

ORDINANCE NO. 7,310-N.S.

GROUND LEASE: UACH, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR 47 UNITS OF AFFORDABLE HOUSING AND ONE COMMERCIAL SPACE AT 1450 UNIVERSITY AVENUE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the City Manager is hereby authorized to execute a sixty-seven (67) year ground lease (Exhibit A) with UACH, LP, a California limited partnership, for the rehabilitation and operation of 47 affordable residential units and one commercial space at 1450 University Avenue, commonly known as "University Avenue Cooperative Housing," thus vesting title to the Improvements in UACH, LP, pursuant to its leasehold estate, for the term of the lease.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 1, 2013 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: Anderson.

GROUND LEASE

By and Between

CITY OF BERKELEY

(Lessor)

And

UACH, LP,

(Lessee)

(HOUSING TRUST FUND PROGRAM UNITS)

GROUND LEASE
UNIVERSITY AVENUE COOPERATIVE HOUSING
(HOUSING TRUST FUND PROGRAM UNITS)

THIS GROUND LEASE, is entered into and made effective as of the _____ day of _____, 2013, by and between the **City of Berkeley**, a municipal corporation (the "Lessor" or "City") and the **UACH, LP**, a California limited partnership (the "Lessee").

RECITALS

- A. WHEREAS, the City is fee owner of the land located at 1450 University Avenue, Berkeley, California, (the "Site") as further described as Parcel One and Parcel Two in Exhibit A, attached hereto and made a part of this Lease; and
- B. WHEREAS, University Avenue Partnership ("UAP") held a leasehold interest in the Site and a fee interest during the previous lease term in the Improvements, commonly known as University Avenue Cooperative Homes, which include forty-seven (47) residential units and ground floor commercial space, as further described as Parcels Three and Four in Exhibit A. UAP's leasehold interest was created by that certain Ground Lease and Agreement executed by UAP and the City on October 22, 1981 (the "Original Lease"), which had a term of fifty-five (55) years and which was made for the express purpose of rehabilitating and providing decent, safe affordable housing; and
- C. WHEREAS, on October 22, 1981, in conformance with the Original Lease, UAP entered into that certain Lease and Agreement with University Avenue Cooperative Homes, Inc., a limited equity housing corporation, ("UA Co-op") for the lease of the Improvements ("Sublease"), pursuant to which UA Co-op oversaw the management and operations of the Improvements and the Site (together, the "Premises"); and
- D. WHEREAS, in 1999, Resources for Community Development ("RCD") assumed control of UA Housing, Inc. (UAH), the managing general partner of UAP, and commenced a collaborative effort with UA Co-op to develop a revitalization and preservation strategy for the Improvements; and
- E. WHEREAS, UAP, RCD, and the City determined that the Improvements' preservation required the substantial rehabilitation of the residential units, the commercial space, landscaping, and Site hardscape; and

- F. WHEREAS, between 2002 and 2011, the City provided predevelopment funding for the proposed rehabilitation project as follows: 1) a First Development Loan Agreement with UAH (dated December 3, 2002), of which only \$8,655 was disbursed and which, together with \$3,235 in accrued interest, remains outstanding in the amount of \$11,890; 2) a Second Predevelopment Loan Agreement with RCD in the amount of \$33,100 (dated February 4, 2010, and as amended on September 20, 2011) which, together with \$1,894 in accrued interest, remains outstanding in the amount \$34,994; and
- G. WHEREAS, in 2010, RCD applied to the City for a predevelopment and acquisition loan from the City's Housing Trust Fund Program ("HTF") in order to complete predevelopment activities necessary to effectuate a rehabilitation program, including securing a low-income housing tax credit allocation and both selling the Improvements and assigning the Original Lease to a tax credit limited partnership; and
- H. WHEREAS, on June 14, 2011, the Berkeley City Council approved an HTF funding reservation in the amount of \$890,000 for the proposed acquisition and rehabilitation of the Improvements and advanced \$20,000 of that HTF reservation as additional predevelopment funding, bringing the City's total funding commitment to the Project, including principal and all accrued interest, to \$937,402; and
- I. WHEREAS, Lessor and RCD executed a Development Loan Agreement dated May 1, 2013 in the principal amount of \$937,402, which consolidated all prior City loans for the Project; at Construction Loan Closing, RCD will assign and Lessee will assume all of RCD's rights and responsibilities under the Development Loan Agreement; and
- J. WHEREAS, the Sublease expired on October 22, 20__, and UAP and UAH, as RCD's wholly-controlled nonprofit affiliate, executed a Purchase and Sale Agreement, which provided for (1) UAP's transfer of its fee interest in the Improvements during the original lease term and its leasehold interest in the Site to UAH, in anticipation of a tax credit award, pursuant to an assignment of the Original Lease by UAP to UAH, and (2) UAH's subsequent assignment of the Original Lease to Lessee; and
- K. WHEREAS, in March 2013, UAH secured an allocation of 9% low-income housing tax credits and additional sources of funds necessary for Lessee to complete the acquisition of the Improvements and rehabilitation of the Premises; and
- L. WHEREAS, Lessee, with full knowledge of the condition of the Premises, agrees to lease the Site from Lessor pursuant to the provisions of this Ground Lease Agreement (the "Lease"); and

M. WHEREAS, this Lease fully and unconditionally replaces and supersedes the Original Lease, which shall terminate as of the date of recordation of the Memorandum of Lease related to this Lease.

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

ARTICLE 1. DEFINITIONS

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

(a) "Area" means the Oakland-Fremont, CA Metropolitan Area.

(b) "Area Median Income" means the median income for the Area as determined and published annually by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the Area determined under the method used by the Secretary of Housing and Urban Development prior to such termination.

(c) "Approved Financing" means all of the loans, grants, equity, and other financing secured by RCD and Lessee and approved by the City for the purpose of the Project's construction and permanent financing.

(d) "Award" means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all of any part of or interest in the Site and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

(e) "Construction Loan Closing" means the loan closing for the construction portion of the Approved Financing, held immediately prior to the start of the Project's rehabilitation.

(f) "DLA" means the City's Housing Trust Fund Program ("HTF") Development Loan Agreement documents, including the Loan Agreement, Promissory Note, Regulatory Agreement, and Ground Leasehold Deed of Trust entered into or assumed by Lessee, dated _____.

(g) "Effective Date" means the date of the Construction Loan Closing.

(h) "First Mortgage Lender" means any lender, and its successor, assigns and participants or other entity, holding the first deed of trust on the Leasehold Estate.

(i) "HTF Units" mean the Project's forty-six residential units as well as one property manager's residential unit, all of which are funded by the City's Housing Trust Fund and are restricted by the Regulatory Agreement.

(j) "HUD" means the United States Department of Housing and Urban Development.

(k) "Improvements" mean the buildings, structures and other improvements, including landscaping, driveways and parking spaces and the building fixtures therein, now or hereafter located on the Site, and as further described as Parcels Three and Four in Exhibit A.

(l) "Investor Limited Partner" shall mean the limited partner of Lessee. For the purposes of this Lease Union Bank, N.A., a national banking association, and its successors and assigns shall be deemed to be an Investor Limited Partner.

(m) "Lease" means this Ground Lease Agreement between the Lessee and the Lessor and shall include any and all duly approved amendments made to this Lease in writing.

(n) "Leasehold Estate" means the estate held by Lessee pursuant to and created by this Lease, which consists of a leasehold interest in the Site and a fee interest in the Improvements during the term of the Lease.

