multiplied by a fraction, the numerator of which is the number of years elapsed from the date of this Lease to the date of the taking, and the denominator of which is seventy-five (75). The Lessee shall receive the remainder after deduction of the Lessor's portion.

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

(f) If the Development is taken or condemned during the last five (5) years of the Lease Term under circumstances described in Section 6.1(a), the Lessee may elect to terminate this Lease and proceeds of any payment or award shall be distributed in accordance with the provisions of Sections 6.1(d) and (e).

6.2. Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Development. In the event that the Loans have been paid in full, and if the Development or any part of it is to be repaired or reconstructed, after damage or destruction of the Development or its condemnation, all proceeds collected under any and all policies of insurance referred to in Article 5 above 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 trust fund to be created and held by the Lessee and to be designated as the “**Construction Fund**”, during such repairing or reconstructing. Any surplus of such insurance or condemnation proceeds remaining after the completion of all payments for such repairing or reconstructing shall be held or applied by the Lessee in a manner consistent with the applicable provision of Articles 5 and 6.

6.3. Lessee, Lessor, Lenders to be Made Parties in Legal Proceedings.

(a) In the event 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 Development, 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 Land, or for damage to or destruction of the Development. Should the Lessor or the Lessee receive notice of institution of any proceedings subject to Section 6.1, the party receiving such notice shall notify the other and each Lender in accordance with Section 10.2 of this Lease, not later than thirty (30) days after receiving such notice.

(b) 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 Development, or for damages on account of the taking or condemnation of the Improvements or the Land.

## ARTICLE 7: PARTICULAR COVENANTS

7.1. Non-Discrimination. The Lessee or its designee shall not, in the selection or approval of Tenants or provision of services or in any other matter, discriminate against any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry. In addition, the Lessee covenants by and for the Lessee and the Lessee’s successors, assigns and all persons claiming under or through the Lessee that this Lease is made subject to the condition that, except to the extent permitted by applicable federal and California law, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Land nor shall the Lessee or any person claiming under or through the Lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, sublessees, subtenants or vendees on the Land.

7.2. Hazardous Materials.

(a) Certain Covenants and Agreements. The Lessee hereby covenants and agrees that:

(i) The Lessee shall not knowingly permit the Land or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Land in violation of any applicable law;

(ii) The Lessee shall keep and maintain the Land and each portion thereof in compliance with, and shall not cause or permit the Land or any portion thereof to be in violation of, any Hazardous Materials Laws;

(iii) Upon receiving actual knowledge of the same the Lessee shall immediately advise the Lessor in writing of:

A. Any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee or the Land pursuant to any applicable Hazardous Materials Laws;

B. Any and all claims made or threatened by any third party against the Lessee or the Land relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as “Hazardous Materials Claims”);

C. the presence of any Hazardous Materials in, on or under the Land in such quantities which require reporting to a government agency; or

D. The Lessee’s discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Land classified as “borderzone property” under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Land under any Hazardous Materials Laws.

If the Lessor reasonably determines that the Lessee is not adequately responding to a Hazardous Material Claim or any condition in Sections 7.2(a)(iii)(C) or (D), the Lessor shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Lessee.

(iv) Without the Lessor’s prior written consent, which shall not be unreasonably withheld or delayed, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Land (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 5.5 above, the Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Lessor) the Lessor, its board members, commissioners, officers, agents, successors, assigns and employees (the "**Indemnitees**") from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(i) the failure of the Lessee or any other person or entity on or after the Closing Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Land;

(ii) any release or discharge of any Hazardous Materials into, on, under or from the Land, arising on or after the Closing Date, or the introduction of, on, or under the Land of any Hazardous Materials that occurs on the Land after the Closing Date; or

(iii) any activity or omission of activity carried on or undertaken on or off the Land, on or after the Closing Date, and whether by the Lessee or any employees, agents, contractors or subcontractors of the Lessee or any successor in title that is related to the Lessee occupying or present on the Land, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Land. The Lessee's indemnity obligations as they pertain to activities occurring off the Land shall only extend to activities performed by or arising from activities performed by the Lessee or any employees, agents, contractors or subcontractors of the Lessee, each of the foregoing a "**Prohibited Condition**."

