




Agenda Item No: 8.a
Meeting Date: September 13, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

Prepared by: Danielle O’Leary,
Economic Development Director

City Manager Approval: _____ 

TOPIC: GROUND LEASE TO CENTERTOWN II, LP OF 855 C STREET

SUBJECT: ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GROUND LEASE OF THE REAL PROPERTY AT 855 C STREET, SAN RAFAEL (CENTERTOWN) TO CENTERTOWN II, LP

RECOMMENDATION:
Pass to print an ordinance approving and authorizing the Mayor to execute a “Ground Lease (Centertown Project)” substantially in the form attached, which grants Centertown II, LP a California limited partnership, a 99-year ground lease of the City-owned property at 855 C Street, and to sign all documents reasonably required to terminate the current ground lease in favor of Centertown Ltd., a California limited partnership (and affiliate of Centertown II, LP), and authorizing the Mayor and City Manager to execute all other documents reasonably required to carry out the intent and purposes of the foregoing.

BACKGROUND:
On August 17, 2020, the City Council adopted Resolution No. 14851, approving and authorizing the City Manager to execute an Option to Lease, which granted Centertown II, LLC, an affiliate of Centertown II, LP, an option to lease this same City-owned property at 855 C Street. The background to Resolution No. 14851, including the original (current) lease to Centertown, Ltd. (an affiliate of Centertown II, LLC and Centertown II, LP), and the need to raise funds to rehabilitate the property, is described in the [agenda report for the August 17, 2020](#) San Rafael City Council meeting.

ANALYSIS:
This Ground Lease is the next stage of the transaction contemplated by [Resolution No. 14851](#). As contemplated by that Resolution, Centertown II, LP has, subject to closing, obtained the necessary funding to rehabilitate the property.

From the City’s perspective, the essential business terms of the Ground Lease are as follows:

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Council Meeting: _____

Disposition: _____

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- Term: 99 years. Under the current schedule, the commencement date will be on or about October 22, 2021, although that could change.
- Premises: City-owned land at 855 C Street, previously leased to Centertown, Ltd. (an affiliate of Centertown LP). The improvements, previously owned by Centertown, LTD, will be owned by its successor Centertown II, LP. The prior lease with Centertown, Ltd. will be terminated.
- Base Rent to City: One-time payment of \$83,000 (appraised land value) plus \$1.00 per year (both payable at closing), plus a \$5,000 per year monitoring fee (escalated per CPI).
- Use: Rehabilitating, constructing, owning and operating a residential development and related uses, including at least 60 dwelling units. Consistent with the current ground lease, at least 48% of the units (i.e., 28 of the 60) must be rented to households earning not more than 80% of the area median income in the San Francisco Bay Area, adjusted for household size ("lower income"). Other funders have even stronger restrictions. For example, CTCAC requires 100% of the units (other than the manager's) to be leased to tenants at or below 60% of Marin County AMI. As described in the Seifel Consulting, Inc. report included with the Resolution No. 14851 agenda report, all Centertown residents at the time were lower income households, and many of them were extremely low.
- City Loans: As described in the Resolution No. 14851 agenda report, the various City outstanding loans will be consolidated into a single loan. The City is not expected to be required to loan additional funds for the project. The specific terms of the City's consolidated loan, as well as a specific City Affordable Housing Regulatory Agreement, will be brought to the Council for review and approval at a later meeting closer to the expected closing/commencement date.
- Timing: The current project schedule contemplates a closing on October 22, 2021. This ordinance is being introduced for initial approval at the September 13, 2021 City Council meeting and if passed, will be scheduled for final adoption at the September 20, 2021 Council meeting. The intent is to have the approved ordinance become effective on October 20, 2021, in advance of the anticipated closing date.

FISCAL IMPACT:

The purpose of this ordinance is to provide BRIDGE/EAH the opportunity to re-syndicate and refinance Centertown located at 855 C Street in San Rafael, California to provide flood improvements, ADA improvements, and other necessary ongoing maintenance. City Council approval of an ordinance is required to approve the new ground lease for BRIDGE/EAH to proceed with re-syndication and refinancing of this property.

There is no fiscal impact in adopting an ordinance that approves and authorizes the Mayor to execute the ground lease. The City will receive a base rent payable at closing along with a \$5,000 per year monitoring fee (escalated per CPI).

OPTIONS:

The City Council has the following options to consider on this matter:

1. Pass the ordinance to print.

2. Pass the ordinance with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt ordinance approving and authorizing the Mayor to execute a ground lease of real property at 855 C Street, San Rafael (Centertown) to Centertown II, LP.

ATTACHMENTS:

1. San Rafael Centertown Apartments Due Diligence Analysis
2. Ordinance of the City Council of the City of San Rafael Approving and Authorizing the Mayor to Execute a Lease of Real Property at 855 C Street, San Rafael (Centertown) to Centertown II, LP
3. Exhibit A to Ordinance – New Centertown II, LP Ground Lease
4. Public Hearing Notice



Memorandum

Date August 7, 2020

To: City of San Rafael

From: Seifel Consulting, Inc.

Subject: San Rafael Centertown Apartments Due Diligence

Seifel Consulting, Inc. (Seifel) has performed a due diligence analysis regarding a proposed ground lease amendment and funding request from BRIDGE Housing and EAH Housing (BRIDGE/EAH) that would substantially rehabilitate Centertown Apartments (Centertown) in downtown San Rafael. The current residents of Centertown are in substantial need of affordable housing as their incomes are significantly below typical household incomes in Marin County.

Prior to BRIDGE/EAH acquiring the site, the property was originally planned as condominiums, but the condominium development failed financially prior to construction completion. The City of San Rafael (City) and its former Redevelopment Agency collaborated with BRIDGE/EAH to acquire the property and redevelop it as 60 units of affordable rental housing. As part of the project's financial structure, the City owns the land, and a BRIDGE/EAH-controlled limited partnership (Centertown Associated Ltd) ground leases the property from the City and owns the Centertown building improvements. EAH is the property manager for the property.

While BRIDGE/EAH were able to redevelop the property into apartments in 1992 by incorporating the existing, partially built foundation, Centertown has unfortunately experienced subsequent construction related issues including significant problems related to water intrusion.. These problems, coupled with the overall age of the building, have resulted in the need for substantial ongoing investment out of operating cash flow. BRIDGE/EAH have requested and been granted the deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from other soft lenders, to pay for needed repairs and increase replacement reserves to help pay for the proposed substantial rehabilitation of the property.

BRIDGE/EAH commissioned Marx | OKUBO Associates to perform a Facility Condition Assessment of the property to determine its condition and the need for repairs to the building systems. As will be further described below, the property is in significant need of repair given its age and construction type. BRIDGE/EAH are proposing to undertake rehabilitation improvements to the property as recommended in the Facility Condition Assessment and to provide additional building common area for residents and property management. The proposed re-syndication of the property and amendment to the ground lease is anticipated to leverage substantial funding from the State of California, County of Marin and private capital to holistically correct the property's waterproofing issues and to undertake other needed rehabilitation.

Both BRIDGE and EAH have a long history of developing, rehabilitating and managing affordable housing. As the property manager of Centertown, EAH provides a broad array of resident services and regularly communicates with residents. Once BRIDGE/EAH have been able to secure funding for the

rehabilitation, they will provide information to the residents regarding the likely rehabilitation schedule and information regarding any temporary moves that households may need to make during the rehabilitation process. Alternative housing will be provided at no additional cost to residents who need to be temporarily relocated, and they will receive assistance with their move and will not have to pay any costs associated with the move or storage for personal belongings. The main focus will be to provide ample information and support to residents, as well as comfortable and convenient accommodations during any temporary moves.

In order to perform its due diligence analysis, Seifel analyzed a series of technical documents that were provided by City and BRIDGE/EAH staff and are referenced in this memorandum. Seifel also interviewed City staff and BRIDGE/EAH staff regarding specific elements of the proposed project and worked with staff and outside counsel to refine the proposed terms of the ground lease amendment and funding request to the City.

This memorandum is organized into the following sections:

- A. Project Description
- B. Existing Ground Lease
- C. Existing City Loan and Other Financial Obligations
- D. Proposed Rehabilitation Program
- E. Proposed Funding Program and Ground Lease Modifications
- F. Due Diligence Findings
- G. Conclusion

The due diligence analysis in this memorandum documents why BRIDGE/EAH's proposed modifications to the ground lease and City loan requests are reasonable, and how they will help the City of San Rafael preserve and substantially rehabilitate an important source of affordable housing for local residents, consistent with the City's Housing Element goals. The proposed resyndication and rehabilitation program will improve the living environment for approximately 180 of the City's lower income residents and will leverage sufficient public and private funding to accomplish much needed repairs and building improvements that will enhance the City's long-term interests in the property.

A. Project Description

Centertown Apartments is located at 855 C Street on a 0.98-acre lot in downtown San Rafael owned by the City of San Rafael. The property was a housing asset of the former San Rafael Redevelopment Agency (SRRA). The City also owns the adjoining property at 815 C Street.

BRIDGE/EAH redeveloped the property into 60 affordable apartments in 1992 by incorporating an existing, partially completed foundation structure that was part of a former condominium development.¹ The former condominium developer declared bankruptcy before construction was complete, and the property was foreclosed in 1984 by the United States Bank. The foundations remained as they were constructed in 1983 until BRIDGE/EAH began construction on Centertown Apartments in the early 1990s.²

¹ For purposes of this memorandum, the use of the term BRIDGE/EAH refers to the Centertown legal entities that have developed and are proposing to rehabilitate and resyndicate the property.

² A detailed history of the development and key terms of the City's ground lease and loans are presented in the Centertown Deal Memo, which was prepared by Page Robbins Associates for the City of San Rafael on February 1, 2000. This is a major source of information that was used in this due diligence analysis, which was verified to the extent feasible with current City and BRIDGE/EAH staff, as well as outside counsel.

The apartment building contains approximately 85,469 gross square feet of building area and is arranged around a central courtyard. Centertown provides 59 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, and 15 three-bedroom units. An onsite property manager occupies a two-bedroom manager’s unit for a total of 60 units. The property includes 102 parking spaces including six offsite spaces on 815 C Street that are able to be used by Centertown residents under the terms of a recorded Declaration of Restrictions for as long as the property remains residential and parking is required by the City.

All of the residents of Centertown are lower income households, with many of them being extremely low income. According to BRIDGE/EAH, the average household income of Centertown residents is about 32% of the Marin County Areawide Median Income (AMI).

B. Existing Ground Lease

On March 8, 1988, BRIDGE entered into the initial Purchase Agreement with United Savings Bank to acquire the property. Later that year, property ownership was transferred from United Savings Bank to the former San Rafael Redevelopment Agency (SRRA). In 1989, property ownership of the adjacent 815 C Street was transferred from BRIDGE to SRRA. Both sites were then leased by the Lessor, SRRA, through a long-term ground lease to the Lessee, a project specific legal entity called Centertown Associates managed by BRIDGE/EAH.

The ground lease was originally recorded on November 30, 1989, and the term of the ground lease is 75 years. Three ground lease amendments have occurred since 1989 that amended specific sections related to the payment of ground rent given evolving financial conditions over time.

The original ground lease and subsequent amendments describe a complicated stream of payments that occur during specific periods of time. These payment amounts were tied to the project’s projected ability to meet its financial obligations including the repayment of loans that were provided by the City and the former SRRA. The most critical portions of the ground lease payment structure are summarized here:

- For the first five years, the Lessee’s initial ground lease payment or ground rent was \$1 per year.
 - A reconciliation was done in the sixth year to determine if the Lessee’s equity investment had been returned, and the rent continued at \$1 per year until this occurred.
- Once the Lessee’s equity investment was returned, the ground rent became 9% of gross income paid annually in arrears until it accumulates to \$1,061,104.
 - As further described below, the California Department of Housing and Community Development (HCD) provided a loan to the property that is subject to an HCD Regulatory Agreement that limits the amount of annual ground lease payments to a maximum of \$69,880 (\$84,880 minus a \$15,000 partnership management fee).³
- Once \$1,061,104 in ground rent payments have accumulated, the ground lease payment is \$1 per year until all of the original City and SRRA loans are repaid. (Only one City loan is currently outstanding as described below.)
- After the City and SRRA loans are repaid, ground rent is then based on 6% of gross income.

³ The HCD Regulatory Agreement does not allow cumulative distributions, but instead allows an annual distribution of up to \$84,880 in any year when there is net cash flow. After the allowable deduction of \$15,000 for a Partnership Management Fee, \$69,880 is available for payment of the deferred ground lease rent, although in recent years, surplus revenues have been used to fund reserves in order to meet repairs.

Based on an analysis of historical payments that were reported in annual financial audits performed on Centertown, the Lessee has made approximately \$430,000 in payments on the ground lease through December 2019, which means that about \$631,000 is remaining to be paid on the current \$1,061,104 ground lease payment tranche. Since 2016, almost all of the remaining cash flow has been deposited in the replacement reserve account to help pay for repairs on the property, and only about \$4,500 in ground lease payments have been made since then.

C. Existing City Loan and Other Loan Obligations

The property has several outstanding loans that are payable to the City of San Rafael, State of California, County of Marin, and Citibank.

1. Existing City Loan

The former SRRA and the City provided three loans to help finance redevelopment of the property. All but one loan was repaid in the early 1990s. The remaining \$303,000 promissory note from the former SRRA was transferred to the City, which is referred to in this memo as the existing City loan.

According to the City's FY 2018/19 Consolidated Annual Financial Report (CAFR), the former SRRA loaned \$303,000 at 3% simple interest to Centertown Associates, Ltd, which was due to be paid semi-annually. This existing City loan is fully secured by a deed of trust. With the dissolution of the Redevelopment Agency effective February 1, 2012, the assets of the Agency's Low and Moderate Income Housing Fund (LMHAF), including the Centertown Associates loan, were assumed by the City's Low and Moderate Income Housing Special Revenue Fund.

The existing City loan was amended, with the relevant terms being contained in the Amended and Restated Promissory Note dated May 6, 1991, with a maturity date of June 30, 2023.

Payments have been made on this loan over the years, and the remaining balance is about \$260,000 according to the most recent City Consolidated Annual Financial Report (CAFR) and Centertown 2019 Audit performed on behalf of BRIDGE/EAH.⁴ (Please see Appendix Table A-1 for additional information regarding this loan and other loan obligations.)

2. California Housing and Community Development (HCD) Loan

The California Department of Housing and Community Development (HCD) provided a Rental Housing and Construction Program (RHCP) loan to the property in the early 1990s, which is subject to an HCD Regulatory Agreement that restricts rents on 29 units (RHCP units). The loan is for 3% simple interest and is payable by November 5, 2052. The current principal balance is \$1,722,662, and about \$1.45 million in interest has accrued on this loan as of the end of 2019.