(o) "Lease Term" means the sixty-seven (67) year period beginning on the Effective Date.

(p) "Leasehold Mortgage" means any mortgage, deed of trust, letter of credit, collateral assignment or other security instrument or agreement approved by Lessor that secures a Loan against or encumbers the Leasehold Estate.

(q) "Lender(s)" mean any entity holding a Leasehold Mortgage.

(r) "Lessee" means UACH, LP, a California limited partnership organized and existing under the laws of the State of California, including its duly approved successors and assigns.

(s) "Lessor" means the City of Berkeley, a municipal corporation.

(t) "Loans" mean collectively: the DLA and all loans included in the Approved Financing.

(u) "Loan Documents" mean all loan agreements, notes, deeds of trust, security documents, regulatory agreements, use agreements, security agreements, fixture filings, and financing statements and any other document executed and delivered in connection with the Approved Financing.

(v) "Memorandum of Lease" means the Memorandum of Ground Lease in substantially the form attached hereto as Exhibit B, as executed by Lessor and Lessee.

(w) "Notice of Intended Taking" means any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a Party to this Lease. The notice is considered to have been received when a Party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

(x) "Partial Taking" means any taking of the fee title of the Improvements and/or Site that is not either a Total, Substantial or Temporary Taking.

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

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

(aa) "Project" shall mean the Improvements, commonly known as University Avenue Cooperative Homes, which include forty-six (46) residential apartment units leased at rents affordable to extremely low-, very low-, and low-income households in accordance with the Regulatory Agreement and one (1) property manager's unit, arranged among multiple building types; one commercial space; common areas; site improvements; landscaping; and, together, their substantial rehabilitation.

(bb) "Regulatory Agreement" means that certain Regulatory Agreement and Declaration of Restrictive Covenants entered into or assumed by Lessee and the Lessor.

(cc) "Site" means the real property more fully described as Parcel One and Parcel Two in Exhibit A.

(dd) "Substantial Taking" means the taking of so much of the Site and/or the Improvements that the portion of the Site and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the Award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income, and all other charges payable under this Lease, and after performance of all covenants and conditions required by Lessee by law and under this Lease.

(ee) "Taking" means institution of any proceedings for the taking or condemnation of all or a portion of the Site and/or Improvements by the government of the United States, State of California, County of Alameda, or any other governmental authority, or any other entity under the right of eminent domain. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemner, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Site and/or the Improvements.

(ff) "Tax Credits" shall mean federal 9% or 4% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, as applicable.

(gg) "Tenant" means any person, persons, or entity holding a residential or commercial sublease for a unit or commercial space in the Improvements, as executed by Lessee in conformance with the requirements of this Lease.

(hh) "Temporary Taking" means a taking of all or any part of the Site and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

(ii) "Total Taking" means the taking of the fee title to all of the Premises.

ARTICLE 2. LEASE OF THE SITE; LEASE PAYMENTS; TAXES AND ASSESSMENTS

2.1 Lease of the Site. The Lessor, for and in consideration of the covenants and agreements to be kept and performed by the Lessee, leases the Site to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Site from the Lessor pursuant to the terms of this Lease and for the express purpose of providing affordable housing to low-income households in accordance with the Regulatory Agreement. The Lessee or its designee shall 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 Exhibit B, and shall record the Memorandum of Lease in the Official Records of the County of Alameda.

2.2 Term.

(a) Lease Term. The term of this Lease shall commence upon the Effective Date and end sixty-seven (67) years from the Effective Date.

2.3 Lease Payments.

(a) Annual Rent. Lessee shall pay Lessor \$1.00 per year for each of Years 1-55 of the Lease Term and fair market rent for each of Years 56-67 of the Lease Term ("Annual Rent"). Fair market rental value shall be determined by appraisal, as described in Section 6.7. Lessee shall make payments to the City of Berkeley, Department of Health, Housing & Community Services, 2180 Milvia Street, Second

Floor, Berkeley, CA 94704, or such other place as Lessor may designate in writing. Lessee may prepay the Rent for any portion of the Term at any time.

(i) If, during Years 56-67 of the Lease Term, Lessee agrees in writing to continue the rental restrictions defined in the Regulatory Agreement on all or a portion of the HTF Units, Lessor shall reduce the Annual Rent from its appraised fair market rental value by the dollar amount it reasonably determines adequately reflects the proportional affordability of the HTF Units, which the parties acknowledge may be \$1.00 per year if all the HTF Units remain subject to the rental restrictions.

(b) Contingent Rent Adjustment. If, during Years 1-55 of the Lease Term, Lessee or its successor discontinues, by right, the rental and use restrictions described in Section 2.4, Annual Rent shall immediately be reset at the then-fair market rental value, taking into account any affordability restrictions agreed to by Lessor and Lessee or its successor. Fair market rental value shall be determined by appraisal, as described in Section 6.7.

(i) If Lessee or its successor discontinues, by right, the rental and use restrictions described in Section 2.4 under Section 2.3(b) above, but nonetheless agrees in writing to apply rental restrictions on a portion of the HTF Units, Lessor shall reduce the Annual Rent from its appraised fair market rental value by the dollar amount it reasonably determines adequately reflects the proportional affordability of the HTF Units, which the parties acknowledge may be \$1.00 per year if all the HTF Units remain subject to rental restrictions.

2.4 Use of Project and Assurances of Lessee. The Lessee agrees:

(a) To rehabilitate the Improvements for use as rental housing and approved commercial uses, and to provide and maintain the Improvements as rental housing and commercial space in conformance with the terms of the DLA, the Regulatory Agreement, and all other regulatory restrictions imposed by the Approved Financing and the Tax Credits for the Project.

(b) Except with respect to tenants occupying the Project as of the date of this Lease, for the duration of the regulatory restrictions imposed by the Approved Financing and the Tax Credits, to restrict tenancy of HTF Units to households as more specifically required in the Regulatory Agreement of the DLA.

(c) To prohibit and use reasonable efforts to prevent disorderly or unlawful activities or nuisances on the Premises, whether conducted by Tenants or others, and to maintain the character of the Project as described in Article 3 for the duration of the Lease Term;

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

(e) To take reasonable action, if necessary, to abate any violation of this Lease by any Tenant or other person or persons upon notice from the Lessor.

2.5 Taxes and Assessments.

(a) Payment by Lessee. Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay, subject to any applicable exemptions, 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 nonpayment, all 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 Site, the Improvements, or any part of the Site 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 Site, the Improvements, or any part of the Site or Improvements, or upon this Lease. 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). Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to pay any franchise tax or transfer tax imposed on any document to which Lessor is a party (other than this Lease) creating or transferring an estate or interest in the Site, any municipal, state or federal income taxes levied against Lessor, any income, profits or revenues tax, assessment or charge imposed upon the Rent received by Lessor under this Lease, any estate, gift, succession, inheritance or transfer taxes of Lessor, or any business and occupational tax attributed and imposed upon Lessor for work, business or income not related or attributable to the Site.

(b) Lessee's Right to Contest. If Lessee disputes any amount or validity of any liens, taxes, assessments, or charges upon the Site 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 Site.

(c) 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 the 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 9.1).

ARTICLE 3. MAINTENANCE; USE OF PREMISES

3.1 Title to Improvements; Personal Property.

(a) During the Lease Term, title to all Improvements on the Site, now existing or later made, are and shall be vested in Lessee, 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, fee 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 Site 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 Lease Term. At the request of Lessor and at the end of the Lease Term, Lessee agrees to execute a confirmatory quitclaim deed of 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 Site and the Improvements free and clear of Lessee's leasehold interest in the Site, ownership interest in the Improvements and all monetary liens and monetary encumbrances not caused or agreed to by Lessor in writing. 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 Site 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 Term begins and ends.