The foregoing indemnity shall further apply to any residual contamination on or under the Land, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials during the Lease Term, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Lease Term or other termination of this Lease and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising solely from any Indemnitee's gross negligence or willful misconduct. Notwithstanding anything herein to the contrary the Lessee's liability under this Section 7.2 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Conditions that first arise, commence or occur after the actual dispossession from the entire Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower.

(c) No Limitation. The Lessee hereby acknowledges and agrees that the Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the Lessor may have concerning the Land and/or the presence on the Land of any Hazardous Materials, whether the Lessor obtained such information from the Lessee or from its own investigations.

7.3. As-Is Conveyance. This Lease is made “AS IS,” with no warranties or representations by the Lessor concerning the condition of the Land. The Lessee shall be entitled to invoke any remedies available at law or in equity to redress any breach of this Article 7 or to compel compliance therewith by the Lessor. The obligations of the Lessee and the Lessor to comply with Section 7.1 above shall inure to the benefit of each other.

## ARTICLE 8: ASSURANCES OF LESSOR

8.1. Lessor to Give Peaceful Possession. The Lessor covenants that it owns in fee simple, and that it has good and marketable title to the Land. The Lessor covenants and warrants that the Lessee and its Tenants shall have, hold and enjoy, during the Lease Term, peaceful, quiet, and undisputed possession of the Land leased without hindrance from anyone so long as the Lessee is not in default under this Lease.

8.2. Release of Lessor. The Lessor may sell, assign, transfer, or convey (but not encumber) all or any part of the Lessor’s interest in the Land or this Lease without obtaining the consent of the Lessee or any Lender of Investor Limited Partner, provided that the purchaser, assignee, or transferee expressly assumes all of the obligations of the Lessor under this Lease by a written instrument recorded in the Official Records. The Lessor may encumber all or any part of the Lessor’s interest in the Land or this Lease, provided that such encumbrance shall be (i) subject and subordinate to this Lease, (ii) consented to by the Lender whose lien has first priority, and (iii) shall not otherwise disturb or negatively affect Tenant’s or any Lender’s rights hereunder. In the event the Lessor intends to sell all or any part of the Land, the Lessor shall notify the Lessee of such intention not later than ten (10) days before close of escrow. In the event of a sale, assignment, transfer, or conveyance by the Lessor of the Land or its rights under this Lease, the same shall operate to release the Lessor from any liability arising on or after the effective date of such transfer upon any of the covenants or conditions of this Lease, expressed or implied, in favor of the Lessee, and in such event the Lessee shall look solely to the successor in interest of the Lessor in and to the Land or this Lease. This Lease shall not be affected by any such sale, and the Lessee agrees to attorn to any such purchaser or assignee.

## ARTICLE 9: DEFAULTS AND REMEDIES

9.1. Events of Default; Remedy of Default by Lessee.

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

(i) Failure of the Lessee to observe and perform any covenant, condition, or agreement hereunder on its part to be performed, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default, or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, the Lessee shall fail to proceed with reasonable diligence after receipt of said notice to cure the same or shall fail to cure within ninety (90) days after receipt of said notice; or

(ii) The Lessee’s abandonment of the Land for sixty (60) consecutive days or longer; or

(iii) A general assignment is made 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 the Lessee shall have ninety (90) days after such filing 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 the Lessee's assets or of this leasehold (other than an appointment initiated by a Lender in connection with a default under its Loan), which appointment is not withdrawn or dismissed within ninety (90) days after its entry; or

(vi) The Lessee declares in writing that it is unable to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of the Lessee or of substantially all of its assets; or the Lessee files any action to dissolve or wind up its affairs or to cease or suspend the Development; or

(vii) The 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 after such act is effected.