3. County of Marin Loan

The County of Marin (County) provided two loans totaling \$99,504 loan to the property in the early 1990s, which is subject to a loan agreement that has a unique set of interest and payment provisions. No interest or principal is currently due, but the loan comes due on May 1, 2021. (The County also provided a CDBG loan of \$59,504 that has since been retired.)

⁴ The remaining balance on the City loan is \$259,756 (including accrued interest) as of December 31, 2019, according to the most recent Centertown 2019 Audit (Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019). The City's FY 2018/19 Consolidated Annual Financial Report (CAFR) indicates that the remaining balance as of the end of June 30, 2019 was \$256,870.

4. Citibank Loans (AHP and Permanent Mortgage)

In addition to these soft, public agency loans, two private loans were provided to the project. The Affordable Housing Program (AHP) loan is a soft private loan that is provided through Citibank (Citi). It has a 0% interest rate and a 30-year term, with a due date of June 30, 2023. BRIDGE/EAH believe that this loan will be forgiven and will no longer apply to the property in the future.

A senior permanent mortgage with a remaining balance of \$236,321 is payable to Citibank and serviced by Berkadia Commercial Mortgage. This loan is senior to all other loan obligations, and the required payments are due in monthly installments of \$5,981, based on a 30-year amortization including interest at 4.690%. The loan is due in full in the year 2023. (Please refer to Appendix Table A-1 for a summary of these loans that is organized according to the seniority of the loans based on the City's records.)

5. Deferral of Loan Payments

In the past five years, BRIDGE/EAH have requested and been granted annual deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from HCD in order to contribute additional funds to the replacement reserves. According to the Centertown 2019 Audit, the property currently has about \$614,354 in replacement reserves available for capital improvements as of the end of 2019.

D. Proposed Rehabilitation Program

As described above, the Centertown development has experienced numerous construction related issues, which include significant problems related to water intrusion, aging building systems and deferred maintenance, as identified in the Facility Needs Assessment performed by Marx | OKUBO Associates. These problems are not uncommon for a building that was constructed about three decades ago, particularly for affordable housing that does not generate sufficient cash flow to pay for significant rehabilitation costs. While ongoing repairs have been undertaken, the needed level of repairs substantially exceeds the replacement reserve account that has been accumulated from project cash flow, and the apartments require substantial renovation to improve the health, safety and quality of life for residents.

BRIDGE/EAH are proposing to resyndicate and refinance Centertown using tax exempt bonds and low income housing tax credits (LIHTC), as further described in the next section, in order to rehabilitate the property to address all immediate physical needs and establish reserves and cash flow to address future maintenance needs as they arise. All of the existing residents will be able to continue to reside in their apartments, although some residents could be temporarily moved depending on the extent of renovation in their units. These residents will be able to move back to their original unit once renovated.

The rehabilitation program is proposed to include the following improvements in the following priority order:

1. Waterproofing-related repairs, including the replacement of windows and sliding glass doors, repair of the roof membrane, shingles, gutters, and downspouts, and the removal and replacement of all cement plaster, repair of gypsum and plywood siding.
2. Exterior improvements to improve health and safety, including replacement of ceramic tiles, use of non-skid strips, signage, upgrades to handrails and entrances.
3. Accessibility upgrades to meet Americans with Disabilities Act (ADA) requirements, including the renovation of six apartment units to serve persons with disabilities.
4. Upgrade and/or replacement of HVAC, plumbing and electrical that will make the property safer, healthier, and environmentally sustainable and provide more efficient operations.

5. Upgrade of unit interiors to address critical repairs related to plumbing leaks and decayed unit finishes.
6. Community building addition of approximately 1,100 square feet to be located on the property's lower, interior courtyard, which will provide a community room, common area restrooms, kitchen area, resident service rooms and management offices.
7. Upgrade of common areas, including replacement of damaged exterior common area and dwelling unit doors and installation of resilient flooring in corridors.
8. Repair and upgrade of the courtyard and parking areas.
9. Should sufficient funds be available, additional rehabilitation of unit interiors will be done to those units most in need of updated interior finishes, which would include new kitchens, bathrooms, flooring and lighting fixtures.

These improvements will be done approximately in the priority order described above. The total estimated cost for the proposed improvements is approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties. The City's Building Department will monitor the rehabilitation efforts through its permitting and inspection process. Appendix Table A-2 shows the proposed development sources, which presents all of the costs associated the renovation and resyndication including the construction hard cost.

To permit the new addition proposed for the lower, interior courtyard, the BRIDGE/EAH team have submitted a design review application to the City's Zoning Administrator, and approvals were received on July 22, 2020. The remainder of the rehabilitation scope is by-right and a building permit application will be submitted in February 2021, in anticipation of a May 2021 construction start.

E. Resident Communication and Temporary Relocation

As the property manager of Centertown, EAH regularly communicates with Centertown residents and provides an array of social services through the EAH "StayWell!" program for families, individuals, and aging adults. Once BRIDGE/EAH have been able to secure funding for the rehabilitation, they will provide information to the residents regarding the proposed rehabilitation schedule and any temporary moves that households may need to make during the rehabilitation process.

The proposed exterior rehabilitation and a substantial portion of the interior rehabilitation, including window/sliding door replacement, lighting, heating and water saving upgrades to all 60 units, can be performed while residents remain in their units. However, the proposed ADA retrofits for 6 units, and the potential kitchen and/or bathroom replacements in about 6-12 units, will be most effectively and safely done if households are temporarily moved while these upgrades are performed.

This means that some households will be temporarily relocated for a period of approximately 4-8 weeks while their units undergo interior rehabilitation work. Every effort will be made to minimize the time when residents must leave their homes. A relocation consultant and on-site property management staff will work with all affected households to address their immediate needs and resolve health and safety concerns.

Accommodations will be provided to residents who are temporarily relocated at no additional cost to the tenants. Packing materials, moving and storage of tenant belongings will also be coordinated and facilitated for them. The rehabilitation budget includes projected costs associated with the temporary relocation, and affected residents will not have to pay any of these expenses. The main focus will be to provide ample information and communication regarding any required move and to provide comfortable and convenient alternative housing for them during the relocation period. Once unit renovations are complete residents will be able to return to their original units.

BRIDGE/EAH are in the process of retaining a relocation consultant who will interview residents, prepare a relocation plan and then implement the plan to accomplish the temporary relocation in compliance with all relevant State and Federal laws. Interviews will be conducted with current residents to understand their housing needs, including any special needs related to disabilities and health problems, and their preferences related to the location and type of temporary housing. Relocation information and assistance will be provided in the primary language of the residents in order to assure that they understand the relocation plan and how their housing needs will be addressed.

A relocation schedule and noticing will be provided to households once the construction phasing is confirmed and BRIDGE/EAH know which households may be affected. A BRIDGE/EAH rehabilitation project manager will work closely with the General Contractor, relocation consultant, and property management staff to ensure a smooth construction schedule and facilitate temporary relocation.

F. Proposed Funding Program and Ground Lease Amendment

BRIDGE/EAH are proposing to renegotiate the existing City, County and State loans to extend their term and modify their interest rates in some cases, among other modifications to be negotiated between the parties. BRIDGE/EAH are also proposing to resyndicate and refinance the development using tax exempt bonds and LIHTC that would be applied for in September 2020 to the California Debt Limit Advisory Committee (CDLAC). Each of the major proposed sources of funding are described below and shown in Appendix Table A-3.

As part of the proposed funding program, the apartments will continue to be restricted as affordable rental units for another 55 years. BRIDGE/EAH propose to maintain the current income restrictions, which range from 50% to 60% of the Area Median Income (AMI). More than 40% of the units will continue to house residents earning 50% AMI or less. Currently, fifteen residents receive Housing Choice Vouchers (HCV) from the Marin County Housing Authority that provide additional annual revenues to Centertown.

The 29 RHCP units will be maintained, which are subject to the HCD Regulatory Agreement and have rents that are subject to review and approval by HCD. Table 1 shows the proposed household income distribution at Centertown, which will remain substantively the same as the current income mix.

Table 1
Resident Affordability by Unit Type
Centertown Apartments

Bedrooms	Rental Restriction	AMI	Total Units
1	TCAC (RHCP)	50%	6
1	TCAC + HCV	60%	10
1	TCAC (Rent Burdened)	60%	1
2	TCAC (RHCP)	50%	11
2	TCAC + HCV	60%	5
2	TCAC (Rent Burdened)	60%	10
2	TCAC	60%	1
3	TCAC (RHCP)	50%	8
3	TCAC (RHCP)	60%	4
3	TCAC (Rent Burdened)	60%	2
3	TCAC	60%	1
2	Manager's Unit	N/A	1
<i>Subtotal RHCP Units</i>			29
<i>Subtotal HCV Units</i>			15
Total			60

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

The current resident population is primarily families, with a number of single adults and seniors. This resident mix is proposed to continue in the future. While Centertown does not currently have any special needs or targeted populations, BRIDGE/EAH are proposing to retrofit six units to be fully ADA accessible, as required by TCAC. These units will be available to current households with disabilities and will be also be provided to new households with disabilities if residents were to move. Although no special needs units would be designated, some of the units will continue to be rented to extremely low-income households that earn 30% or less of AMI. (Although these units are designated as very low-income units affordable at 50% AMI, some are occupied by extremely low-income households.

1. Modifications to City Loans and Ground Lease

BRIDGE/EAH are proposing that the City amend the loan terms of the existing City loan, and this loan would continue to remain a source of funding for the rehabilitation program. The existing City loan would be modified to change the interest rate to meet tax credit requirements (from 3% simple to compounding interest at the Applicable Federal Rate or AFR), extend the loan term to 55 years, and other needed changes to be negotiated with the City. The existing City loan would be assigned to the new tax credit partnership when this occurs, anticipated to be in May 2021.

A Fourth Amendment to the Ground Lease is proposed to occur at the end of 2020, and an option to enter into a new ground lease would be entered into during August 2020, with the formal agreement for the new ground lease to occur only if and when the re-syndication and refinancing process moves forward. The Option to Ground Lease is a required document to be submitted with the project's joint TCAC/CDLAC application to establish site control (a Purchase and Sale Agreement will also be entered into for the improvements).

a. Fourth Amendment to the Ground Lease (To be Executed by End of 2020)

Under the City's existing ground lease, the City is unlikely to receive substantive ground lease payments in the future as surplus cash flow will likely continue to be needed for repairs. The estimated hard cost for repairs (before consideration of soft costs related to professional services to undertake them) is \$10 million in 2020 dollars. If this amount of rehabilitation were divided by the 42 years remaining on the ground lease, the operating cash flow would need to contribute \$238,000 per year (in 2020 dollars) toward these repairs to accomplish them by the end of the ground lease. As noted in Section C, only \$69,880 is allowed by HCD to be annually paid out of project cash flow, so there would not be sufficient cash flow to pay for all of the proposed repairs before the end of the lease term.

In recent years, the developer has requested permission to contribute excess cash flow into replacement reserves, rather than make residual receipts distributions to ground lease and soft debt payments. These requests have consistently been approved by the City and HCD. The replacement reserves have been used to make immediate repairs and to save for the upcoming substantial rehabilitation that is planned for 2021.

Additionally, structural changes to the current ground lease payment structure are needed to bring the ground lease into compliance with IRS rules. These changes need to occur prior to the anticipated construction financing closing/resyndication event that is anticipated for May 2021. The developer and investor's respective tax counsel advise that amendments to the ground lease and the new loan be completed in 2020.

Taking into account these considerations while also seeking to enhance potential revenues to the City, the fourth amendment of the ground lease is proposed to modify the lease as follows:

- \$1 per year ground lease payment plus a \$5,000 per year annual City monitoring fee. These annual payments will continue until a new lease is negotiated.
- The remaining balance of the second ground lease payment tranche, which is approximately \$631,000, will become the principal amount on a new City loan.⁵
 - The precise loan amount will be verified with City staff and be based on the Centertown 2019 Audit as of 12/31/19 and the City's FY 2018/19 CAFR.)
 - This new City loan will ultimately be consolidated with the existing City loan and become part of a consolidated City loan to the new Limited Partnership should the resyndication and refinancing proceed. This consolidated City loan will be a part of the overall residual receipts distributions.
- The fourth amendment and the new City deferred loan are proposed to be entered into by the end of 2020 with City Council approval, once receipt of the tax credit and bond allocation is received.

The proposed 4th Amendment and the New City Loan allows the accrued ground rent of \$631,000 to be recast as a loan, which paves the way for an optimal structure for the project's resyndication and future

⁵ The New City Loan will be evidenced by a promissory note, with a maturity date of November 6, 2052 (after the HCD loan term has expired but before the expiration of the current Ground Lease term, which expires November 5, 2064) and will be a fully deferred soft loan. It will not be secured by the Property, but a default under the promissory note will be a default under the Ground Lease, which is how the Ground Lease payment is secured now. The New City Loan will essentially be a placeholder loan, as it will be consolidated with the City's Existing Loan when that loan is modified (to change some of the terms to comply with tax credit requirements such as: changing the interest rate from 3% simple to compounding AFR, extending the term to 55 years, and other needed changes to be negotiated with the City) and assigned to the new tax credit partnership in May 2021.

ground lease, while at the same time preserving the City’s ability to retain the ability to collect residual receipts payments from \$631,000 in the resyndication financial plan.

b. Option to Ground Lease and New Ground Lease (Option To be Executed in August 2020; New Ground Lease Agreement to Occur with Proposed Resyndication and Refinancing)

The proposed ground lease option would enable BRIDGE/EAH and the City to negotiate a new lease under the following terms, which may be modified as the financing program is refined over the next few months:

- A new ground lease term of 99 years from the date of execution.
- \$83,000 upfront ground lease payment based on a 2020 property appraisal that indicates the current land value is \$83,000, due to existing regulatory restrictions on the property. (This amount would be paid to the City at closing.)
- Payment of a \$5,000 per year annual City monitoring fee, which could escalate at 3% per year after permanent financing is in place. This amount will be determined in collaboration with City staff based on experience with other projects, taking into account the size of this development.
- The ground lease language will be modernized in connection with the resyndication, which will include a provision that the ground rent won't exceed the market value of the land.
- As described above, the consolidated City loan would be entered into at the same time.