(b) All personal property, furnishings, fixtures and equipment, including, without limitation, Lessee-owned appliances, which are not so affixed to the Site or the buildings thereon as to require substantial damage to the buildings upon removal thereof shall constitute personal property including, but not limited to, (a) functional items related to the everyday operations of the Site, and (b) personal property and furnishings. At any time during the Lease Term, and at the termination thereof, Lessee shall have the right to remove any and all such personal property, furnishings, fixtures and equipment; provided, that Lessee repairs any damage to the Site or the Improvements caused by such removal.

3.2 Permits, Licenses and Easements; Utilities. The Lessor agrees that, within a reasonable period 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 development of the Project. The Lessor, by virtue of its fee title to the Site, may hold certain rights, entitlements or credit with respect to utility capacity, connections, etc. (the "Utility

Rights"). Lessor hereby assigns said Utility Rights, if any, to Lessee as an incidence of its leasehold interest in the Site.

3.3 Use of Property. The Lessee shall at all times during the Lease Term use or cause the Premises 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 Premises. The Lessee agrees to comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the United States, the State of California, the County of Alameda, and of any other governmental authority having jurisdiction over the Site, the Improvements or the Project.

3.4 Maintenance of the Project.

(a) Lessee shall maintain, repair and operate the Premises and the Project, or cause the maintenance, repair, and operation of the Premises and Project, in good and safe condition, ensuring that the Premises and Project remain free of debris, waste and graffiti, and in are at all times in full compliance with the terms of the Loan Documents, the DLA, and the City of Berkeley Municipal Code.

(i) The Lessee further agrees that during construction, the Premises shall be maintained in a neat, safe, and orderly condition and in accordance with industry health and safety standards, and that following the Project's completion, Lessee shall ensure that all residential areas, the common areas, the commercial space, and the open space maintain a high-quality, neat, and clean appearance and are kept in good repair and working order, with any necessary repairs and replacements made in a timely manner.

(b) If the City gives written notice to Lessee that the maintenance, repair, operation or condition of the Premises does not comply with this Lease and such notice describes the deficiencies, Lessee shall correct, remedy or cure the deficiency within thirty (30) days following the submission of such notice, unless (1) such deficiency cannot be reasonably corrected within such thirty- (30) day period, in which case such deficiency shall be deemed cured if Lessee commences a cure within thirty (30) days following the notice submission and completes such cure within ninety (90) days following the notice submission; or (2) the notice states that the deficiency is an urgent matter relating to public health and safety, in which case Lessee shall cure the deficiency with all due diligence and shall complete the cure at the earliest possible time, but in no event more than seventy-two (72) hours following the submission of the notice. If Lessee fails to maintain the Premises in accordance with this Lease and fails to cure any deficiencies within the applicable period described above, the City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Premises, or portion thereof, or to contract for the correction of any deficiencies, and Lessee shall be responsible for payment of all costs reasonably incurred by the City.

(c) Lessee shall assume responsibility, subject to the provisions of the Lease, for the operation and maintenance (including repair, restoration and

reconstruction) of the Project and all of the Improvements constructed on the Site and the costs thereof, and the City shall have no liability for the costs of such operation and maintenance by Lessee or for any claims arising from the operation and maintenance (including repair, restoration and reconstruction) of such Improvements during the Lease Term.

3.5 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 Project, and the Lessee shall pay or cause same to be paid currently and as due.

3.6 Damage to Person or Property; Hazardous Materials; Indemnification.

3.6.1 Damage to Person or Property – General Indemnification. During the Lease Term Lessor shall not be liable for any injury, loss or damage to any person happening on or about the Premises, for any injury, loss 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 Premises. Lessee shall defend, hold harmless and indemnify the Lessor, and its respective officers, agents, 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 and during its tenancy, its use of the Premises, and any of its activities thereon or connected thereto; provided, however, that this Section 3.6 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Lessor any of its officers, agents or employees 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 gross negligence by the person or entity seeking such indemnity. This Section 3.6.1 shall survive termination of this Lease.

3.6.2 Hazardous Materials – Indemnification

(a) Lessee shall indemnify, defend, and hold the Lessor, and its officials, officers, agents and employees (individually, an “Indemnified Party” and collectively, 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) (the “Liabilities”) 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 Site. The foregoing indemnity shall apply to any Liabilities arising from and during Lessee’s tenancy. This Section 3.6.2 shall survive termination of this Lease.

(b) For purposes of this Section 3.6.2, the following definitions shall apply:

(i) “Hazardous Substance” shall have the meaning 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 containment under Environmental Law.

(ii) “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 related to the work being performed under this Agreement.

(iii) “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.

ARTICLE 4. MORTGAGE LOANS

4.1 Loan Obligations. Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Loans to operate the Project as set forth herein.

4.2 Liens and Encumbrances Against Lessee’s Interest in the Leasehold Estate. Notwithstanding any other provision of this Lease and subject to the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed, Lessee may place Leasehold Mortgages on the Leasehold Estate only for the purposes of securing loans financing the acquisition, design, construction, renovation or reconstruction of the Improvements and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate or reconstruct and operate the Improvements under this Lease and to achieve the purpose of this Lease. Lessor hereby acknowledges and accepts Union Bank, N.A. as the First Mortgage Lender and consents to Union Bank, N.A.’s Leasehold Mortgages associated with its construction and permanent financing.

(a) Lender Contact Noticing. Upon the execution of any Leasehold Mortgage, Lessee and/or Lender shall inform Lessor in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Lessee and/or Lender shall provide Lessor with updates based on any changes in name or address or assignments that occur.

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 (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.

4.4 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.

4.5 Right of Lessor to Cure a Default or Breach by Lessee Under a Leasehold Mortgage.

(a) Lenders must provide Lessor or its successor with copies of notices of default at the same time and in the same manner as provided to Lessee.

(b) If Lessee defaults or breaches its obligations under any Leasehold Mortgage, and Lessee fails to timely commence or diligently prosecute cure of such default or breach, Lessor may, at its option, cure such breach or default in the same manner as provided to Lessee under the Leasehold Mortgage. In such event, Lessor shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. Lessor shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements that are not reimbursed by Tenant. Any such lien shall be subject to the lien of any then-existing Leasehold Mortgage authorized under this Lease. After ninety (90) days following the date of Lender filing a notice of default, Lessor shall also have the right to assign Lessee's interest in the Lease to another entity, subject to Lender's and Investor Limited Partner's written consent, but which may be conditioned upon, among other things, assumption by such other entity of all obligations of the Lessee under the Leasehold Mortgage.

ARTICLE 5. INSURANCE

5.1 Required Insurance Coverage.

(a) Property Insurance. The Lessee shall during the Lease Term keep the Premises insured against loss or damage by a property insurance policy providing coverage of the perils of direct damage as insured under the Insurance Services Office (ISO) "Causes of Loss-Special Form" or equivalent with limits in sufficient amounts such that the proceeds of such insurance shall not be less than the replacement value of the Project.

(b) Commercial General Liability (CGL) Insurance. During the Lease Term, the Lessee shall keep in full force and effect a policy or policies of Commercial General Liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the City

Parcels. 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.