(b) Whenever any Event of Default shall have occurred and be continuing and upon expiration of any applicable cure periods provided herein, and subject to the cure rights of the Investor Limited Partner and the Lenders set forth in this Lease (including, without limitation, Section 4.2), the Lessor may take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants of the Lessee under this Lease, including without limitation, termination of this Lease, in which event all Improvements shall become the property of Lessor without compensation or reimbursement to Lessee and all interest of Lessee in the Development shall terminate. In the event of such default, the Lessor's remedies shall be cumulative, and no remedy expressly provided for in this Section 9.1 shall be deemed to exclude any other remedy allowed by law.

9.2. Remedy of Material Breach by Lessor. If the Lessor defaults under this Lease, the Lessee shall give the Lessor written notice requiring that the default be remedied by the Lessor. If the default is not cured within the time set forth by the Lessee (which shall be a reasonable time for curing the default and shall in any event be at least thirty (30) days), the Lessee and the Lenders may take any action as may be necessary to protect their respective interests. Such action, in the event that the Lessor shall fail to perform any of its obligations under this Lease and such failure shall continue after the expiration of the cure period specified in this Section 9.2, shall include the right of the Lessee and the Lenders to cure such default.

9.3. Termination. Subject to Section 4.2(b)(i), in the event of a total taking or in the event of damage, destruction, or a partial taking, other than a temporary taking of the Development, which the Lessee reasonably determines renders continued operation of the Development infeasible both as a whole and in substantial part, this Lease shall terminate (except if the Lessee

is rebuilding the Development in accordance with the terms of this Lease) and in such event any proceeds shall be allocated pursuant to Section 5.4 or Article 6, as appropriate. In the event of a partial taking that does not result in termination pursuant to this Section 9.3, this Lease shall remain in full force and effect as to the portion of the Development remaining.

### ARTICLE 10: MISCELLANEOUS

10.1. Instrument Is Entire Agreement. This Lease and the attached exhibits constitute the entire agreement between the parties with respect to the matters set forth herein. This Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Lessor and the Lessee relating to the lease of the Land by the Lessor to the Lessee.

10.2. Notices. All notices hereunder shall be in writing signed by Authorized Officer(s) and shall be sent by United States first class, certified mail, return receipt requested, postage prepaid, or by recognized express delivery service with a receipt showing the date of delivery, addressed:

If to the Lessor:           Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Director of Housing and Community Development

*With a copy to:*           Carle, Mackie, Power & Ross LLP  
100 B Street, Suite 400  
Santa Rosa, CA 94952  
Attention: Henry Loh II

If to the Lessee:           [APPLICABLE LP]  
c/o Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Director of Housing and Community Development

*With a copy to:*           Carle, Mackie, Power & Ross LLP  
100 B Street, Suite 400  
Santa Rosa, CA 94952  
Attention: Henry Loh II

If to Limited                [APPLICABLE INVESTOR]  
Partner:                    [APPLICABLE ADDRESS]

or to any other address as any party may have furnished to the other in writing pursuant to the requirements of this Section 10.2 as a place for service of notice. Any notice so given shall be deemed to have been given upon receipt (or upon the date that delivery is refused by the addressee), as shown on the delivery receipt.

10.3. Recording. Either Lessee or Lessor may record the Memorandum in the Official Records.

10.4. 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 parties under the terms of this Lease shall be deemed a waiver or relinquishment (a) of any covenant herein contained or of any of the rights or remedies of the Lessee or the Lessor hereunder, (b) of 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 thereof, or (c) the right of the Lessor to recover possession of the Land.

10.5. Effective Date; Counterparts. This Lease shall become effective upon the Closing Date. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

10.6. 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 permitted assigns and, as provided in Sections 4.2(b) and 9.1(b), the Investor Limited Partner and the Lenders.