As noted above, BRIDGE/EAH need a contractual option to enter a new ground lease in order to meet requirements for applying for tax credits and tax exempt bond monies. Entering into a new ground lease will enable the proposed resyndication and rehabilitation to occur, which will significantly improve the building improvements. As the City will ultimately receive the building improvements at the end of the lease, the rehabilitation will enhance the City’s long-term asset. Any new ground lease will have to be approved by the City Council, but subject to the material terms agreed to in the Option.

c. New Housing Trust Fund Loan

BRIDGE/EAH is applying to the City for between \$500,000 and \$1 million in Housing Trust Funds to help fund the rehabilitation of the development. (The City’s funds will be solely used for this purpose.) If approved, these loan funds would collectively be repaid out of residual cash flow from the project in proportion to the City’s contribution, as the project stabilizes. Table 2 summarizes the proposed City funding.

**Table 2
Proposed City Funding
Centertown Apartments**

Proposed City Loans	Potential Loan Amount
City- Existing Loan	\$259,576
City- New Loan	\$631,000
City- Housing Trust Fund	<u>\$524,927</u>
Total Proposed Loans	\$1,415,503

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

2. California Housing and Community Development (HCD) Loan

BRIDGE/EAH are proposing that HCD amend the existing HCD loan terms and allow this loan to remain a source of funding for the rehabilitation program pursuant to HCD's Loan Portfolio Restructuring Program and Guidelines. The existing HCD loan would be modified to change the interest rate to AFR, extend the loan term to 55 years, and other needed changes to be negotiated with HCD. The HCD loan would also be assigned to the new tax credit partnership. HCD would likely continue to receive an annual senior payment of \$10,311 per year, as well as a proportionate share of residual receipts.

3. County of Marin Loan

BRIDGE/EAH are also proposing that the County amend the loan terms of its existing County loan and allow this loan to remain a source of funding for the rehabilitation program. In addition, BRIDGE/EAH have received additional funding of approximately \$1 million to help fund the project's substantial rehabilitation. The existing and new County loan would likely have the same terms, which would need to be consistent with tax credit requirements and would be similar to the City and HCD loan terms as described above.

4. Private Loans

In addition to these soft, public agency loans, BRIDGE/EAH will secure a permanent mortgage, which is projected to be about \$5 million in size. This loan will be senior to all other loan obligations, and the required payments will likely be due in monthly installments based on a 40-year amortization at an interest of about 4.25%. (The AHP loan is assumed to be forgiven.)

5. Replacement Reserves

BRIDGE/EAH are proposing to utilize about \$680,000 in funding from replacement reserves to help pay for the rehabilitation. As indicated earlier, the Centertown replacement reserve account has \$614,354 in funds as of 2019. Assuming the continuation of substantial HCV payments to tenants, additional funds could be available from surplus cash flow to be deposited in the replacement reserve. The final amount of replacement reserves that could be available to help pay for future rehabilitation costs will be finalized at the close of construction period financing, and upon finalization of the 2020 financial audit of the property. If additional reserves result in a surplus of project sources, the City of San Rafael Housing Trust Fund would be reduced by an amount commensurate to the surplus.

6. Syndication Proceeds, General Partner Equity and Seller Carry Back Loan

BRIDGE/EAH are applying for low income housing tax credits, which will be syndicated and are projected to yield about \$9.1 million in investor equity. BRIDGE/EAH will also contribute about \$1.7 million in General Partner Equity that is equal to the portion of the developer fee that is in excess of the allowable fee pursuant to State guidelines. The seller carry back loan represents the difference between the appraised value for Centertown and the sum of the refinanced loans and the sponsor loan.

G. Due Diligence Findings

The Centertown apartments are in substantial need of rehabilitation, which is evident from the Facility Needs Assessment performed by Marx | OKUBO Associates. In addition, BRIDGE/EAH retained an experienced General Contractor (Saarman) to review the building conditions and prepare a detailed cost estimate to undertake the rehabilitation in alignment with the findings of the Facility Needs Assessment.

Seifel reviewed the Facility Needs Assessment and interviewed BRIDGE/EAH to understand what rehabilitation elements are most critically needed, as there may not be sufficient funding to undertake all

of the improvements that have been identified. Section D of this memorandum describes the proposed rehabilitation and the proposed order of priority to undertake these improvements depending on the level of available funding from all sources.

Seifel has reviewed BRIDGE/EAH's funding plan as it evolved over the past two months and agrees that BRIDGE/EAH has identified all relevant public funding sources that could be utilized for this rehabilitation effort. BRIDGE/EAH will work to maximize the amount of revenues that are generated from LIHTC, and BRIDGE/EAH will contribute about 40 percent of its eligible developer fee (in the form of a General Partner contribution) to help fund the planned rehabilitation. In addition, BRIDGE/EAH is providing a seller back carry loan to the development that is equal to the difference between the appraised property value and the existing debt. Repayment on this loan is limited to 50% of cash flow per the HCD Loan Portfolio Restructuring Guidelines.

Seifel reviewed BRIDGE/EAH's financial pro forma, and the proposed high priority rehabilitation projects that can be feasibly undertaken if the City, County, State and private lender provide the requested level of funding. BRIDGE/EAH has included a 10% contingency to take into account cost escalation and potential rehabilitation needs that could occur once construction begins.

Should less funding be available, the scope of the rehabilitation may need to be reduced. If additional funding is available or not all of the construction contingency funds are needed, additional rehabilitation improvements could be undertaken. Seifel worked with BRIDGE/EAH to identify and prioritize these improvements, and BRIDGE/EAH is committed to implementing as many of the needed rehabilitation improvements as possible, following the order of priority in this memorandum, or as this priority may be further revised in consultation with City staff.

BRIDGE/EAH proposes that the existing public loans (soft debt) from the City of San Rafael, Marin County and the State of California will be amended to a compounded interest rate equal to the AFR, which is currently approximately 1.2%. While this proposed modification could generate less interest than the City's current 3% simple interest rate, this modification will generate additional tax credit equity for the project. Furthermore, the AFR may increase by the time this project proceeds and be closer to the City's current effective interest rate.

Seifel worked with City staff, BRIDGE/EAH and outside counsel to refine what BRIDGE/EAH originally proposed with respect to the ground lease and City funding. The proposed Fourth Amendment to the Ground Lease and proposed Option to Ground Lease, and the recommended provision of a new City loan equal to the outstanding balance on the ground lease, will enable the City to properly secure its interest in the property and provide for greater participation in future residual receipts. Seifel also prepared a comparative analysis of what the City would likely receive under the existing ground lease and with the proposed project under two alternative revenue scenarios. Table 3 on the next page compares the City revenues under these three scenarios. As this shows, the City will likely receive a larger stream of revenues with the proposed project than under the existing ground lease scenario.

1. Scenario 1– Existing Ground Lease With Fourth Amendment

Scenario 1 assumes that the City would enter into the Fourth Amendment to the Ground Lease by the end of 2020. As described above under Section E, the Fourth Amendment to the Ground Lease will revise the existing payment terms to conform with current IRS rules, provide for the payment of an annual monitoring fee, and will facilitate the creation of a new City loan that will be refinanced in the syndication of the project, generating revenues to the City from residual receipts.

2. Scenario 2A and 2B– Proposed Project Under Two Revenue Scenarios

Two proposed project scenarios are analyzed that assume the proposed resyndication and rehabilitation occurs based on key financial projections in the BRIDGE/EAH proforma. Scenario 2A assumes that future rental revenues do not include payments from Housing Choice Vouchers, as HCV payments cannot be underwritten to secure a permanent mortgage. Scenario 2A assumes that the resyndication occurs in May 2021, the new ground lease is signed in connection with the resyndication's financial closing, an upfront ground lease payment of \$83,000 is made at this time, and the City's annual monitoring fee payments continue throughout the term.

Scenario 2B assumes that 15 residents will continue to receive HCV, and revenues from these HCV payments are included in the cash flow projections. Scenario 2B assumes that the resyndication is delayed two years and occurs in May 2023, the new ground lease is signed prior to this date, an upfront ground lease payment of \$83,000 is made in May 2023, and the City's annual monitoring fee payments continue throughout the term. Scenario 2B generates significantly more revenues than the other two scenarios as additional cash flow is generated, and about 12.7% of this cash flow accrues to the City.

Table 3
Comparison of City Revenues from Alternative Scenarios
Centertown Apartments

Lease Year (Fiscal Year Beginning)	Pro Forma Year	Scenario 1: Existing (Amended)	Scenario 2A: Proposed Project	Scenario 2B: Proposed Project (Plus HCV)
2020		\$5,001	\$0	\$0
2021		\$5,001	\$8,000	\$5,001
2022		\$5,001	\$5,000	\$5,001
2023	1	\$5,001	\$5,680	\$101,066
2024	2	\$5,001	\$5,759	\$18,392
2025	3	\$5,001	\$5,816	\$18,702
2026	4	\$5,001	\$5,850	\$18,994
2027	5	\$5,001	\$5,860	\$19,267
2028	6	\$5,001	\$5,846	\$19,521
2029	7	\$5,001	\$5,805	\$19,753
2030	8	\$5,001	\$5,736	\$19,963
2031	9	\$5,001	\$5,638	\$20,150
2032	10	\$5,001	\$5,510	\$20,312
2033	11	\$5,001	\$5,350	\$20,449
2034	12	\$5,001	\$5,157	\$20,557
2035	13	\$5,001	\$5,000	\$20,637
2036	14	\$5,001	\$5,000	\$20,686
2037	15	\$5,001	\$5,000	\$20,703
2038	16	\$5,001	\$6,942	\$22,953
2039	17	\$5,001	\$6,645	\$22,969
2040	18	\$5,001	\$6,306	\$22,950
2041	19	\$5,001	\$5,924	\$22,894
2042	20	\$5,001	\$5,498	\$22,800
2043	21	\$5,001	\$5,024	\$22,665
2044	22	\$5,001	\$5,000	\$22,488
2045	23	\$5,001	\$5,000	\$22,266
2046	24	\$5,001	\$5,000	\$21,997
2047	25	\$5,001	\$5,000	\$21,680
2048	26	\$5,001	\$5,000	\$21,311
2049	27	\$5,001	\$5,000	\$20,889
2050	28	\$5,001	\$5,000	\$20,411
2051	29	\$5,001	\$5,000	\$19,874
2052	30	\$5,001	\$5,000	\$19,276
2053	31	\$5,001	\$5,000	\$18,614
2054	32	\$5,001	\$5,000	\$17,886
2055	33	\$5,001	\$5,000	\$17,087
2056	34	\$5,001	\$5,000	\$16,216
2057	35	\$5,001	\$5,000	\$15,269
2058	36	\$5,001	\$5,000	\$14,243
2059	37	\$5,001	\$5,000	\$13,135
2060	38	\$5,001	\$5,000	\$11,940
2061	39	\$5,001	\$5,000	\$10,656
2062	40	\$5,001	\$5,000	\$9,278
2063	41	\$5,001	\$26,993	\$43,893
2064	42	\$5,001	\$25,183	\$42,317
Total		\$225,045	\$359,524	\$947,113

H. Conclusion

As described above, the property needs to be substantially rehabilitated, and the proposed funding request is reasonable. The City should continue to work with BRIDGE/EAH and the County to obtain the additional \$1 million in funding, as well as to facilitate the renegotiation of the HCD loan. In total, the City's commitment to the development would be to amend and renegotiate the ground lease and to enter into the following loans with the future Limited Partnership:

- Existing Loan—Approximately \$260,000, which is the current remaining balance including accrued interest.
- New Loan— Approximately \$631,000, which is equivalent to the remaining unpaid amount from the ground lease.
- Potential Housing Trust Fund Loan— Between \$500,000 and \$1,000,000, which, if awarded, would be used to help pay for new community facilities.

These loans would be repaid out of the resyndicated project's residual cash flow in proportion to the City's contribution. The City's investment will leverage about \$21.8 million in private and public funding to meet the total development costs of about \$23.2 million net of the building acquisition value.

The City's ground lease modification and investment will result in the following:

- Enhanced living environment for approximately 180 of the City's lower income residents.
- Substantial health, life-safety, environmental and accessibility improvements.
- Continued preservation of 60 affordable apartments, with an extension of the affordability covenants for another 55 years.
- Recapitalization of the development, which will leverage sufficient funding to undertake much needed rehabilitation improvements that will enhance the City's long term interests in the property.

Appendix Table A-1
Summary of Existing and Proposed Loans
Centertown Apartments

	Original Principal	Outstanding Balance as of Dec. 31, 2019			Key Loan Terms	
		Principal	Accrued Interest	Total	Due Date	Rate
Existing Loans						
First Mortgage (Berkadia, Citi)	\$1,025,504	\$236,321	\$924	\$237,245	2023	4.69%
Affordable Housing Program (AHP, Citi)	\$390,000	\$390,000	\$0	\$390,000	2023	None
California HCD (RHCP)	\$2,647,711	\$1,722,662	\$1,495,167	\$3,217,829	2052	3.00%
City of San Rafael/Former SRRA*	\$303,000	\$219,982	\$39,594	\$259,576	June 2023	3.00%
City of San Rafael and Former SSRA*	\$616,000	\$0	\$0	\$0	N/A	N/A
County of Marin	<u>\$99,504</u>	<u>\$99,504</u>	<u>\$0</u>	<u>\$99,504</u>	May 2021	Specific Terms
Subtotal	\$5,081,719	\$2,668,469	\$1,535,685	\$4,204,154		

* The City and the former San Rafael Redevelopment Agency (SRRA) provided three loans to the development, two of which were repaid in the 1990s. The remaining \$303,000 promissory note was transferred to the City as a former housing asset of the SRRA.

Source: Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019, BRIDGE Housing, EAH Housing, .