(c) Workers' Compensation Insurance. The Lessee shall carry or cause to be carried workers' compensation insurance as required by California law covering all persons employed by Lessee in connection with the Premises and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against the Lessor or Lessee, and such policy shall include a waiver of subrogation as to Lessor.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction, the cost of which exceeds One Hundred Thousand Dollars (\$100,000), either Lessee or its contractor shall provide builders' risk insurance for not less than the amount of work to be performed, insuring against the perils of direct damage as insured under the Insurance Services Office ISO "Causes of Loss – Special Form" or equivalent.

(e) Adjustment of Coverage Limits. Whenever the insurance coverages required by this Section 5.1 are renewed or extended, the Lessee shall increase the coverage limit required to an amount as required by the Lenders for insurance at the time the insurance is renewed or extended.

5.2 Insurance Policies and Premiums.

(a) All policies required by this Lease shall name the Lessor as an additional insured.

(b) Any policy of insurance shall provide that any change or cancellation of said policy shall be made in writing and sent to the Lessee and the Lessor at their respective principal offices at least thirty (10) days before the effective date of change or cancellation.

(c) Any insurance provided for in this Article 6 may be placed by a policy or policies of blanket and/or excess liability (or umbrella) insurance.

5.3 Proceeds of Insurance.

(a) If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Lessee hereunder, Lessee shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their pre-damage condition; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Lessee, with the written consent of Lender(s), may terminate this Lease within thirty (30) days after the later of (1) the date of such damage or destruction or (2) the date on which Lessee is notified of the amount of insurance proceeds available for restoration. If Lessee elects or is required to restore the Improvements, all proceeds of any insurance policy required by this Lease shall, subject to the rights of any Lender(s),

be used by Lessee for that purpose, and Lessee shall use its own funds or seek other financing as reasonably approved by Lessor to cover any deficiency between the amount of insurance proceeds available for the restoration and its actual cost.

(b) If Lessee elects to terminate this Lease pursuant to its right to do so under Section 5.3(a), or elects not to restore the Improvements, the insurance proceeds shall be disbursed as follows:

i. First, to the Lenders, in order of their lien priority and in accordance with the terms of their respective Leasehold Mortgages;

ii. Second, to pay for the cost of removal of all debris from the Site or adjacent properties, and for the cost of any work or service required by any statute, law, ordinance, rule, regulation or order of any federal, state or local government, or any agency or official thereof, for the protection of persons or property from any risk, or for the abatement of any nuisance created by or arising from the casualty or the damage or destruction caused thereby;

iii. Third, to compensate the City for any diminution in the value (as of the date of the damage or destruction) of the Site as a raw development site caused by or arising from the damage or destruction; and

iv. The remainder to the Lessee.

ARTICLE 6. CONDEMNATION

6.1 Taking of Land or Improvements. If, during the term of this Lease, there is any Taking of all or any part of the Premises, the rights and obligations of the parties shall be determined as follows:

6.2 Total Taking. If the Premises are totally taken by condemnation, this Lease shall terminate on the date of the taking. If this Lease is terminated pursuant to this Section 6.2, the Award for such taking shall be apportioned and distributed as follows:

(a) First, to the Lenders, if any, to the extent of the Leasehold Mortgages;

(b) Second, to Lessee, a sum equal to the fair market value of the Improvements on the date immediately preceding the Taking as determined by the appraisal method set forth in Section 6.7 and determined as if there were no Taking, nor threat of condemnation; plus the residual value of the Term, subject to the rent reserved; plus any part of the Award attributable to the Tax Credits; and.

(c) Third, to Lessor, the remainder, if any.

6.3 Reserved.

6.4 Substantial Taking.

(a) In the event of a Taking which is substantial, Lessee may, subject to the rights of the Lenders, if any, terminate this Lease. For purposes hereof, a Taking shall be deemed to be "substantial" if it renders the Premises economically infeasible for Lessee's intended purpose. If Lessee elects to terminate this Lease under this provision, Lessee shall give written notice of its election to do so to Lessor within forty-five (45) days after receipt of a copy of a Notice of Intended Taking.

(b) In the event Lessee terminates this Lease in accordance with this Section 6.4, such termination shall be as of the time when the Taking entity takes possession of the portion of the Premises taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Premises not taken) shall be apportioned and distributed as follows:

(i) First, to the Lenders, if any, to the extent of the Leasehold Mortgages;

(ii) Second, to Lessee a sum equal to the fair market value of the Improvements taken preceding the date of the Taking as determined by the appraisal process provided for in Section 6.7, commenced as provided in Section 6.2, and as modified by Section 6.5(c); plus the residual value of the Term, subject to the rent reserved; plus any part of the Award attributable to the Tax Credits; and

(iii) Third, to Lessor, the remainder, if any.

(c) Notwithstanding anything to the contrary contained in Section 6.7, if Lessee has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Lessee shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

6.5 Partial Taking.

(a) In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be no abatement in or reduction of any of Lessee's obligations hereunder.

(b) The Award for such Partial Taking shall be apportioned and distributed first to the Lenders, if any, to the extent of the Leasehold Mortgages, then to Lessor and Lessee in proportion to the fair market value of their respective interests in the Premises, as such interests existed immediately prior to such Partial Taking. Notwithstanding anything contained herein to the contrary, any part of the Award attributable to the Tax Credit shall belong to Lessee.

(c) The fair market value of the parties' respective interests in the Site and the Improvements shall be determined by the appraisal process provided in Section 6.7, except the assumptions listed in such Section shall not apply. Rather, the appraisal

shall be based on the value of the Site as improved and encumbered by this Lease and on the value of the Improvements as they stand, but without regard to any Taking or threat of condemnation.

(d) Any Award for severance, consequential or other damages which accrues by reason of the Partial Taking to the portion of the Site or the Improvements not taken shall be distributed first to the Lenders, if any, to the extent of the Leasehold Mortgages, then shall be apportioned between Lessor and Lessee in accordance with the diminution in value of their respective interests. Notwithstanding anything contained herein to the contrary, any part of the Award attributable to the Tax Credits shall belong to Lessee.

6.6 Temporary Taking.

(a) In the event of a Temporary Taking of the whole or any part of the Premises, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Lessee, and, Lessee shall be entitled to any Award or payment for the temporary use of the Premises prior to the termination of this Lease, and Lessor shall be entitled to any Award or payment for such use after the termination of this Lease.

(b) Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Lenders, if any, to the extent of the Leasehold Mortgages, then to Lessor absolutely, together with the remaining balance of any other funds paid to Lessee for such damages or cost of restoration.

6.7 Appraisal. Whenever an appraisal of the Site or the Improvements is called for under the terms of this Lease, the parties shall use the following procedure:

(a) Appointment of Appraiser. Within ten (10) days after notice from Lessor to Lessee, Lessor and Lessee shall each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 6.7 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the nondefaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Lessor and Lessee, or if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

(b) Determination of Fair Market Value.

(i) Within thirty (30) days after the appointment of the third appraiser, the appraisers shall determine the fair market value of the Site and the Improvements in accordance with the provisions hereof, and shall execute and

acknowledge their determination of fair market value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) The appraisers shall determine the fair market value of the Site and the Improvements based on sales of comparable property in the area in which the Site is located; provided, however, the appraisal should reasonably reflect the rent restrictions imposed on the Site and the Improvements pursuant to Article 2 of this Lease (taking into consideration the remaining term of the rent restrictions), as well as the City's right to a reversion of title to the Improvements to the City at the end of the Lease Term.