10.7. Forum. Any suit, action or other legal proceeding arising out of this Lease shall be brought in Alameda County, California.

10.8. 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.

10.9. No Merger. There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created hereby, with the fee estate in the Land, by reason of the fact that this Lease or such interest therein, 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 Land, 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 hereby may be conveyed or mortgaged in a leasehold mortgage to a leasehold mortgagee who shall hold the fee estate in the Land or any interest of the Lessor under this Lease.

10.10. 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 context requires.

10.11. 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.

10.12. 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.

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

10.14. Amendments. Except as provided in Section 4.2 hereof, prior to entering into any amendment to this Lease, Lessor and Lessee shall obtain the prior consent of the Investor Limited Partner and all Lenders, if required.

10.15. Estoppel Certificates. Each Party, the Investor Limited Partner or each of the Lenders (a “**Requesting Party**”) may require the other Party (a “**Certifying Party**”) to execute and deliver to the Requesting Party (or directly to a designated third party) an estoppel certificate certifying to the Certifying Party’s actual knowledge as to factual matters relating to this Lease as reasonably requested by the Requesting Party. The Certifying Party shall sign, acknowledge, and return such estoppel certificate within fifteen (15) days after request, even if the Requesting Party is in default under this Lease. Such estoppel certificate may be relied upon by the Investor Limited Partner, a Lender or any other party which may have, or intend to acquire, an interest in this Lease.

10.16. Fees and Costs of Litigation. The prevailing Party in any litigation arising out of or in connection with this Lease shall be entitled to receipt of reasonable attorneys’ fees and costs from the other Party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Ground Lease effective as of the day and year first above written.

**LESSOR:**

Housing Authority of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
Vanessa Cooper,  
Executive Director

[Signatures continue on next page.]

**LESSEE:**

[APPLICABLE LP],  
a California limited partnership

By: [APPLICABLE LLC],  
a California limited liability company,  
its managing general partner

By: Island City Development,  
a California nonprofit public benefit corporation,  
its Manager

By: \_\_\_\_\_  
Janet Basta  
Treasurer and Secretary

Exhibit A

Description of Land

[APPLICABLE PROJECT NAME LEGAL DESCRIPTION]

Exhibit B

Memorandum of Ground Lease

[attached]

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Executive Director

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MEMORANDUM OF GROUND LEASE

The undersigned Grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_.

CITY TRANSFER TAX \$ \_\_\_\_\_

Survey Monument Fee \$ \_\_\_\_\_

Computed on the consideration or full value of property conveyed; OR

Computed on the consideration or full value less value of liens and/or  
encumbrances remaining at time of sale;

unincorporated area;

City of Alameda

\_\_\_\_\_  
Signature of Declarant

THIS MEMORANDUM OF GROUND LEASE is made and entered into as of July 1, 2020, by and between Housing Authority of the City of Alameda, a public body, corporate and politic (the “**Lessor**”) and [APPLICABLE LP], a California limited partnership (the “**Lessee**”).

The Lessor has leased that certain real property located in the County of Alameda, California, as more particularly described in Exhibit A attached hereto, to the Lessee upon the terms and conditions set forth in that certain written Ground Lease (the “**Lease**”) of even date herewith. The term of the Lease terminates on [APPLICABLE LEASE END DATE], unless terminated earlier pursuant to the terms of the Lease.

The purpose of this Memorandum of Ground Lease is to give notice of the Lease and of the rights created thereby, all of which are hereby confirmed.

[SIGNATURES ON FOLLOWING PAGE]

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

**LESSOR:**

Housing Authority of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
Vanessa Cooper  
Executive Director

[ALL SIGNATURES MUST BE NOTARIZED]

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

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

[SIGNATURES CONTNUED ON FOLLOWING PAGE]



Exhibit A

[APPLICABLE LEGAL DESCRIPTION OF SUBJECT PROPERTY]