**Appendix Table A-2
Estimated Development Uses
Centertown Apartments**

Development Cost (Uses)	Project Estimates	
	Total	Per Unit
Property Related Costs		
Acquisition Cost (Upfront Ground Lease Payment)	\$83,000	\$1,383
Acquisition Cost or Value- Building	\$14,917,000	\$248,617
BRIDGE WC Interest	\$50,000	\$833
<u>Other Acquisition Costs</u>	<u>\$41,500</u>	<u>\$692</u>
Subtotal	\$15,091,500	\$251,525
Hard Construction Costs		
Rehabilitation Costs	\$6,937,344	\$115,622
General Conditions	\$416,241	\$6,937
General Requirements & Profit	\$554,988	\$9,250
Covid Related	\$300,000	\$5,000
GC Testing Allowance	\$40,000	\$667
Insurance & Bond	\$158,171	\$2,636
Design Contingency	\$840,674	\$14,011
<u>Hard Cost Contingency</u>	<u>\$924,742</u>	<u>\$15,412</u>
Subtotal	\$10,172,160	\$169,536
Project Related Soft Costs		
Architecture/Engineering	\$1,085,109	\$18,085
Legal	\$135,000	\$2,250
Marketing/Lease-up	\$123,800	\$2,063
Appraisal	\$7,500	\$125
Miscellaneous	\$549,450	\$9,158
Title & Recording	\$52,500	\$875
Furnishings and Equipment	\$49,000	\$817
Permits and Fees	\$60,000	\$1,000
Soft Cost Contingency and Reserves	\$682,602	\$11,377
<u>Insurance</u>	<u>\$79,218</u>	<u>\$1,320</u>
Subtotal	\$2,824,179	\$47,070
Project Financing		
Construction Interest & Fees	\$1,365,688	\$22,761
<u>Permanent Financing</u>	<u>\$327,500</u>	<u>\$5,458</u>
Subtotal	\$1,693,188	\$28,219
Syndication & Developer Fee		
Capitalized Developer Fee	\$2,010,264	\$33,504
GP Equity	\$2,010,264	\$33,504
<u>Construction Management and Other Consultants</u>	<u>\$170,600</u>	<u>\$2,843</u>
Subtotal	\$4,191,128	\$69,852
Total Development Cost	\$33,972,155	\$566,203

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

**Appendix Table A-3
Estimated Development Sources
Centertown Apartments**

Development Revenues (Sources)	Project Estimates	
	Total	Per Unit
Permanent Loan	\$5,406,942	\$90,116
Building Acquisition Value		
Seller Note	\$2,500,000	\$41,667
<u>Seller Carryback Loan</u>	<u>\$8,222,431</u>	<u>\$137,041</u>
Subtotal	\$10,722,431	\$178,707
Tax Credit Equity		
Federal	\$9,144,715	\$152,412
<u>State</u>	<u>\$0</u>	<u>\$0</u>
Subtotal	\$9,144,715	\$152,412
City of San Rafael Financial Assistance		
City- Existing Loan	\$259,576	\$4,326
City- New Loan (Former Ground Lease)	\$631,000	\$10,517
<u>City- Housing Trust Fund</u>	<u>\$524,927</u>	<u>\$8,749</u>
Subtotal	\$1,415,503	\$23,592
Other Public Funding Assistance		
HCD RHCP- Existing Loan	\$1,722,662	\$28,711
County of Marin- Existing Loan	\$99,504	\$1,658
<u>County of Marin- New Loan</u>	<u>\$1,013,732</u>	<u>\$16,896</u>
Subtotal	\$2,835,898	\$47,265
Other Revenues		
GP Equity	\$2,010,264	\$33,504
Accrued interest during construction	\$1,603,421	\$26,724
Income From Operations	\$152,725	\$2,545
<u>Contributed Reserves</u>	<u>\$680,257</u>	<u>\$11,338</u>
Subtotal	\$4,446,667	\$74,111
Deferred Developer Fee	\$0	\$0
Total	\$33,972,155	\$566,203

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GROUND
LEASE OF THE REAL PROPERTY AT 855 C STREET, SAN RAFAEL
(CENTERTOWN) TO CENTERTOWN II, LP**

WHEREAS, the City of San Rafael owns real property located at 855 C Street, commonly known as Centertown, and leases that real property to Centertown, Ltd, a California limited partnership, which has constructed and operates on the real property a 60 residential unit affordable housing development; and

WHEREAS, the original development, constructed in approximately 1992, is in need of substantial rehabilitation; and

WHEREAS, to permit a resyndication and refinancing of Centertown using tax exempt bonds and low-income housing tax credits (LIHTC), on August 17, 2020, the City Council, in Resolution No. 14851, approved an Option to Lease with Centertown II, LLC, an affiliate of Centertown, Ltd., for a ninety-nine-year term; and

WHEREAS, as contemplated by Resolution No. 14851, Centertown II, LP, an affiliate of Centertown II, LLC and Centertown, Ltd has, subject to closing, obtained the necessary funding to rehabilitate the property; and

WHEREAS, the City Council wishes to support the continuation of Centertown as an affordable housing project, and finds that leasing the property to Centertown II, LP would be in the best interests of the public and would benefit the public health and welfare; and

WHEREAS, the City Council finds that approval of a lease of an existing structure is categorically exempt from environmental review, pursuant to CEQA Guidelines Section 15301;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES
ORDAIN AS FOLLOWS:**

DIVISION 1.

The City Council hereby approves, and authorizes the Mayor to execute, a lease of the Centertown property to Centertown II, LP for a term of ninety-nine (99) years, at a base rental of Eighty-Three Thousand Dollars (\$83,000) plus One Dollar (\$1.00) per year (both payable at closing), plus a Five Thousand Dollar (\$5,000) per year monitoring fee (escalated per CPI), and

on substantially the other terms set forth in the “Ground Lease (Centertown)” Between the City of San Rafael and Centertown II, LP, a California limited partnership attached hereto as Exhibit A, subject to final approval as to content and form by the City Manager and City Attorney.

DIVISION 2.

The City Council hereby authorizes the Mayor to execute all documents reasonably required to terminate the current ground lease in favor of Centertown Ltd., a California limited partnership, subject to approval as to form by the City Attorney.

DIVISION 3.

The City Council hereby authorizes the Mayor and City Manager to execute, all other documents reasonably required to carry out the intent and purposes of the foregoing lease, subject to approval as to form by the City Attorney.

DIVISION 4:

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

KATE COLIN, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 13th day of September 2021 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 20th day of September 2021.

LINDSAY LARA, City Clerk

EXHIBIT A

**GROUND LEASE
(Centertown Project)**

Between

CITY OF SAN RAFAEL

and

CENTERTOWN II, LP

A California Limited Partnership

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GROUND LEASE

(Centertown Project)

THIS GROUND LEASE, dated for convenience _____, 2021 (the “**Ground Lease**”), is by and between the CITY OF SAN RAFAEL, a municipal corporation (“**Lessor**” or “**City**”) and CENTERTOWN II, LP, a California limited partnership (“**Lessee**”).

RECITALS

A. The former Redevelopment Agency of the City of San Rafael, sometimes referred to as San Rafael Redevelopment Agency, a public body, corporate and politic, and a redevelopment agency organized pursuant to the former California Community Redevelopment Law (“**CRL**”), California Health and Safety Code Section 33000 et seq. (“**Former Agency**”), was the former owner of certain land, located at 855 C Street in the City (APN 011-254-19), which is now more particularly described in Exhibit A attached hereto and incorporated herein (the “**Land**”). The Former Agency, as Lessor (“**Prior Lessor**”), entered into a 75-year Ground Lease, dated November 6, 1989 (“**Original Ground Lease**”) for the Land with Centertown Ltd., a California limited partnership, with Centertown, Inc., a California nonprofit public benefit corporation as general partner (“**Prior Lessee**”), for low income housing use.

B. The Original Ground Lease was subsequently amended and restated by the First Amended and Restated Ground Lease dated August 20, 1990 (“**A&R Ground Lease**”). The A&R Ground Lease was subsequently amended by the Second Amendment to the First Amended and Restated Ground Lease dated May 6, 1991 (“**Amendment 2**”), the Third Amendment to First Amended and Restated Ground Lease dated April 1, 1993 (“**Amendment 3**”), and the Fourth Amendment to First Amended and Restated Ground Lease dated June 2, 2021 (“**Amendment 4**”). The A&R Ground Lease, together with Amendment 2, Amendment 3 and Amendment 4, is hereby referred to as the “**Prior Ground Lease**.”

C. Pursuant to the Original Ground Lease, Prior Lessor and Prior Lessee executed a Memorandum of Ground Lease, dated November 6, 1989 (“**Original Memorandum**”), and caused the original Memorandum to be recorded in the official records of Marin County (“**Official Records**”) on November 30, 1989 as Document No. 89-69343. The Original Memorandum was amended by that certain Amendment to Memorandum of Ground Lease, dated May 6, 1991, recorded in Official Records on July 8, 1991 as Document No. 91-041695 (re-recorded in Official Records on January 16, 1992 as Document No. 92-003311) (“**Memorandum Amendment 1**”) and that certain Second Amendment to memorandum of Ground Lease, recorded in Official Records June 30, 1993 in Document No. 93-052072 (“**Memorandum Amendment 2**” and, together with the Original Memorandum and Memorandum Amendment 1, the “**Prior Memorandum**”).

D. Pursuant to the Prior Ground Lease, the Prior Lessee developed, constructed, owns and operates a residential development consisting of 60 units rented to and occupied by very low, low and lower income households and commonly known as Centertown Apartments (“**Project**”). The Project was completed on or about 1992.

E. By a Declaration of Restrictions executed by the Prior Lessor, recorded September 11, 1990 in Official Records as Recorder’s Serial No. 90-53574, Prior Lessee obtained a non-exclusive right to use six (6) parking spaces at 1412 2nd Street, San Rafael California (APN 11-252-10) (“**Parking Rights**”).

F. In 2011, the California Legislature adopted, the Governor signed, and the California Supreme Court, in *California Redevelopment Association, et al. v. Matosantos* (2012) 53 Cal.4th 231, upheld Assembly Bill x1 26 (“**ABx1 26**”). Pursuant to ABx1 26 (as amended by AB 1484 and SB 107, the “**Dissolution Law**”), all California redevelopment agencies were dissolved effective February 1, 2012, including the Former Agency. Pursuant to the Dissolution Law and resolutions adopted by the City’s City Council on January 3, 2012 the City elected to become the successor housing agency to the Former Agency, and thereby succeeded to all of the Former Agency’s right, title and interest in and to the Land and Prior Ground Lease.

G. The Project is in need of rehabilitation. To finance the rehabilitation, it was determined to obtain a new allocation of low-income housing tax credits pursuant to Internal Revenue Code Section 42 (“**LIHTC**”), which required, among other things, that: (1) the Project be owned by a new limited partnership, the Lessee and (2) the term of the ground lease for the Land be ninety-nine (99) years. Pursuant to that certain Option Agreement dated August 27, 2020 (“**Option Agreement**”) by and between the City (as Prior Lessor) and Centertown II, LLC, a California limited liability company (“**General Partner**”), with sole members BRIDGE Housing Corporation and EAH Inc., each, a California nonprofit public benefit corporation, as assigned by General Partner to Lessee, pursuant to that certain Assignment Agreement (Option and Purchase and Sale Agreement) (the “**Assignment Agreement**”), Lessee has an option to enter into a new 99-year ground lease for the Land, on terms and subject to certain conditions set forth in the Option Agreement, including (I) sale of the Project to Lessee pursuant to a purchase and sale agreement and (II) termination of the Prior Ground Lease.

H. After the Option Agreement: (1) the Prior Lessee entered into a Purchase and Sale Agreement, dated September 8, 2020 (“**PSA**”) with General Partner, which was assigned by General Partner to Lessee pursuant to the Assignment Agreement, to purchase the Project.¹

I. Concurrently with the execution and delivery of this Ground Lease: (1) Lessor and Lessee will record the Memorandum (as defined in Section 10.6 in the Official Records, (2) Lessee will purchase a fee simple interest in all improvements on the Land, including without limitation the Project in accordance with the PSA, pursuant to a [Grant Deed] executed by Prior Lessee and recorded in the Official Records substantially concurrently with the Memorandum; (3) Lessor and Prior Lessee will execute and deliver a Termination of Ground Lease² dated _____, 2021, to be recorded in the Official Records (which shall also terminate the Prior Memorandum); and (4) Prior Lessee will execute and deliver to Lessor a recordable Quitclaim of all of its right, title and interest in and to the Land.

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

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions.

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

¹ Developer to prepare and distribute Assignment Agreement.

² Developer to prepare and distribute Termination of Ground Lease.

- (a) **“Alterations”** is defined in Section 3.2.
- (b) **“Assignment Agreement”** is defined in the Recitals.
- (c) **“business day”** is defined in Section 10.16.
- (d) **“City Leasehold Mortgage”** shall mean the Leasehold Mortgage on the Development, executed by Lessee for the benefit of the City, as security for the City Leasehold Loan, and recorded in the Official Records Substantially concurrently with the Memorandum.
- (e) **“City Leasehold Loan”** shall mean the \$_____ loan made by the City to Lessee.
- (f) **“City Leasehold Mortgage Documents”** shall mean all documents executed by Lessee and/or the City evidencing or securing the City Leasehold Loan.
- (g) **“Commencement Date”** shall mean the date the Memorandum is recorded in the Official Records of Marin County.
- (h) **“CPI”** means the Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- (i) **“Development”** shall mean and include both the Improvements owned by Lessee and located on the Land and the leasehold estate in the Land held by Lessee which is created by this Ground Lease.
- (j) **“Dwelling Units”** shall mean the residential units within the Development, and any additions or alterations thereto; such Dwelling Units shall be occupied by Residents.
- (k) **“General Partner”** is defined in the Recitals.
- (l) **“Governmental Capacity”** is defined in Section 3.10.
- (m) **“Ground Lease”** shall mean this Ground Lease between Lessor and Lessee, and shall include all further amendments, addenda or modifications to this Ground Lease.
- (n) **“HCD”** shall mean the Department of Housing and Community Development, a public agency of the State of California.
- (o) **“HCD Rider”** shall mean the Lease Rider (Ground Lease) among Lessor (as Landlord), Lessee and HCD (as the Department), attached hereto and incorporated herein as Exhibit C.
- (p) **“Household”** shall mean all persons residing together in one Dwelling Unit.
- (q) **“Impositions”** shall mean any Property Taxes, possessory interest taxes, licenses and permit fees, charges for public utilities of any kind, and obligations for any and all other governmental charges, general and special, of any kind and nature whatsoever, as well as assessments for sidewalks, streets, sewers, water or any other public improvements and any other improvements or benefits which shall, during the Term hereof, be made, assessed, levied or imposed upon or become due and payable in connection with, or a lien upon, the Development,

or any part thereof, or upon this Ground Lease, and any payment in lieu of taxes which Lessee has agreed to or is bound to pay with respect to the Development.

(r) **“Improvements”** shall mean that portion of the Development consisting of 60 Dwelling Units, including all structures, fixtures, equipment, landscaping, driveways, off-street parking on the Land and other improvements constructed or installed on the Land, including without limitation the Lessee Improvements.

(s) **“Investors”** (individually **“Investor”**) shall mean Lessee’s limited partner(s), including those identified as such in Exhibit B:

(t) **“Laws”** (individually, **“Law”**) shall mean all laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force.

(u) **“Lessee Improvements”** shall mean the rehabilitation of Centertown Apartments and all other improvements to be constructed or rehabilitated on the Land as described in the design plans titled “_____” prepared by TWM Architects + Planners, dated June 21, 2021 and approved by the Lessee and Lessor, which are incorporated herein by this reference (as modified from time to time, the **“Lessee Improvement Plans”**).

(v) **“Lessee Improvement Plans”** shall have the meaning set forth in the definition of Lessee Improvements.

(w) **“Leasehold Mortgage”** is defined in Section 4.1.