(iii) If a majority of the appraisers are unable to agree on fair market value within thirty (30) days of the appointment of the third appraiser, the three (3) appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the fair market value of the Site and the Improvements. If, however, the low appraisal and/or high appraisal is or are more than ten percent (10%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two (2). The resulting quotient shall be the fair market value of the Site and the Improvements. If both the low and high appraisals are disregarded, the middle appraisal shall be the fair market value of the Site.

(c) Payment of Fees. Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.

6.8 Lessor's Waiver of Rights to Eminent Domain. Lessor hereby waives any and all rights to condemnation or eminent domain of the Site for the duration of the Lease Term.

ARTICLE 7. ASSURANCES OF LESSOR

7.1 Lessor to Give Peaceful Possession. The Lessor covenants that it owns the Site in fee simple, and that it has the full right and authority to make this Lease. 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 Site leased without hindrance or molestation by or from Lessor so long as no Event of Default exists and is continuing under this Lease.

7.2 Lessor to Lease Project with Marketable Title. The Lessor covenants and warrants that as of the date of execution of this Lease, there were no outstanding liens, easements, covenants, conditions, restrictions or encumbrances on the Site, other than those disclosed in writing to Lessee.

7.3 Release of Lessor. The Lessor may sell, assign, transfer or convey (but not encumber), with the prior written consent of Lenders, which shall not be unreasonably withheld, conditioned or delayed, all or any part of Lessor's interest in the

Site, reversionary interest in the Improvements, or this Lease without obtaining Lessee's consent, provided that the purchaser, assignee, or transferee expressly assumes all of the obligations of the Lessor under this Lease by a written instrument acceptable to Lessor and Lessee and recorded in the Official Records of the County of Alameda (an "Assumption Agreement"). In the event of a sale, assignment, transfer or conveyance by Lessor of the Site or its rights under this Lease, provided an Assumption Agreement is executed, the same shall operate to release the Lessor from any liability arising from and after the effective date of the Assumption Agreement upon any of the covenants or conditions of this Lease, expressed or implied, in favor of Lessee, and in such event the Lessee shall look solely to the successor in interest of Lessor in and to the Site or this Lease. This Lease shall not be affected by any such sale or transfer, and the Lessee agrees to attorn to any such purchaser or assignee provided Lessee has received an Assumption Agreement.

ARTICLE 8. ASSURANCES OF LESSEE

8.1 Use of Site and Rents Lessee covenants and agrees for itself, and its successors and assigns to or of the Site, or any part thereof, that during the term of this Lease, Lessee and such successors and assigns shall comply with the following requirements:

(a) Permitted Uses. Lessee shall devote the Premises to, exclusively and in accordance with, the uses specified in this Lease in Article 2.4 (a).

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

(c) Access for Disabled Persons. Lessee shall 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.

8.2 Lessor Deemed Beneficiary of Covenants. In amplification of, and not in restriction of, the provisions of the preceding subsections, it is intended and agreed that the Lessor shall be deemed beneficiary of the agreements and covenants provided in this Article 8 for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall be in full force and effect, without regard to whether the Lessor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Lessor shall have the right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the

curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 9. DEFAULTS AND REMEDIES

9.1 Lessee Events of Default; Notices.

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

(i) Lessee fails to make lease payments, as required pursuant to Section 2.3 of this Lease, or any other 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; Lessee voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Lease or any rights in this Lease in violation of section 12.1;

(ii) Lessee or its successors fail to pay real estate taxes or assessments on the Premises, or place any encumbrance or lien unauthorized by this Lease, or suffer any levy or attachment to be made, or any material supplier’s or mechanic’s lien to attach, and such taxes or assessments are not paid or the encumbrance or lien not removed or discharged; provided, however, that Lessee shall have the right to contest any tax or assessment after posting an adequate bond to cover the charge. In the event of any such contest, Lessee shall protect, indemnify and hold City harmless against all losses and damages, including attorney’s fees and costs resulting therefrom; or,

(iii) Lessee fails to observe and perform any material covenant, condition or agreement that this Lease requires Lessee to perform, including, but not limited to, conformance with the terms of the DLA, the Regulatory Agreement, and all other regulatory restrictions imposed by the Approved Financing and the Tax Credits for the Project as required in Section 2.4, and (i) 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 (ii) if by reason of the nature of such default the same cannot be remedied within said ninety (90) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; or

(v) 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

(vi) 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

(vii) 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

(viii) 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; or

(ix) Lessee fails to complete the Project within the time period required by the DLA, or the occurrence of an event of default, subject to all applicable notice and cure periods, specified in the Loan Documents.

9.2 Lessor's Remedy for Event of Default by Lessee. At any time after the occurrence of an Event of Default hereunder, subject to the rights of Lenders and Investor Limited Partner pursuant to Article 10 and Section 11.6 hereof, Lessor may terminate this Lease by giving Lessee, Investor Limited Partner, and Lenders 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 the Leasehold 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 Lease Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises 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 9.2, 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.

9.3 Deficiency Judgments. Lessor, for itself and for each and every succeeding owner of Lessor's estate in the Site, agrees that it shall not be entitled to seek a personal judgment against Lessee and that upon any Event of Default hereunder, the rights of Lessor to enforce the obligations of Lessee, its successors or assigns, or to collect any judgment, shall be limited to the termination of this Lease and of Lessee's Leasehold Estate and the enforcement of any other rights and remedies specifically granted to Lessor hereunder.

ARTICLE 10. LENDER PROTECTIONS

10.1 Rights and Obligations of Lenders. If Lessee obtains a Leasehold Mortgage in accordance with the provisions of Article 4, as long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) No Cancellation. Lessor will not cancel, accept a surrender of, terminate or modify this Lease in the absence of an Event of Default by Lessee without the prior consent in writing of the Lenders to the extent such consent is required under the terms of such Lender's loan documents.

(b) Notice of Defaults. Lessor agrees to give to each Lender a written copy of all notices of default that Lessor gives to Lessee. Such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given to Lessee, pursuant to information provided to Lessor by Lender and/or Lessee under Section 4.2(a). Notwithstanding any other provision of Article 10, any Lender shall be deemed to have waived any right to receive notice pursuant to this paragraph unless and until Lessor has received such information. Any notices of default given by Lessor under the Lease shall describe the default(s) with reasonable detail. Each Lender shall have the right to cure any breach or default within the time periods given below. Lessor acknowledges the execution of an Estoppel Certificate naming Union Bank, N.A. as the Lender and Investor Limited Partner.

(c) Lender's Cure Rights.

(i) After receipt by Lessee of a notice of default under the Lease and the expiration of any applicable period of cure given to Lessee under the Lease, Lessor shall not terminate the Lease or exercise its other remedies under the Lease if:

1. Within ninety (90) days after Lender's receipt of the notice of default, any Lender (i) cures the default, or (ii) if the default reasonably requires more than ninety (90) days to cure, commences to cure said default within such ninety (90) day period and thereafter diligently prosecutes the same to completion; or

2. Where the default cannot be cured by payment or expenditure of money or without possession of the Premises or otherwise, Lender initiates foreclosure or other appropriate proceedings within ninety (90) days after receipt of the notice of default, thereafter cures all other defaults reasonably capable of cure by the payment of money to Lessor, and thereafter continues to pay all rents, real property taxes and assessments, and insurance premiums to be paid by Lessee under the Lease. Lender shall then have ninety (90) days following the later to occur of (i) the date of execution and delivery of a new lease of the Site pursuant to Section 10.1(d) of the Lease (a "New Lease"), or (ii) the date on which Lender or its nominee is able to occupy the Premises following foreclosure under such Leasehold Mortgage and the eviction of or vacating by Lessee of the leased premises, to cure such default; provided, however, that if any such default, by its nature, is such that it cannot practicably be cured within ninety (90) days, then Lender shall have such additional time as shall be reasonably necessary to cure the default provided that Lender commences such cure

within such ninety (90)-day period and thereafter diligently prosecutes the cure to completion.

(ii) Lessor agrees to accept performance by Lender of all cures, conditions and covenants as though performed by Lessee, and agrees to permit Lender access to the Site to take all such actions as may be necessary or useful to perform any condition or covenants of the Lease or to cure any default of Lessee. Lender shall not be required to perform any act or cure any default which is not reasonably susceptible to performance or cure by Lender.

(iii) If Lender elects any of the above-mentioned options, then upon Lender's acquisition of the Lease and right, title, and interest to the Leasehold Estate by foreclosure, whether by power of sale or otherwise or by deed or assignment in lieu of foreclosure, or if a receiver be appointed, the Lease shall continue in full force and effect, provided that, if Lender elects the option provided in Section 10.1(d)(i)(2) above, then upon Lender's acquisition of the Lease, Lender shall cure all prior defaults of Lessee under the Lease that are reasonably capable of being cured by Lender within the time set forth in said Section, and Lessor shall treat Lender as Lessee under the Lease. If Lender commences an action as set forth in Section 10.1(d)(i)(2) above, and thereafter Lessee cures such defaults (which cure Lessor shall be obligated to accept) and Lender then terminates all proceedings under the option in said Section, then the Lease shall remain in full force and effect between Lessor and Lessee.

(d) New Lease. In the event the Lease is terminated for any reason prior to the end of the Lease Term, Lessor shall promptly give Lender written notice of such termination and shall enter into a new lease ("New Lease") with Lender or Lender's nominee covering the Site, provided that Lender (1) requests such New Lease by written notice to Lessor within ninety (90) days after Lender's receipt of written notice by Lessor of termination of the Lease, and (2) cures all prior defaults of Lessee that are reasonably capable of being cured by Lender. The New Lease shall be for the remainder of the Lease Term, effective at the date of such termination, and shall only include the same rents, covenants, agreements, conditions, provisions, restrictions and limitations contained in the Lease, except for any requirements which have been fulfilled by Lessee prior to termination. In connection with a New Lease, Lessor shall assign to Lender or its nominee all of Lessor's interest in all existing subleases of all or any part of the Site and all attornments given by the sublessees. Lessor shall not terminate or agree to terminate any sublease or enter into any New Lease or sublease for all or any portion of the Site without Lender's prior written consent, unless Lender fails to deliver its request for a New Lease under this Section. In connection with any such New Lease, Lessor shall, by grant deed, convey to Lender or its nominee title to the Improvements, if any, which become vested in Lessor as a result of termination of the Lease.

(e) Permitted Delays. So long as Lender is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee or any other person, from commencing or prosecuting foreclosure or other

appropriate proceedings in the nature thereof, provided that Lender uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction, the time periods specified in Sections 10.1(d)(i)(1) and (2) above shall be extended for the period of such prohibition; provided that 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 as and when the same fall due.

(f) Lender Seniority. Except as provided in Section 11.6, the provisions of this Article 10 shall inure only to the benefit of the holders of Leasehold Mortgages. If the holders of more than one such Leasehold Mortgage shall make written requests upon Lessor in accordance with this Lease, the New Lease (as provided for in Section 10.1(d) above) shall be entered into pursuant to the request of the holder whose Leasehold Mortgage shall be prior in lien thereto (as determined by Lessor according to a lender title insurance policy issued by a responsible title insurance company doing business in California), and thereupon the written requests for a new lease of each holder of a Leasehold Mortgage junior in lien shall be and be deemed to be void and of no force or effect.

(g) No Merger. No merger of Lessee's interest in the Premises into Lessor's interest in the Premises shall result or be deemed to result by reason of ownership of Lessee's interest and Lessor's interest by the same party or by reason of any other circumstances, without the prior written consent of the Lenders.

ARTICLE 11. LESSOR'S FORBEARANCE AND LENDER'S TRANSFEREES

11.1 Lender's Transferees. Lessor agrees, with respect to any Leasehold Mortgage, that the Lender may cause same to be recorded and enforced and, upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price, or acquire title to the Leasehold Estate in any lawful way; subject, however, to Lessor's prior written approval, which Lessor shall not unreasonably withhold or delay.

11.2 Accrued and Ongoing Lease Obligations. Lessor shall forgive any accrued Annual Rent owing at the time of foreclosure, but any purchaser, transferee or other successor shall be liable for all Lease Payments, if any, becoming due following its assumption of the Lease.. This Section shall also apply to the rights of a Lender in connection with the entry into a New Lease under Section 10.1(d) and to the appointment of a receiver on behalf of a Lender.

11.3 Insurance and Condemnation. In the event of any casualty to, or condemnation of, all or any part of the leased premises or any improvements now or hereafter located thereon, the provisions of the Leasehold Mortgages relating thereto shall prevail over this Lease, subject to Section 5.3.

11.4 No Liability of Lender for Prior Indemnified Acts. A Lender shall not be obligated to assume the liability of Lessee for any indemnities arising for a period prior to Lender's acquiring the right to possession of the Leasehold Estate under this Lease.

11.5 Further Amendments; Estoppels. Lessor and Lessee shall cooperate in including in the Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Lender for the purpose of implementing the Lender protection provisions contained in this Lease. Lessor and Lessee each agree to execute and deliver (and to acknowledge for recording purposes, if necessary) any agreement required to effect any such amendment. At the request of Lessee or any proposed or existing Lender, Lessor shall promptly execute and deliver (i) any documents or instruments reasonably requested to evidence, acknowledge and/or perfect the rights of Lenders as herein provided; and (ii) an estoppel certificate certifying the status of this Lease and Lessee's interest herein and such matters as are reasonably requested by Lessee or such Lenders. Any such estoppel certificate may be conclusively relied upon by any proposed or existing leasehold Lender or assignee of Lessee's interest in this Lease.

11.6 Tax Credit Partner Rights. The Investor Limited Partner shall have the same rights and protections as any Lender under Article 10 and Article 11, and any reference to a Lender in said section shall be deemed to include such Investor Limited Partner; provided, however, that the rights of such limited partners shall be subordinate to the rights of any Lender; provided, further, that references in Article 10 to the rights of lenders to initiate foreclosure or other appropriate proceedings shall be deemed, with respect to Investor Limited Partner, to refer instead to the initiation of procedures to remove the general partner of Lessee pursuant to Lessee's partnership agreement.

ARTICLE 12. ASSIGNMENTS AND TRANSFERS

12.1 Consent Required. Except as expressly provided herein, Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest therein ("Transfer"). A Transfer shall be deemed to include any attempt by Lessee to make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Improvements. Any attempt to Transfer Lessee's interest in this Lease without Lessor's prior written consent shall be null and void, and any assignee, sublessee, secured party or transferee shall acquire no right or interest by reason of such attempted Transfer.

12.2 Permitted Transfers. Notwithstanding the foregoing, Lessor's prior written consent of an assignment or transfer of this Lease or conveyance of Lessee's Leasehold Estate, or any part thereof, shall not be required to effectuate any of the following ("Permitted Transfers"):

(a) A right of first refusal and/or option to purchase the Investor Limited Partner's interest in Lessee by a Lessee general partner or its wholly-controlled affiliate, pursuant to the terms of Lessee's Limited Partnership Agreement.