(x) **“Leasehold Mortgage Documents”** shall mean all documents executed by Lessee evidencing or securing the Leasehold Mortgages, including without limitation the City Leasehold Mortgage Documents and all other documents evidencing or securing the loans identified on Exhibit B attached hereto.

(y) **“Leasehold Mortgagee”** shall mean the holder or beneficiary of any Leasehold Mortgage, including without limitation, those securing the loans identified in Exhibit B attached hereto, or any other holder of a Leasehold Mortgage.

(z) **“Lower Income Household”** means a household whose annual income does not exceed eighty percent (80%) of the Area Median Income as determined for the San Francisco, California HUD Metro FMR Area annually by HUD and adjusted for household size.

In the event that such income determinations are no longer published by HUD, “Median Income” shall mean the median gross yearly income for households in Marin County, as published periodically by the California Department of Housing and Community Development (**“HCD”**). In the event that such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, Lessor shall provide Lessee with other income determinations which are reasonably similar with respect to method of calculation to these previously published by HCD or HUD.

(aa) **“Material Alterations”** is defined in Section 3.2.

(bb) **“Memorandum”** is defined in Section 10.6.

- (cc) **“Monetary Default”** is defined in Section 4.2(d).
- (dd) **“New Lease”** is defined in Section 4.2(g).
- (ee) **“Non-Monetary Default”** is defined in Section 4.2(d).
- (ff) **“Property Taxes”** is defined in Section 2.6.
- (gg) **“Proprietary Capacity”** is defined in Section 3.10.
- (hh) **“Rent”** is defined in Section 2.3.
- (ii) **“Residents”** shall mean the residents of the Dwelling Units in the Development to whom Lessee leases such Dwelling Units.
- (jj) **“TCAC”** means the California Tax Credit Allocation Committee.
- (kk) **“TCAC Rider”** shall mean the _____ among Lessor, Lessee and TCAC, which shall be recorded after the permanent conversion of the construction loan for the Lessee Improvements, the form of which is attached hereto and incorporated herein as Exhibit D.
- (ll) **“Term”** shall mean period set forth in Section 2.2 during which this Ground Lease shall be operative, unless earlier terminated in accordance with this Ground Lease.
- (mm) **“Title Reports”** mean those certain _____ Reports on the Land issued by Old Republic National Title Insurance Company, dated _____, 20____, Order No. _____ and _____.

ARTICLE 2

LEASE OF THE LAND; RENTAL PROVISIONS; TAXES AND ASSESSMENTS

Section 2.1 **Ground Lease of the Land**. Lessor for and in consideration of the rent, covenants and agreements of Lessee set forth herein, to be paid, kept and performed by Lessee, hereby leases the Land to Lessee, and in consideration thereof, Lessee does take, hire and lease the Land from Lessor pursuant to the terms of this Ground Lease.

Section 2.2 **Duration of Term**. The Term of this Ground Lease shall commence on the Commencement Date, and shall expire at midnight ninety-nine (99) years thereafter.

Section 2.3 **Rental Provisions, Including Monitoring Fee**. Lessee agrees to pay the Lessor the following as **“Rent”** for the Land:

(i) On or before the Commencement Date, and as a condition thereof, Lessee shall pay Lessor a one-time, upfront lease payment of \$83,000.00, being the value of the Land pursuant to that certain appraisal by _____, dated _____, issued to _____.

(ii) Commencing on the Commencement Date, the Lessee shall pay, on an annual basis, rent in the amount of One Dollar (\$1.00) per year or fraction thereof. Lessor hereby

acknowledges and agrees that, as of the Commencement Date, Lessee has paid to Lessor all Rent due under this Section 2.3(a)(ii) in the amount of \$99.00, and no further rent is due under this Section 2.3(a)(ii).

(iii) In connection with the requirements imposed by this Ground Lease and to ensure compliance, Lessee agrees to pay Lessor on January 1 of each year a Five Thousand Dollar (\$5,000.00) annual monitoring fee (“**Monitoring Fee**”). The Monitoring Fee will not be prorated for any partial year of the Term. Commencing on the fifth anniversary of the Commencement Date, and each five years thereafter, the Monitoring Fee shall be increased by the increase in CPI during that five-year period.

(b) Rent and all other sums payable by Lessee to Lessor under this Ground Lease shall be paid in lawful currency of the United States of America at Lessor's address for notices as set forth below, or to such other person or at such other place as Lessor may from time to time designate by notice in writing to Lessee.

Section 2.4 Use of Development and Assurances of Lessee.

(a) The Land shall be used by Lessee solely for rehabilitating, constructing, owning and operating a residential development and related ancillary uses, including at least 60 Dwelling Units, of which no less than 48% shall be rented to Lower Income Households; provided, however, that from and after the foreclosure of a Leasehold Mortgage (or acceptance of a deed in lieu thereof), Lessee need only comply with those Regulatory Requirements that are senior in priority to such Leasehold Mortgage.

(b) Lessee hereby agrees. subject to applicable law:

(i) not to use or permit the use of the Development or the Land for any disorderly or unlawful purpose, and not to use the Land and the Development other than to provide proper housing facilities to Residents and to maintain the character of the Development as required by any Leasehold Mortgage Documents and this Ground Lease, for so long as such Leasehold Mortgage Documents remain in effect and for the entire Term of this Ground Lease;

(ii) not to utilize any of the Dwelling Units at any time on a transient basis or for hotel, motel, dormitory, rooming house, nursing home, hospital, rest home or similar uses;

(iii) to notify the Lessor promptly in writing of any defect appearing in the Land or any part thereof;

(iv) to use reasonable efforts to prevent any Resident from committing or maintaining any nuisance or unlawful conduct on or about the Development or the Land;

(v) to use reasonable efforts to prevent any Resident from violating any of the covenants and conditions of the Ground Lease with respect to the Development or the Land;

(vi) to take necessary action, to abate any violation of this Ground Lease by any Resident; and

(vii) to permit the Lessor and its agents to inspect the Development and the Land or any part thereof at any reasonable time during the Term of this Ground Lease.

(c) Lessee will maintain complete and accurate records pertaining to the Dwelling Units, and will permit any duly authorized representative of the Lessor upon ten days' notice to inspect the books and records of the Lessee pertaining to Lessee's obligation to rent at least 48% of the Dwelling Units to eligible Residents under this Lease.

(d) Costs and expenses, if any, incurred by the Lessor for the review of certificates described in this Section 2.4 shall be borne by the Lessor.

Section 2.5 Rights of Lessee.

Subject to the terms and conditions set forth in Section 2.4, Lessee shall have the sole and exclusive right:

- (a) to select and terminate the occupancy of a Resident;
- (b) to determine the eligibility of a Resident for rental of a Dwelling Unit within the Development;
- (c) to give notice to a Resident to vacate the Development or any part thereof; and
- (d) to institute and prosecute legal proceedings against a Resident and levy execution upon any judgement obtained in such proceedings.

Section 2.6 Taxes and Assessments.

(a) Subject to Section 2.6(c), as a part of the consideration for the execution and delivery of this Ground Lease and as additional rent and subject to all provisions hereof, Lessee covenants and agrees during the entire Term of this Ground Lease, at its own cost and expense, to pay the public officers charged with the collections thereof, as the same become due and payable and before any fine, penalty, interest or other charge may be added thereto for the nonpayment thereof, all Impositions.

Any Impositions which are applicable only to a portion of the Term hereof shall be appropriately prorated between Lessor and Lessee; provided that, if by law any Imposition may at the option of the taxpayer be paid in installments, Lessee may exercise such option, and in such event Lessee shall pay all such installments and interest, if any, becoming due during, or allocable to, the Term of this Ground Lease as the same become due and before any additional interest or any penalty, fine or cost may be added thereto, except that any amount properly allocable to periods subsequent to the expiration of the Term of this Ground Lease shall not be chargeable to nor payable by Lessee, it being agreed that such impositions for said partial taxing period shall be prorated between Lessor and Lessee on the basis that the number of days in each such fractional tax year bears to 365.

Upon request by Lessor, Lessee covenants to furnish to Lessor, prior to delinquency, official receipts of the proper taxing or other authority, or other proof satisfactory to Lessor, evidencing the full payment thereof. In the event of Lessee's failure to pay any such Imposition, Lessor shall have the right to pay the same and charge said amount to Lessee as additional rent, which rent shall not be deferred but shall be due and payable immediately upon receipt of notice to Lessee that Lessor has paid an Imposition pursuant to this Section. Lessor agrees promptly to send to Lessee (i) copies of any notices for any Impositions, if such notices have been received

by Lessor, and (ii) evidence of any such payment of Impositions made by the Lessor, which are the responsibility of Lessee pursuant to the terms of the Ground Lease.

Subject to the rights of the Leasehold Mortgagees under, and without limiting the scope of Article 4, failure by Lessee to pay any such Imposition shall be a default by Lessee under this Ground Lease for which Lessor may terminate the Ground Lease.

(b) The provisions of this Ground Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against Lessor, or municipal, county, state or federal capital levy, succession, gift or transfer taxes of Lessor, or corporation franchise taxes imposed upon any fee interest of the Lessor in the Land, or any increase in real estate taxes or assessments on account of Lessor's transfer of its fee title to the Land or a change in ownership of the Land other than to Lessee. Lessee agrees promptly to send to Lessor copies of any and all notices received by it in respect to any taxes or assessments affecting the Land which are the responsibility of the Lessor, pursuant to the terms hereof.

(c) Notwithstanding anything to the contrary contained in the Lease, if Lessee deems any Imposition imposed in connection with the ownership, use or occupancy of the Development to be excessive or illegal, Lessee may defer payment thereof so long as the validity or the amount thereof is contested by Lessee with diligence and in good faith; provided, however, that Lessee, upon request by Lessor, shall furnish to Lessor a bond in form, and issued by a surety company, reasonably satisfactory to Lessor, in an amount equal to the amount of the tax so contested, which bond shall guarantee the payment thereof with interest and penalties thereon; and provided further that if, at any time, payment of the whole of such tax shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of all or any part of the Development, or to prevent eviction of Lessor or of Lessee because of non-payment thereof, Lessee shall pay the same, or cause the same to be paid, in time to prevent such termination of the right of redemption or such eviction. Any contest as to the validity or amount of any tax, whether before or after payment, may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, it being understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceedings brought by Lessee, and Lessee covenants to pay, and to indemnify and save Lessor harmless from, any such costs or expenses. Lessee shall be entitled to any refund of any such tax and penalties or interest thereon which have been paid by Lessee or by Lessor and reimbursed to Lessor by Lessee.

(d) In the event Lessor fails to timely pay any Imposition affecting the Land or Development which Lessor is obligated to pay, Lessee may (but shall not be required to) pay such Imposition and seek reimbursement from Lessor for such costs, which reimbursement shall be made promptly following Lessee's request therefor.

(e) As used herein, the term "**Property Taxes**" shall include all general and special taxes, assessments, duties and levies, charged and levied upon or assessed by any governmental authority against the Development, including the Land, the Improvements, any other improvements situated on the Land other than the Improvements, the various estates in the Land and the Development, any leasehold improvements, fixtures, installations, additions and equipment, whether owned by Lessor or Lessee. Further included in the definition of Property Taxes herein shall be general and special assessments, license fees, levy or tax (other than federal or state income or gift tax, and any franchise, capital stock, inheritance or estate taxes)

imposed by any authority having the direct or indirect power to tax, as against any legal or equitable interest of the Lessor and/or Lessee in the Land or in the Development or on the act of entering into leases or any tax, fee, or charge with respect to the possession, leasing, transfer of interest, operation, management, maintenance, alteration, repair, use or occupancy of the Development, or any tax imposed in substitution, partially or totally, for any tax previously included within the definition of Property Taxes. Further, if at any time during the term of this Ground Lease the method of taxation or assessment of real estate or the income therefrom prevailing at the time of execution hereof shall be, or has been altered so as to cause the whole or any part of the taxes now or hereafter levied, assessed or imposed on real estate to be levied, assessed or imposed upon Lessor, wholly or partially, as a capital levy, business tax, permit or other charge, then such new or altered taxes, regardless of their nature, which are attributable to the land, the Improvements or to the Development shall be deemed to be included within the term "Property Taxes" for purposes of this Subsection, whether in substitution for, or in addition to any other Property Taxes. However, with respect to any general or special assessments which may be levied upon or against the Land or which may be evidenced by improvement or other bonds, or may be paid in annual or semiannual installments, only the amount of such installment, prorated for any partial year, and statutory interest shall be included within the computation of Property Taxes for which the Lessee is responsible hereunder.

ARTICLE 3

CONSTRUCTION OF LESSEE IMPROVEMENTS; REHABILITATION AND MAINTENANCE; USE OF LAND

Section 3.1 Construction of Lessee Improvements.

(a) Lessee shall renovate the Improvements by constructing the Lessee Improvements substantially as indicated in the Lessee Improvement Plans. All of the Improvements, including without limitation the Lessee Improvements, shall be the fee simple property of Lessee until the termination of this Ground Lease.

(b) Lessee shall construct the Lessee Improvements on or before the dates set forth in the Schedule of Performance attached hereto as Exhibit E; provided, however, that any delay in construction due to causes beyond the reasonable control of Lessee shall extend the time in which said construction must be completed by the length of such delay.

(c) For the purpose of this Section 3.1, the term "beyond the reasonable control of the Lessee" shall mean, and is limited to, delays caused directly by acts of God; epidemics; pandemics, quarantine restrictions, strikes; lockouts; sit-downs; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials necessary in the work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by City of San Rafael insofar as they necessarily require additional time in which to complete the work; the prevention by City of Lessee from commencing or prosecuting the work because of the acts of others, excepting Lessee's contractors and subcontractors; or the prevention of Lessee from commencing or prosecuting the work because of a citywide failure of public utility service. Lessor may grant an extension of time for unavoidable delay as a result of inclement weather.

The term "beyond the reasonable control of Lessee" shall specifically not include: (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence;

and (ii) any delay in the prosecution of parts of the work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other parts of the work, nor the completion of the whole work within the time specified.

(d) Notwithstanding the above and the Schedule of Performance set forth in Exhibit E, so long as (i) Lessee is diligently prosecuting the work and (ii) any Leasehold Mortgagee has agreed to extend performance dates under its Leasehold Mortgage Documents so as not to cause a default thereunder, Lessor's consent to extend the performance dates set forth in Exhibit E shall not be unreasonably withheld.