(b) The assignment by a Lessee limited partner, including the Investor Limited Partner, of its interests in Lessee to a successor limited partner or partners pursuant to Lessee's Limited Partnership Agreement.

(c) The withdrawal or removal of a general partner of Lessee pursuant to the terms of Lessee's Limited Partnership Agreement; provided, however, that any proposed replacement general partner, other than an affiliate of the Investor Limited Partner, will be subject to Lessor's prior consent.

(d) In the event of a Permitted Transfer by Lessee pursuant to this Section, Lessee agrees that within thirty (30) days following such Permitted Transfer it shall give written notice to Lessor of such assignment or transfer along with a true and complete copy of the executed assignment or transfer document.

ARTICLE 13. MISCELLANEOUS

13.1 Instrument Is Entire Agreement. This Lease including the Recitals above and the attached Exhibits 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 Site by the Lessor to the Lessee.

13.2 Notices. 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. Legal counsel for the respective Parties 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 Berkeley
Department of Health, Housing &
Community Services
2180 Milvia Street
2nd Floor
Berkeley, CA 94704
Attn: Director

With a Copy to:

City of Berkeley
City Manager
2180 Milvia Street
5th Floor
Berkeley, CA 94704

If to the Lessee:

UACH, LP
c/o Resources for Community
Development
Attn: Executive Director
2220 Oxford Street
Berkeley, CA 94704

If to the Permitted Limited Partner:
(and delivery of copies of notices to
Lessee)

Union Bank, N.A.
200 Pringle Ave., Ste. 355
Walnut Creek, CA 94596
Attn: CDF Head

13.3 Recording. A Memorandum of Lease shall be recorded in the Office of the Recorder in Alameda.

13.4 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 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.

13.5 Effective Date; Counterparts. This Lease shall be effective during the Lease Term. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

13.6 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 this Lease, Lenders of the Lessee.

13.7 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.

13.8 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.

13.9 Titles. The titles and article 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.

13.10 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.

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

13.12 Amendments. This Lease may not be amended or modified without the prior written consent of Lessor and Lessee. The City Manager of the City of Berkeley, or his or her designee, shall have the authority on behalf of the Lessor to approve amendments to this Agreement.

13.13 No Mortgage Encumbrance by Lessor. Lessor shall not mortgage its fee estate unless there exists an express subordination of any fee mortgage to Lessee's interest in the Lease. Lessee shall not be obligated to subordinate its leasehold interest and any interests in subleases and subrents to a subsequent mortgage of the fee estate granted by Lessor.

13.14 Termination of Original Lease. This lease replaces the Original Lease, which shall automatically terminate as of the date of recordation of the Memorandum of Lease.

ARTICLE 14. CITY NON-DISCRIMINATION ORDINANCE

14.1 Lessee hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Agreement, Lessee agrees as follows:

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

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

ARTICLE 15. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

ARTICLE 16. CONFLICT OF INTEREST PROHIBITED

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

16.2 In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Lessee, or immediate family member of any of the preceding, shall make or participate in a decision made by Lessor or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in

real Site of that person or Lessee, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

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

ARTICLE 17. NUCLEAR FREE BERKELEY

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

ARTICLE 18. OPPRESSIVE STATES

18.1 In accordance with Resolution No. 59,853-N.S., Lessee certifies that it has no contractual relations with, and agrees during the term of this Agreement to forego contractual relations to provide personal services to, the following entities:

(a) The governing regime in any Oppressive State.

(b) Any business or corporation organized under the authority of the governing regime of any Oppressive State.

(c) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Agreement) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

18.2 For purposes of this Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed Oppressive States.

18.3 Lessee's failure to comply with this paragraph shall constitute a default of this Agreement and Lessor may, subject to all applicable notice and cure periods, terminate this Agreement in accordance with Article 9. In the event that Lessor terminates this Agreement due to a default under this provision, Lessor may deem Lessee a non-responsible bidder for five (5) years from the date this Agreement is terminated.

ARTICLE 19. BERKELEY LIVING WAGE ORDINANCE (LWO)

19.1 Lessee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Lessee employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Lessee will be required to provide all eligible employees with City mandated

minimum compensation during the term of this Agreement, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

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

19.3 If Lessee fails to comply with the requirements of this the LWO and this Agreement, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

19.4 Lessee's failure to comply with this Section shall constitute default of the Agreement, upon which, subject to all applicable notice and cure periods provided in Article 9, City may terminate this Agreement.

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

ARTICLE 20. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

20.1 Lessee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Lessee is currently subject to the Berkeley Equal Benefits Ordinance, Lessee will be required to provide all eligible employees with City mandated equal benefits during the term of this Agreement, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

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

20.3 If Lessee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

20.4 Lessee's failure to comply with this Paragraph shall constitute default of the Agreement, upon which, subject to all applicable notice and cure periods, City may terminate this Agreement in accordance with Article 9.

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

ARTICLE 21. AUDIT

21.1 The City Auditor's Office, or its designee, may conduct an audit of Lessee's financial and compliance records maintained in connection with the operations and services performed under this Agreement, and with the payments made under this Agreement. In the event of such audit, Lessee agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Lessee an opportunity to discuss and respond to any findings before a final audit report is filed.

ARTICLE 22. FORCE MAJEURE

22.1 Any prevention, delay, nonperformance or stoppage by Lessee due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof, or civil or military authority; acts of God; acts or omissions of Lessor or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Lessee.

22.2 No prevention, delay, or stoppage of performance shall be excused unless Lessee notifies Lessor within ninety (90) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 22.

[This document continues on the following page.]

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

LESSOR:

CITY OF BERKELEY, a municipal corporation

Approved as to Form

By: _____
Christine Daniel

By: _____

Its: City Manager

Deputy City Attorney

Date: _____

Registered by:

City Auditor

Date: _____

Attest:

Deputy City Clerk

Date: _____

LESSEE:

UACH, LP, a California limited partnership

By: RCD GP LLC, a California limited liability company, its general partner

By: Resources for Community Development, a California nonprofit public benefit corporation, its sole member/manager

By: _____

Printed Name:

Its:

Date:

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

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

Parcel One:

Parcel A:

Parcel A of Parcel Map 2686, filed January 8, 1979, Map Book 107, Page 74, Alameda County Records, and those portions of Lots 1 and 2 in Block 1 of the Shaw Tract, in the City of Berkeley, County of Alameda, State of California, as per map thereof filed March 3, 1877 in Book 6 of Maps, at Page 15, in the office of the County Recorder of said county, described as follows:

Beginning at a point on the westerly line of Sacramento Street as shown on said map, south 55° 22' 00" E. 100.26 feet from the southern line of University Avenue, as shown on said map, said point also being the northeasterly corner of Parcel A of Parcel 2 Map 2686, filed January 8, 1979, in Map Book 107 at Page 74 in the office of said County Recorder; thence south 5° 22' 00" east 175.74 feet along said westerly line to the northerly line of Addison Street, as said Addison Street now exists; thence south 80° 30' 00" west 159.11 feet along said northerly line; thence north 9° 30' 00" west 125.28 feet to the westerly prolongation of the southerly line of said Parcel A of Parcel Map 2686; thence north 80° 30' 00" east 69.00 feet along said prolongation to the southwestern corner of said Parcel A of Parcel Map 2686; thence along the boundaries of said Parcel A of Parcel Map 2686 north 9° 30' 00" west 50.00 feet and north 80° 30' 00" east 102.77 feet to the point of beginning.