(e) Prior to the commencement of construction of the Lessee Improvements, Lessee shall, at its own cost and expense, furnish to Lessor as obligee or co-obligee, either (i) a faithful performance bond of a surety company licensed to transact business in the State of California and satisfactory to Lessor with Lessee's contractor or contractors as principal, in a sum not less than one hundred percent (100%) of the estimated cost of construction, and a labor and materials bond of a surety company licensed to transact business in the State of California and satisfactory to the Lessor with Lessee's contractor or contractors as principal in a sum not less than 50% of the total estimated cost of the construction contract or contracts for the Lessee Improvements, guaranteeing respectively faithful performance and the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said construction work or labor done thereon of any kind whatsoever, or (ii) other instrument of security or completion assurance agreement or payment assurance agreement acceptable to the Leasehold Mortgagees and approved by the Lessor to guarantee completion of such construction and payment of all such items. In the event that Lessee obtains from its contractor or contractors such bonds, security or assurance agreements in like amount which is satisfactory to Lessor, Lessor, upon application by Lessee and upon naming Lessor an additional obligee of Lessee's principal and surety under such bonds or agreements, will release Lessee from Lessee's obligation to provide its bonds, agreements or instruments of security pursuant to this Section 3.1(e).

Section 3.2 Alterations.

(a) Following completion of the Lessee Improvements, Lessee shall, subject to the Leasehold Mortgage Documents, have the right to further alter, modify or rehabilitate the Improvements (together, "**Alterations**") as Lessee shall deem desirable; provided that for any Material Alterations, Lessor's prior written consent shall first have been obtained. "**Material Alterations**" means (a) the construction of any new additional building or structure, (b) an increase in the height of the Improvements, (c) demolition or removal of all or any substantial part of the Improvements; (d) change in the number of Dwelling Units or total square footages of the Dwelling Units; (e) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Lessee uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (f) reconstruction following fire or other casualty in excess of \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Commencement Date. Lessee shall also obtain building permits for all Alterations to the extent required by City of San Rafael codes and other customary requirements.

(b) Fee simple title to all of the Improvements (including without limitation the Lessee Improvements) shall be in and remain in Lessee for and during the entire Term of the Ground Lease, but at the expiration of the Ground Lease Term, or upon the sooner termination of this Ground Lease (unless a New Lease is executed), title to the Improvements shall vest in Lessor,

free and clear of all claims to or against them by Lessee or any third person, except those existing and created pursuant to the terms of this Ground Lease or those remaining on title with the consent or at the request of the Lessor. Lessee agrees to execute at the time of such expiration or termination a quitclaim deed for the Improvements to Lessor to be recorded at Lessor's option and at Lessor's sole cost and expense. Lessee shall defend, indemnify and hold Lessor harmless against any and all claims, liability and losses arising from such claims or from Lessor's exercise of the right conferred by this Section 3.2(b).

(c) Lessor shall have the right at all reasonable times to post, and keep posted, on the Land and Improvements any notices which Lessor may reasonably deem necessary for the protection of Lessor and of the Land from mechanics' liens or other claims. Lessee shall give Lessor ten days' prior written notice of the commencement of the Lessee Improvements and any Alterations that could give rise to mechanics' liens to be done on or about the Land or Improvements to enable Lessor to post such notice.

(d) Lessee agrees that the Improvements and any maintenance, repair work, Alterations, replacements and/or additions in connection therewith (including without limitation the Lessee Improvements) shall be of good quality. Lessee shall have no authority to place any lien or any encumbrances upon the fee title to the Land, or in any manner to bind the interest of Lessor in the Land or, except as provided elsewhere in this Ground Lease, to assign the rentals payable to Lessor under this Ground Lease for any claim in favor of any person dealing with Lessee. Lessee covenants and agrees promptly to pay all sums legally due and payable by Lessee on account of any labor performed or materials supplied for which a lien can legally be asserted against Lessee's leasehold interest in the Land or Lessee's fee title to the Improvements thereon. In the event any mechanic or materialmen's lien is filed against the Land, Lessee at its expense, shall promptly cause such lien to be removed by bonding or otherwise. If Lessee disputes liens or claims of materialmen, mechanics or laborers, upon the Land or the Improvements, regardless of whether such amounts are payable by Lessor or Lessee, 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. During any such contest, Lessee shall (by the payment of such disputed charges, if necessary) prevent any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Land.

Section 3.3 Permits, Licenses and Easements.

Lessor (as the lessor hereunder and not as a government authority having jurisdiction over the Development) agrees that, within ten days after receipt of written request from Lessee, it will (at no expense to Lessor) join in all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which Lessee may perform in connection with the Development, and will also join in any grants of easements for public or private utilities useful, desirable or necessary to the proper economic development of the Land or to the improvements to be constructed thereon, if required to do so by such governmental or other bodies (including without limitation utility companies). Nothing herein will limit the City's rights in a Proprietary Capacity or Governmental Capacity in accordance with Section 3.10.

Section 3.4 Use of Development.

Lessee shall cause the Development to be used solely for purposes specified in Section 2.4(a), consistent with all applicable zoning and environmental laws of any governmental

authority having jurisdiction over the Development. Lessee agrees to comply reasonably, promptly and effectively with all applicable and lawful statutes, rules, orders, ordinances, requirements and regulations of the State of California, the Federal Government, the City and any other governmental authority having jurisdiction over the Development. Lessee shall have the right, if in good faith and on reasonable grounds, to dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Lessee agrees that any such contest shall be prosecuted to a final conclusion as speedily as possible. Except to the extent City is acting in a Governmental Capacity in accordance with Section 3.10, Lessor agrees upon request by Lessee to sign, promptly and without charge therefor to Lessee, all applications for licenses and permits required by Lessee for the lawful conduct and operation of any business on the Land or in the Improvements, including, without limitation, applications for occupancy permits, provided that the cost of obtaining such licenses and permits shall be borne by Lessee, and to the extent such participation by the Lessor is required by the body receiving such application.

Section 3.5 Maintenance of the Improvements and the Land.

During the Term of this Ground Lease, Lessee or its designee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Improvements and Land in good repair and tenantable condition, except for ordinary wear and tear, and in full compliance with all Leasehold Mortgage Documents.

Section 3.6 Utilities.

Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal or other utilities or services supplied to the Development, and Lessee will pay or cause same to be paid currently and as due. Lessor without limitation of the foregoing acknowledges that Lessee may require each Resident to pay for utility charges for each Resident's Dwelling Unit.

Section 3.7 Condition of Land.

Lessor has knowledge that prior to the Original Ground Lease certain petroleum hydrocarbons had come to be located on or beneath the Land from an underground fuel tank. The fuel tank and contaminated soil surrounding the area of the tank were removed before the Original Ground Lease; however, some petroleum hydrocarbons or dirt contaminated with such materials or substances may have remained on the Land thereafter. Lessee has knowledge of the facts in the preceding sentence and agrees to lease the Land in an "as is" condition, with no warranty, express or implied, by the Lessor as to the condition of the soil, its geology, the presence of known or unknown faults or the former presence of petroleum hydrocarbons. It shall be the sole responsibility of the Lessee at its expense to investigate and determine the soil conditions for the Lessee Improvements to be constructed thereon and for the Improvements to be leased, owned and operated thereon, including the presence of potentially toxic materials or soils.

If the soil conditions are not in all respects entirely suitable for the use or uses to which the Land is currently being put and will be put under this Lease, it is the sole responsibility and obligation of Lessee, at its sole cost, to take such action as may be necessary to place the soil conditions of the Land in a condition entirely suitable for the Lessee's purposes under this Lease, subject to all other provisions contained in this Ground Lease, including Section 10.20.

Section 3.8 “As-Is, Where-IS” Existing Improvements.

Lessor makes no warranty, express or implied, regarding the condition of the Land or any physical improvements to the Land existing as of the Commencement Date, including without limitation the existing Improvements. Lessee had inspected the Land and all improvements and acknowledges that it is leasing the Land and, as between Lessor and Lessee, is acquiring fee title to the improvements thereon existing as of the Commencement Date in an “as is” condition.

Section 3.9 Management.

Lessee shall direct and supervise the operation and management of the Development and shall, at all times during the term of this Ground Lease, maintain or employ a professionally trained staff to manage the Development. Lessor hereby consents to management of the Development by Bridge Property Management Company or Ecumenical Association for Housing; provided, however, that Lessor may require Lessee to remove any manager of the Development within 120 days of notice from Lessor if Lessor determines there is good and sufficient cause for such removal, and provided, further, that Lessor provides Lessee with the opportunity to contest Lessor’s reasons for the removal of the management agent. Lessee shall not contract with another person to manage the Development without Lessor’s consent, which shall not be unreasonably withheld.

Section 3.10 Proprietary and Governmental Roles: Actions by City.

Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the Lessor in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on Lessor shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Ground Lease. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from Lessor under applicable Law, nor guarantee that Lessor, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Lessee understands that Lessor may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

Section 3.11 City Manager Authority and Limitations.

Any amendment to this Ground Lease which affects or relates to: (1) the Term of this Ground Lease; (2) the permitted use of the Land; (3) rent amounts and other monetary payments by Lessor; or (iv) any other material provision of this Ground Lease, shall require approval by the Lessor’s City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Lessor is entitled to provide under this Ground Lease, including without limitation: (I) approvals of Material Alterations under Section 3.2; and (II) rules for a CASp inspection under Section 10.7.

Section 3.12 City Leasehold Mortgage Documents.

Nothing in this Ground Lease shall limit any City right under the City Leasehold Mortgage Documents.

**ARTICLE 4
LEASEHOLD MORTGAGES**

Section 4.1 Mortgage of Leasehold and Improvements.

Lessee shall have the right to encumber the Development (i.e., the Improvements and the leasehold estate created by this Ground Lease) by whatever security instruments are used in the locale of the Land, including without limitation deeds of trust, security deeds, assignments of rents, issues and profits, and conditional deeds, as well as financing statements, security agreements and documentation required pursuant to the Uniform Commercial Code (each, a “**Leasehold Mortgage**”) to secure repayment of any loan and associated obligations of Lessee in connection with the acquisition, construction, rehabilitation or refinancing of the Development. The term “Leasehold Mortgage” shall also include any instruments required in connection with a sale leaseback transaction.

Section 4.2 Notice to and Rights of Leasehold Mortgagee.

(a) During the continuance of any Leasehold Mortgage and until such time as the lien of any such Leasehold Mortgage has been extinguished, the Leasehold Mortgagees shall have all rights provided in this Article 4. Lessor shall not accept any cancellation or surrender of this Ground Lease, Lessee shall not make any election or waiver to terminate, cancel or surrender this Ground Lease, nor shall Lessor or Lessee consent to any amendment or modification of this Ground Lease without, in each instance, the prior written consent of all Leasehold Mortgagees. Without limiting the foregoing, no election by Lessee to terminate this Ground Lease shall be effective unless the same is contained in a written instrument signed by Lessee and each Leasehold Mortgagee.

(b) When giving any notice to Lessee with respect to this Ground Lease or any provision hereunder, Lessor shall also give a concurrent copy of each such notice to any Leasehold Mortgagee who shall have given Lessor a written notice requesting such notice and specifying its name and address. No notice by Lessor to Lessee shall be deemed to have been given unless, and until, a copy thereof shall have been delivered to each Leasehold Mortgagee as set forth herein. The names and addresses of the initial Leasehold Mortgagees and Investor are set forth on Exhibit B attached hereto, and this shall constitute such Leasehold Mortgagees’ and Investor’s request for copies of all notices at such addresses pursuant to this Section 4.2(b). All notices by Lessor to Leasehold Mortgagees and Investor shall be given by registered or certified mail, return receipt requested, or reputable courier service with confirmation, addressed to the Leasehold Mortgagees or Investor, as applicable, at the address last specified to Lessor by the Leasehold Mortgagees and shall be effective upon receipt by such recipient(s) (or refusal to accept delivery by such recipient(s)).

(c) In the event Lessee shall default in the performance of any of the terms, covenants, agreements or conditions of this Ground Lease on Lessee’s part to be performed, any Leasehold Mortgagee shall have the right, but not the obligation, within the grace period available to Lessee for curing such default and such additional period permitted under Section 4.2(d), to cure such default, whether the same consists of the failure to pay rent, to effect any insurance, to pay any

taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under the Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of the Lease, and the Lessor shall accept any such performance by any Leasehold Mortgagee as though the same had been done or performed by Lessee. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Land and Improvements for purposes of accomplishing any of the foregoing.

(d) In case of a default by Lessee in the payment of money or the performance of any other obligation due under this Ground Lease, Lessor will take no action to effect a termination of this Ground Lease by reason thereof unless, following the expiration of the grace periods (if any) otherwise granted to Lessee hereunder, including, without limitation, under Section 9.1, such default has continued beyond 60 days in the case of any default resulting from Lessee's failure to pay money due to Lessor (a "**Monetary Default**"), and beyond 180 days, in the case of any other default by Lessee hereunder (a "**Non-Monetary Default**"), after Lessor has given written notice to each Leasehold Mortgagee and Investor of such Monetary Default or Non-Monetary Default, as applicable and Lessor's intent to terminate the Ground Lease as a result of such default, it being the intent hereof and the understanding of the parties that any Leasehold Mortgagee and Investor shall be allowed up to, but not in excess of 60 days in the case of a Monetary Default, and 180 days in the case of a Non-Monetary Default by Lessee, to cure such default, in addition to the cure and grace periods (if any) otherwise granted to Lessee under this Ground Lease, including without limitation Section 9.1. Notwithstanding the foregoing or anything else to the contrary contained herein, in the case of any Non-Monetary Default, Lessor shall take no action to effect a termination of this Ground Lease by reason thereof if, within 180 days after the Leasehold Mortgagees and Investor receive written notice thereof, as provided for in this Section 4.2(d), a Leasehold Mortgagee or Investor has either:

(i) commenced to cure such default and to proceed diligently with such cure thereafter, if such default can be cured by the Leasehold Mortgagee without the Leasehold Mortgagee obtaining possession of the Development;

(ii) commenced proceedings to obtain possession of the Development (including possession by a receiver) and proceeded diligently to obtain such possession and to cure such default in the case of default which can be cured only after the Leasehold Mortgagee has obtained possession thereof; or

(iii) instituted foreclosure proceedings (either judicial or non-judicial) and thereafter to diligently proceed to complete such foreclosure proceedings (either judicial or non-judicial) or otherwise acquire Lessee's interest under this Ground Lease with reasonable and continuous diligence in the case of a default which cannot be cured in the manner set forth in subparagraphs (i) or (ii) above. As long as any Leasehold Mortgagee is diligently proceeding to complete foreclosure, the Lessor shall not terminate the Ground Lease. No Leasehold Mortgagee shall be required to continue such possession or continue such foreclosure proceedings (either judicial or non-judicial) if the default which prompted the service of such a notice has been cured. No Leasehold Mortgagee shall be obligated to cure any Monetary Default which has occurred more than 90 days before such Leasehold Mortgagee's receipt of notice of such default, in order to preserve its interest under its Leasehold Mortgage Documents or to exercise any of the rights granted to it under this Ground Lease. Nothing herein shall require a Leasehold Mortgagee who has acquired Lessee's leasehold interest and has taken possession of the Development to cure any Non-Monetary Default which is not reasonably capable of being cured by such Leasehold Mortgagee, and such default shall be deemed to be waived following Leasehold Mortgagee's

acquisition of Lessee's leasehold interest and such Leasehold Mortgagee's timely cure of all Monetary Defaults and all Non-Monetary Defaults which are reasonably capable of cure by such Leasehold Mortgagee in accordance with the foregoing provision.

(e) All right of Lessor to terminate the Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Lessor having first given to each Leasehold Mortgagee written notice of the default as required under Section 4.2(b), and each Leasehold Mortgagee having failed to remedy such default or acquire the Leasehold or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.4(d).

(f) If a Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified in this Section 4.2 for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Ground Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

(g) Lessor agrees that, in the event of termination of the Lease for any reason (including without limitation by reason of any default by Lessee or by reason of the disaffirmance thereof by a receiver, liquidator or trustee for Lessee or its property):

(i) Lessor shall (1) promptly give each Leasehold Mortgagee written notice of such termination and (2) if requested by any Leasehold Mortgagee, enter into a new lease of the Land ("**New Lease**") with the most senior Leasehold Mortgagee requesting a New Lease, which New Lease shall commence as of the date of termination of this Ground Lease and shall run for the remainder of the Ground Lease Term, at the same Rent and additional rent and upon the same terms, provisions, covenants and agreements, and subject to the rights, if any, of any parties then in possession of any part of the leasehold estate, provided:

(1) The Leasehold Mortgagee shall make written request upon Lessor for the New Lease not later than 60 days after the date such Leasehold Mortgagee receives written notice of the termination from Lessor;

(2) The Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the New Lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to the Ground Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of Lessee's default;

(3) The Leasehold Mortgagee shall perform and observe all covenants in this Ground Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated Ground Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Leasehold Mortgagee; and

(ii) The lessee under the New Lease shall have the same right, title and interest in and to the Improvements as Lessee had under the terminated Ground Lease immediately prior to its termination, and such New Lease shall be senior in priority to all mortgages, deeds of trust, or other lien or charge or encumbrance on the Land. The New Lease

shall be accompanied by a conveyance of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor) for a term of years equal to the term of the New Lease, subject to the reversion in favor of Lessor upon expiration or sooner termination of the New Lease.

(h) Nothing herein contained shall require any Leasehold Mortgagee to enter into a New Lease pursuant to Section 4.2(g), nor to cure any default of Lessee referred to above.

(i) Except as provided in Section 4.2(j), during the period that a Leasehold Mortgagee shall be in possession of the Land and/or Development and/or during the pendency of any foreclosure proceeding instituted by a Leasehold Mortgagee, subject to the cure periods set forth in Section 4.2(d)(iii), the Leasehold Mortgagee shall pay or cause to be paid the Rent specified in Section 2.3 and all other charges of whatever nature payable by Lessee hereunder which have been accrued and are unpaid and will continue to pay, when due, all such amounts which accrue thereafter during such Leasehold Mortgagee's possession of the Development.

(j) In the event two or more Leasehold Mortgagees exercise their rights hereunder, and there is a conflict which renders it impossible to comply with all such requests, the Leasehold Mortgagee holding the most senior holding the most senior Leasehold Mortgage shall prevail.

(k) Upon the request of any Leasehold Mortgagee, Lessor agrees to execute any amendment to this Ground Lease which does not adversely affect Lessor's rights hereunder, subject to Section 10.4.

(l) Any Investor shall have the same notice and cure rights as the Leasehold Mortgagee as set forth in this Section 4.2 for so long as it is a limited partner of Lessee; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 4.2(d), if it is attempting with diligence and in good faith to remove the general partner of Lessee. The address for any notices to Investor, as of the date hereof, is provided in Article I.

(m) Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the Development from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of, or a default under, the Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Ground Lease.

(n) In the event any Leasehold Mortgagee or any designee of it becomes the Lessee under this Ground Lease or under any New Lease obtained pursuant to Section 4.2(g), above, the Leasehold Mortgagee or its designee shall be personally liable for the obligations of Lessee under this Ground Lease or New Lease only to the extent that they arise during the period of time that the Leasehold Mortgagee or its designee constitutes the actual beneficial holder of the leasehold estate. The Leasehold Mortgagee's, or its designee's, right thereafter to assign this Ground Lease or the New Lease shall not be subject to any restriction.

(o) Notwithstanding anything to the contrary contained herein, under no circumstances shall any Leasehold Mortgagee (or its designee), whether before or after a foreclosure of its Leasehold Mortgage (or acceptance of a deed in lieu thereof), be obligated to

pay any amounts or perform any obligations owing to Lessor under the City Leasehold Mortgage Documents.

Section 4.3 Registration of Leasehold Mortgagees and Investor(s).

Upon written request by Lessor, Lessee shall provide written notice to Lessor of the name and address of each Leasehold Mortgagee and each Investor under this Ground Lease.

Section 4.4 Notice and Right to Cure Defaults Under Leasehold Mortgages.

Upon the recording of the Memorandum pursuant to Section 10.6, Lessee on behalf of Lessor shall cause to be recorded in the office of the County Recorder of Marin County requests for copies of any notice of default or notice of sale under the Leasehold Mortgages.

Section 4.5 Priorities.

No deed of trust, mortgage, lien, encumbrance, restriction or exception shall be superior to any of Lessor's interests in the Land.

Section 4.6 No Merger.

In the event Lessee acquires the fee estate of Lessor in the Land, except with the written consent of all Leasehold Mortgagees there shall be no merger of Lessee's leasehold and fee estates, but rather the lien of such mortgage, deed of trust or other encumbrance shall continue and apply to the entire right, title and interest of Lessee.

ARTICLE 5

INSURANCE

Section 5.1 Required Insurance Coverage.

(a) Fire and Special Coverage Endorsement. Lessee shall during the Term of this Ground Lease keep the Development insured against loss or damage by fire, and all other risks as may be included in the standard form of extended coverage endorsement (including flood if the Land is located in flood zone A or V, and including earthquake to the extent available at commercially reasonable rates or otherwise required by a Leasehold Mortgagee), in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the buildings and Improvements or any other amount required by the Leasehold Mortgagees and approved by Lessor which is reasonably and commercially available.

(b) Liability and Property Damage Insurance. During the Term of the Ground Lease, Lessee shall keep in full force and effect a policy or policies of public liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of the Development and/or the Land. If reasonably and commercially available, the limits of such insurance shall not be less than ten million dollars (\$10,000,000) combined single limit for injury to persons or death for any one occurrence, and not less than five million dollars (\$5,000,000) for property damage to others' property.

(c) Workers' Compensation Insurance. Lessee shall carry workers' compensation insurance covering all persons employed by Lessee in connection with the Development and with

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

(d) **Builders Risk Insurance.** Lessee shall require its contractor(s) to carry builder's risk insurance, at contractor's own cost and expense, at all times during the construction of the Improvements and until Lessee has filed with the Lessor a certificate of fire, liability and property damage insurance on the completed Improvements, and shall provide to Lessor prior to commencement of construction a certificate evidencing the same. Lessee shall request its contractor's insurance carrier to provide a certificate which shall state that the insurance coverage shall not be cancelled or excluded on account of completion, occupancy or use of the improvements unless and until (1) Lessor is given at least 30 days prior written notice of cancellation after completion of construction or (2) there is on file with Lessor with respect to the Improvements the certificate required evidencing liability and property damage insurance coverage.

(e) **Review.** The public liability and property damage insurance requirements may be reviewed by Lessor every five years, for the purpose of (in consultation with its insurance advisors) adjusting the specific policy requirements, and minimum limits of such insurance from time to time, to requirements and minimum limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. However, in no event will Lessee be required to change specific policy requirements more frequently than every five years, nor increase the amount of coverage for any five-year period by more than the lesser of (1) 50% and (2) two times the CPI increase since the last increase under this Section.

Section 5.2 Insurance Policies and Premiums.

(a) All policies of insurance required under this Ground Lease shall name the Lessor, including its members, officers, employees and agents, and the Leasehold Mortgagees, as additional insureds as their respective interests may appear; provided, however, that the Leasehold Mortgagees for so long as the Leasehold Mortgages are outstanding, shall be added to the "Loss Payable Endorsement" of all insurance policies required to be carried by Lessee hereunder, and all insurance proceeds shall be payable to the most senior Leasehold Mortgagee and applied in accordance with the terms of such Leasehold Mortgagee's Leasehold Mortgage Documents and applicable Law. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to the Leasehold Mortgagees and the Lessor.

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

Section 5.3 Proceeds of Insurance Upon Damage or Destruction.

(a) For so long as a Leasehold Mortgage on the Development is outstanding, all fire and special or extended coverage (casualty) and builders' risk insurance proceeds shall be applied, subject to the rights of the most senior Leasehold Mortgagee, to the payment of the costs of repairing or rebuilding that part of the Development damaged or destroyed if Lessee agrees in writing within 90 days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible. If the Development is not repaired or replaced, all such proceeds shall be applied in a manner consistent with the terms of the most senior Leasehold Mortgage Documents. The balance, if any, after payment to the most senior Leasehold Mortgagee, shall, subject to the

rights of the other Leasehold Mortgagees, be paid to Lessee and, subject to the prior written consent of each Leasehold Mortgagee, Lessee may terminate this Ground Lease, in which case this Ground Lease shall become void from the time of termination, and from that date the parties hereto shall be released from further obligation hereunder.

(b) In the event all Leasehold Mortgages have been paid in full, all insurance proceeds received under the policies set forth in this Article 5 shall be applied to the payment of the costs of repairing or rebuilding that part of the Development damaged or destroyed, if Lessee agrees in writing within 90 days after the payment of the proceeds of insurance that such repair or rebuilding is economically feasible. If Lessee decides that such repair or replacement is not economically feasible, the proceeds shall be paid to Lessee and this Ground Lease shall terminate, and shall become void from the time the decision is made by Lessee to rebuild, and from that date the parties hereto shall be released from further obligation hereunder.

(c) Upon the occurrence of any loss, damage or destruction to the Improvements or operations of the Development resulting from such damage or destruction, Lessee's obligation to pay rent as set forth in Section 2.3 (other than Monitoring Fee) shall be abated, subject to the following:

(i) If only a portion of the Improvements is damaged or destroyed, the rent (other than Monitoring Fee) shall be abated or reduced by the percentage of the amount of damage or destruction to the Improvements until the Improvements are repaired or rebuilt and approved for occupancy by the City.

(d) Notwithstanding anything to the contrary contained herein, in no event may Lessor or Lessee exercise any right to terminate the Lease in connection with any casualty or similar matter without the prior written consent of each Leasehold Mortgagee (each, in its sole and absolute discretion).

Section 5.4 Hold Harmless and Indemnity.

(a) Indemnification of Lessor. To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Lessee shall indemnify and hold Lessor harmless from and shall defend (including payment of attorney's fees) Lessor against all liability, penalties, losses, damages, costs and expenses including attorney's fees, claims or judgment arising from any injury to any person or persons or any damage to any property occurring in, on or about the Development and/or the Land, or as a result of any accident or other occurrence during the Term, occasioned in any way as a result of Lessee's or Lessee's officers', employee', agents', servants', concessionaires', licensees', contractors' or invitees' use, maintenance, occupation or operation of the Development and/or the Land; provided, however, that Lessee shall not be required to indemnify Lessor for any damage or injury of any kind arising as the result of Lessor's negligent act or omission or misconduct or that of its officers, agents, employees or contractors. Notwithstanding the foregoing or anything else to the contrary contained herein, but without limiting Lessor's rights under any insurance maintained by Lessee, no Leasehold Mortgagee or subsequent lessee shall be required to indemnify Lessor for any act or omission of the prior lessee under this Ground Lease (or to cure any failure of any such prior lessee to indemnify the Lessor).

(b) Indemnification of Lessee. Lessor shall indemnify and hold Lessee harmless from and shall defend (including payment of attorneys' fees) Lessee against all liability, penalties, losses, damages, costs and expenses including attorneys' fees, claims or judgment arising from

any injury to any person or persons or any damage to any property occurring in, on or about the Development and/or the Land, or as a result of any accident or other occurrence during the Term occasioned in any way as a result of Lessor's or Lessor's officers', employees', agents', servants', concessionaires', licensees', contractors' or invitees' use, maintenance, occupation or operation of the Development and/or the Land; provided, however, that Lessor shall not be required to indemnify Lessee for any damage or injury of any kind arising as the result of Lessee's negligent act or omission or misconduct or that of its officers, agents, employees or contractors.

ARTICLE 6

PROVISIONS RESPECTING CONDEMNATION AND DAMAGE OR DESTRUCTION OF DEVELOPMENT

Section 6.1 Condemnation or Damage or Destruction of Development.

(a) If the Development or any part thereof shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, the whole compensation therefore shall be paid directly to the most senior Leasehold Mortgagee, subject to the terms of the Leasehold Mortgage Documents and applicable Laws. In the event that the Leasehold Mortgages have been paid in full, all proceeds resulting from any taking or condemnation of the Development or any portion thereof, shall be paid to Lessee.

(b) Subject to the rights of the most senior Leasehold Mortgagee, all condemnation proceeds received by the Leasehold Mortgagees, or paid to Lessee, in compensation for taking of less than substantially all of the Development shall be applied as follows:

(i) If the Development or any part thereof is taken without any material loss of or damage resulting to the Development, but creating a right to compensation therefor, the net condemnation award shall be applied pursuant to the terms of the most senior Leasehold Mortgage Documents, or otherwise, subject to the rights of the other Leasehold Mortgagees, be paid to Lessee;

(ii) If the Development or any part thereof is taken with material loss of or any damage to the Development resulting from such taking, and Lessee agrees in writing within 90 days after payment of the condemnation award that continuation of the operation of the Development and reconstruction or restoration of all or any part of the Development taken or damaged is economically feasible, then the net condemnation award shall be applied, subject to the rights of the most senior Leasehold Mortgagee, first to the reconstruction or restoration, and the balance, if any, subject to the rights of the other Leasehold Mortgagees, shall be paid to Lessee. In the event of such taking and subsequent determination to proceed with reconstruction or restoration, the rights and obligations of the parties to this Ground Lease shall continue in full force and effect, subject to the rights of the most senior Leasehold Mortgagee.

(c) Upon the occurrence of a loss of, or any damage to, the Development or operation of the Development, resulting, from such taking, Lessee's obligation to pay Rent as set forth in Section 2.3 (other than Monitoring Fee) shall be abated, subject to the following:

(i) If only a portion of the Improvements is damaged or destroyed, the Rent (other than Monitoring Fee) shall be abated or reduced by the percentage of the amount of damage or destruction to the Improvement.