Excepting therefrom all buildings and improvements located on said land.

APNs: 056-1996-028, 056-1996-002, 056-1996-003, 056-1996-004-01, 056-1996-006

Parcel Two:

Parcel B:

That portion of Lot 3 in Block 1 of the Shaw Tract, in the City of Berkeley, County of Alameda, State of California, as per map thereof filed March 3, 1877 in Book 6 of Maps, at Page 15, in the office of the County Recorder of said county, described as follows:

Beginning at the intersection of the southerly line of University Avenue and the easterly line of said Lot 3 as shown on said map; thence south 80° 30' 00" west 88.00 feet along said southerly line; thence south 9° 30' 00" east 136.00 feet to the southerly line of the land conveyed to William Ernest Elliot Mabey, et ux, by deed dated April 13, 1921, and recorded in Book 3063 of Deeds at Page 406, in the office of said County Recorder; thence south 80° 30' 00" west 16.00 feet along last said southerly line to the westerly line of said Lot 3; thence south 9° 30' 00" east 139.28 feet along said westerly line to the northerly line of Addison Street, as said Addison street now exists; thence north 80° 30' 00" east 69.00 feet along said northerly line to a point south 80° 30' 00" west 224.11 feet from the westerly line of Sacramento Street as last said westerly line is shown on said map; thence north 9° 30' 00" west 139.28 feet to the southerly line of said land conveyed to Mabey or its prolongation; thence north 80° 30' 00" east 35.00 feet along last said southerly line or its prolongation to the easterly line of said Lot 3; thence north 9° 30' 00" west 136.00 feet to the point of beginning.

Excepting therefrom all buildings and improvements located on said land.

APN: 056-1196-024-01, 056-1966-009, 056-1196-010

The Leasehold Estate referenced herein is described as follows:

Parcel Three:

All buildings and improvements located on Parcel A herein described.

Parcel Four:

All buildings and improvements located on parcel B herein described.

EXHIBIT B

MEMORANDUM OF GROUND LEASE

RECORDING REQUESTED BY:
City of Berkeley, California

WHEN RECORDED MAIL TO:
Health, Housing & Community Services Department
City of Berkeley
2180 Milvia Street, Second Floor
Berkeley, CA 94704
Attn: Director

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Documentary Transfer Tax _____
Declarant _____
City _____ County _____

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made as of _____ 2013, by and between the City of Berkeley, a municipal corporation ("Lessor") and UACH, LP., a California limited partnership ("Lessee") with respect to that certain unrecorded Ground Lease Agreement of even date herewith (the "Lease"), between Lessor and Lessee with respect to the real property located at 1450 University Avenue in the City of Berkeley, County of Alameda and more particularly described in the attached **EXHIBIT A** (the "Property"). Capitalized terms used in this Memorandum and not defined shall have the meanings set forth in the Lease.

Pursuant to the Lease, Lessor has leased to Lessee and Lessee has leased from Lessor, the land, or "Site", described as Parcel One and Parcel Two in Exhibit A, and, through the Lease, Lessee holds the Leasehold Estate at the Property for the term of the Lease. The Lease commenced on _____, and shall continue from such date until the expiration of Sixty-Seven (67) years, or sooner termination pursuant to the terms of the Lease.

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:
UACH, L.P.
c/o Resources for Community Development
2220 Oxford Street
Berkeley, CA 94704
Attn: Executive Director

(signatures commence on following page)

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

Approved as to Form
By: _____
Deputy City Attorney

LESSOR:

CITY OF BERKELEY, a municipal corporation

By: _____
Christine Daniel

Its: City Manager

Date: _____

Registered by:

City Auditor

Date: _____

Attest:

Deputy City Clerk

Date: _____

LESSEE:
UACH, L.P., a California limited partnership

By: RCD GP LLC, a California limited liability company, its general partner

By: Resources for Community Development, a California nonprofit public benefit corporation, its sole member/manager

By:

Its:

Date:

[SIGNATURES MUST BE NOTARIZED]

State of CALIFORNIA

County of ALAMEDA

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

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

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

Parcel One:

Parcel A:

Parcel A of Parcel Map 2686, filed January 8, 1979, Map Book 107, Page 74, Alameda County Records, and those portions of Lots 1 and 2 in Block 1 of the Shaw Tract, in the City of Berkeley, County of Alameda, State of California, as per map thereof filed March 3, 1877 in Book 6 of Maps, at Page 15, in the office of the County Recorder of said county, described as follows:

Beginning at a point on the westerly line of Sacramento Street as shown on said map, south 55° 22' 00" E. 100.26 feet from the southern line of University Avenue, as shown on said map, said point also being the northeasterly corner of Parcel A of Parcel 2 Map 2686, filed January 8, 1979, in Map Book 107 at Page 74 in the office of said County Recorder; thence south 5° 22' 00" east 175.74 feet along said westerly line to the northerly line of Addison Street, as said Addison Street now exists; thence south 80° 30' 00" west 159.11 feet along said northerly line; thence north 9° 30' 00" west 125.28 feet to the westerly prolongation of the southerly line of said Parcel A of Parcel Map 2686; thence north 80° 30' 00" east 69.00 feet along said prolongation to the southwestern corner of said Parcel A of Parcel Map 2686; thence along the boundaries of said Parcel A of Parcel Map 2686 north 9° 30' 00" west 50.00 feet and north 80° 30' 00" east 102.77 feet to the point of beginning.

Excepting therefrom all buildings and improvements located on said land.

APNs: 056-1996-028, 056-1996-002, 056-1996-003, 056-1996-004-01, 056-1996-006

Parcel Two:

Parcel B:

That portion of Lot 3 in Block 1 of the Shaw Tract, in the City of Berkeley, County of Alameda, State of California, as per map thereof filed March 3, 1877 in Book 6 of Maps, at Page 15, in the office of the County Recorder of said county, described as follows:

Beginning at the intersection of the southerly line of University Avenue and the easterly line of said Lot 3 as shown on said map; thence south 80° 30' 00" west

88.00 feet along said southerly line; thence south 9° 30' 00" east 136.00 feet to the southerly line of the land conveyed to William Ernest Elliot Mabey, et ux, by deed dated April 13, 1921, and recorded in Book 3063 of Deeds at Page 406, in the office of said County Recorder; thence south 80° 30' 00" west 16.00 feet along last said southerly line to the westerly line of said Lot 3; thence south 9° 30' 00" east 139.28 feet along said westerly line to the northerly line of Addison Street, as said Addison street now exists; thence north 80° 30' 00" east 69.00 feet along said northerly line to a point south 80° 30' 00" west 224.11 feet from the westerly line of Sacramento Street as last said westerly line is shown on said map; thence north 9° 30' 00" west 139.28 feet to the southerly line of said land conveyed to Mabey or its prolongation; thence north 80° 30' 00" east 35.00 feet along last said southerly line or its prolongation to the easterly line of said Lot 3; thence north 9° 30' 00" west 136.00 feet to the point of beginning.

Excepting therefrom all buildings and improvements located on said land.

APN: 056-1196-024-01, 056-1966-009, 056-1196-010

The Leasehold Estate referenced herein is described as follows:

Parcel Three:

All buildings and improvements located on Parcel A herein described.

Parcel Four:

All buildings and improvements located on parcel B herein described.