(d) If the entire Development shall be taken as provided in this Section, or, in the case of a partial taking, there is a decision not to continue with the Development and carry out its reconstruction or restoration pursuant to (b) above, then the net condemnation award for the Development shall be paid to the most senior Leasehold Mortgagee in accordance with the terms of that Leasehold Mortgagee's Leasehold Mortgage Documents, and the balance (if any) shall be paid, subject to the rights of the other Leasehold Mortgagees, to the Lessee. At the election of Lessor and Lessee, this Ground Lease shall then terminate, and shall become void from the time possession thereof is required for public use, and from that date the parties hereto shall be released from further obligation hereunder.

(e) Lessor shall be entitled to all condemnation proceeds for the taking of the Land in the event the Land is taken by eminent domain, provided that the award to which Lessor is entitled for such taking shall take into consideration the fact that Lessor's interest in the Land is limited to the fee interest in the Land, as encumbered by this Ground Lease and, upon the expiration of the Term, a reversionary interest in the Improvements.

(f) Notwithstanding any other provision of this Ground Lease, in no event may Lessor or Lessee exercise any right to terminate the Lease in connection with any condemnation or similar matter without the prior written consent of each Leasehold Mortgagee (each in its sole and absolute discretion).

Section 6.2 Lessee, Lessor and Leasehold Mortgagees to be Made Parties in Legal Proceedings.

(a) In the event proceedings shall be instituted (1) for the exercise of the power of eminent domain, or (2) as a result of any damage to or destruction of the Development, Lessee, Lessor, and the Leasehold Mortgagees (at their election) shall be made parties thereto, and if not made parties thereto by the petitioning party, at their election, shall be brought into the proceedings by appropriate proceedings of parties thereto so that adjudication may be made of such damages, if any, as are to be paid to Lessee, Lessor, or the Leasehold Mortgagees as compensation for loss of their rights in the Development or the Land, or for damage to or destruction of the Development.

(b) The Lessor, Lessee and the Leasehold Mortgagees shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all (1) legal proceedings affecting Lessee, the Lessor and the Development, or (2) claims and demands for damages on account of damage to or destruction of the Development, or for damages on account of the taking or condemnation of the Development or the Land.

Section 6.3 Waiver of Eminent Domain.

(a) So long as Lessee is not in breach of any of the material terms, conditions or covenants of this Ground Lease, after notice and the expiration of applicable cure periods, the Lessor agrees not to exercise its own right of eminent domain against the Development for the term of this Ground Lease.

Section 6.4 Waiver of CCP Section 1265.130.

Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Marin, State of California to terminate this Ground Lease in the event of a partial taking of the Development.

ARTICLE 7

PARTICULAR COVENANTS

Section 7.1 Non-Discrimination Clause.

(a) Lessee herein covenants by and for Lessee and Lessee's successors and assigns and all persons claiming under Lessee or through Lessee that this Ground Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital or familial status, national origin or ancestry, or handicap, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Land herein leased nor shall Lessee or any person claiming under or through Lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Residents or vendees in the Land herein leased.

(b) The obligations of Lessee and the Lessor to comply with this section inures to the benefit of each to the other and to the Leasehold Mortgagees where applicable. The Leasehold Mortgagees, as appropriate, shall be entitled to invoke any remedies available by Applicable Law to redress any breach of these subsections or to compel compliance therewith by Lessee and Lessor.

Section 7.2 Lessee to Extend Vendor's Warranties to Lessor.

Lessee covenants that it will, to the extent available at no cost to Lessee, extend to the Lessor all vendor's warranties received by Lessee in connection with the provision, construction and equipment of the Land and any improvements thereon, including any warranties given by contractors, manufacturers or service organizations who have performed construction work on the Land; provided, however, that Lessor's rights to such warranties shall be subordinate to those of the most senior Leasehold Mortgagee. If requested, Lessee shall execute and deliver appropriate instruments to the Lessor to accomplish the foregoing, all without cost to Lessee.

Section 7.3 Ground Leases and Contracts.

Lessee covenants that it will require a provision in all contracts involving the Development and in all leases to its Residents in the Development that these contracts and leases require compliance with the terms and conditions of this Ground Lease applicable to such contracts and leases.

Section 7.4 Lessee's Right of First Refusal.

(a) If Lessor wishes to sell or transfer its interest in the Land and this Ground Lease, Lessor shall first give 45 days' written notice to Lessee so that Lessee may have the first right to purchase the Land. The notice shall contain the purchase price and a complete description of the terms on which Lessor wishes to sell or transfer the Land. Within 45 days of receipt of the notice given by Lessor, Lessee shall in writing either accept the offer to purchase the Land on the terms provided in the notice or reject the offer. Failure to accept the offer in writing within the 45-day period shall be deemed a rejection. If the terms of the sale or transfer change or if Lessor desires to sell or transfer the Land after expiration of a 90-day period from the date Lessee receives the last notice from Lessor, the sale or transfer shall again be subject to Lessee's right of first refusal contained in this Section.

(b) In the event that Lessee exercises its right to purchase the interest of Lessor on the terms and conditions set forth in this Section, Lessor and Lessee intend that the rights under this Section shall be specifically enforceable, without limitation on the right of Lessee or Lessor to resort to any other remedy available at law. If required by a Leasehold Mortgagee, Lessee shall execute an assignment of Lessee's right of first refusal in favor of the Leasehold Mortgagee and shall notify Lessor of the assignment in writing, and Lessor hereby consents to such assignment.

(c) Notwithstanding Section 7.4(a) and Section 7.4(b), neither Lessee nor any Leasehold Mortgagee shall have a right to purchase the interest of Lessor in the Land and this Ground Lease in the event Lessor transfers all of its interest in the Land, and all of its rights and obligations under this Ground Lease from and after the effective date of the sale or transfer (A) by operation of Law, or (B) to (1) another governmental entity, (2) an entity all of whose members are also governmental entities, or (3) a not for profit entity established and operated for the purpose of affordable housing; provided, however, that in each such instance any such sale or transfer shall be expressly subject to this Ground Lease, and neither Lessee's nor any Leasehold Mortgagee's other rights arising out of this Ground Lease shall be affected or disturbed in any way by any such sale or transfer. Each covenant, agreement or obligation of Lessor under this Ground Lease is intended to and shall constitute a covenant running with the title to the Land and shall be binding upon any subsequent owner of the Land. At such time as Lessor shall sell or transfer its entire interest in the Land and this Ground Lease, all Lessor obligations and liability arising under this Ground Lease from and after the effective date of such sale or transfer shall terminate as to Lessor, and thereupon all such liabilities and obligations shall be binding upon the transferee,

Section 7.5 Estoppel Certificates.

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

Section 7.6 No Land Encumbrances.

Lessor shall not encumber the Land without the prior written consent of each Leasehold Mortgagee, which consent shall be granted or withheld in such Leasehold Mortgagee's sole and absolute discretion. Lessor hereby approves the HCD Rider substantially in form attached hereto as Exhibit C and, following the permanent conversation of the construction loan for the Lessee Improvements, the TCAC Rider substantially in form attached hereto as Exhibit D. In the event of any default under a deed of trust, mortgage or other financing document which (1) encumbers Lessor's interest in the Land and (2) is prior to the Ground Lease, Lessee may cure such default and deduct all amounts reasonably expended in so doing from the next installment(s) of rent.

ARTICLE 8

COVENANTS AND ASSURANCES OF LESSOR

Section 8.1 Lessor to Give Peaceful Possession.

(a) Lessor covenants that to its actual knowledge it is seized in fee simple of, and has good and marketable title to, the Land and that except as set forth in the Title Reports, and the HCD Rider and TCAC Rider, the Land is free of all easements, covenants, conditions and restrictions. Lessor covenants and warrants that it has the full right and authority to make this Ground Lease. Lessor covenants and warrants that so long as Lessee is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Lessee and the Residents shall have, hold and enjoy, during the Ground Lease Term, peaceful, quiet and undisputed possession of the Land herein leased without hindrance or molestation by or from Lessor or anyone acting by or through Lessor so long as Lessee.

(b) Lessor covenants and agrees that Lessor shall not mortgage, convey, pledge, or otherwise encumber the Land without the written consent of Lessee and Leasehold Mortgagees, which written consent may be withheld in the Lessee or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgagees. In such event, Lessee shall not be required, nor shall Lessee be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section shall limit any City exercise of its regulatory or governmental authority, including without limitation pursuant to Section 3.10 above

Section 8.2 Lessor to Ground Lease Development with Marketable Title.

The Lessor covenants and warrants that there are no outstanding liens and encumbrances of record that will interfere with Lessee's possession of the Land.

Section 8.3 Lessor to Obtain Necessary Governmental Approvals.

The Lessor as landlord (not as a public body) covenants that as of the date of this Ground Lease, all necessary approvals from any and all governmental agencies in compliance with all federal, state, and local laws, ordinances, and regulations requisite to leasing of the Land have been obtained.

ARTICLE 9

DEFAULTS AND REMEDIES

Section 9.1 Default of Lessee.

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

(i) Failure of Lessee to make timely payment of Rent otherwise due pursuant to this Ground Lease. All Rent payments shall first be applied to accrued and unpaid Rent and then to Rent currently due.

(ii) Failure to make any monetary payment (other than Rent) due to Lessor under the Ground Lease, and continuance of such failure for 30 days, in addition to a grace period of 21 days after receipt by Lessee of written notice from Lessor specifying such failure;

(iii) Failure of Lessee to observe and perform any other material covenant, condition or agreement hereunder on its part to be performed and (i) continuance of such failure for a period of 60 days, in addition to a grace period of 21 days, after receipt by Lessee of written notice from Lessor or its agent specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within the said 60 days and grace period, Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; and

(iv) Lessee's abandonment of the Land as determined under Civil Code Section 1951.3 or succeeding statutes.

(b) Notices given under this Section shall specify the alleged default and the applicable Ground Lease provisions and shall demand that Lessee perform this Ground Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this Ground Lease unless Lessor so elects in the notice, and in no event shall any termination of this Ground Lease be effective unless the provisions of Article 4 have been complied with.

(c) Subject to Section 10.19 and Article 6, whenever any Event of Default referred to in (a)(i), (a)(ii) or (a)(iii) above shall have occurred and be continuing, the Lessor may take whatever action at law or in equity as may appear necessary or reasonable to enforce performance or observance of any obligations, agreements or covenants of Lessee under this Ground Lease. If Lessor terminates the Ground Lease after an Event of Default, which termination right shall at all times be subject to the rights of Leasehold Mortgagees under Article 4, Lessor shall have the right to hire a property manager for the Development, to release or sell the Development, or to take any other action it desires with the Development. Upon Lessor's termination of this Ground Lease after an Event of Default, subject to the rights of Leasehold Mortgagees under Article 4, Lessee shall have no further monetary or other obligations or liabilities under this Ground Lease.

Section 9.2 Default of Lessor.

(a) Lessor shall be in default or breach of this Ground Lease if Lessor fails to observe or perform any material covenant, condition or agreement hereunder on its part to be performed, and (A) continuance of such failure for a period of 60 days after receipt by the Lessor of written notice specifying the nature of such default, or (B) if by reason of the nature of such default the same cannot be remedied within said 60 days, the Lessor fails to proceed with reasonable diligence after - receipt of the notice to cure the default.

(b) If the Lessor breaches or defaults under the Ground Lease, Lessee shall give the Lessor and the Leasehold Mortgagees written notice requiring that the breach-or default be remedied by the Lessor. If the default or breach is not cured within the time set forth in (a) above, Lessee or the Leasehold Mortgagees may take any action at law or in equity as may be necessary to protect their respective interests. Such action shall include but is not limited to the right of (i) Lessee or the Leasehold Mortgagees to cure such default and recover any expenditure with interest thereon (at the reference lending rate then in effect at the largest financial institution in the State of California, or at the maximum amount allowed under applicable law, if less), from the

Lessor within 30 days after sending to Lessor a statement therefor, (ii) any rights or remedies granted to Lessee and/or the Leasehold Mortgagees under the Leasehold Mortgage Documents or the laws of the State of California. Lessee and Leasehold Mortgagees shall have the right to offset expenses incurred by Lessee or the Leasehold Mortgagees to cure such default against Rent due under Section 2.3.

ARTICLE 10

GENERAL PROVISIONS

Section 10.1 HCD Rider and TCAC Rider.

The Ground Lease is amended by the HCD Rider and, following the permanent conversation of the construction loan for the Lessee Improvements, the TCAC Rider. In the event of any conflict or inconsistency between the other terms of the Ground Lease and either the HCD Rider or the TCAC Rider, the terms of the HCD Rider or TCAC Rider shall govern and control. In the event of any conflict or inconsistency between the HCD Rider and the TCAC Rider, the HCD Rider shall take precedence.

Section 10.2 No Third Party Beneficiary.

The provisions of this Ground Lease are for the exclusive benefit of Lessee and Lessor and their successors and assigns, and not for the benefit of any third person, nor shall this Ground Lease be deemed to have conferred any rights, express or implied, upon any third person, except those rights conferred on the Leasehold Mortgagees by this Ground Lease, with respect to which each Leasehold Mortgagee is hereby made an express third party beneficiary.

Section 10.3 Instrument is Entire Agreement.

This Ground Lease and the attached Exhibits constitute the entire agreement between the parties as to the lease of the Land by Lessor to Lessee. The Recitals, exhibits, and defined terms herein and therein, are incorporated into this Ground Lease by this reference. This Ground Lease shall completely and fully supersede all inconsistent other prior understandings or agreement, both written and oral, between the Lessor on the one hand, and Lessee or General Partner on the other hand, relating to the Ground Lease of the Land by the Lessor to Lessee, including without limitation the Option Agreement.

Section 10.4 Amendment of Ground Lease.

(a) No amendment to this Ground Lease shall be effective unless (1) the amendment is in writing and executed by both Lessor and Lessee and (2) written consent to the amendment has been obtained from each Leasehold Mortgagee.

(b) Lessor and Lessee acknowledge and agree that Leasehold Mortgagees may require amendments to this Ground Lease as a condition precedent to providing Leasehold Mortgages. Lessor agrees to cooperate with Lessee and Leasehold Mortgagees, and Lessor's approval of amendments shall not be unreasonably withheld; provided, however, that any such amendment shall not in any way (1) affect Lessor's fee estate or other interest in the Land, (2) affect the Term, rent or any amount otherwise payable to Lessor under this Ground Lease, or (3) otherwise in any material respect adversely affect any rights of Lessor under this Ground Lease or (except as otherwise expressly provided herein) Section 2.4.

Section 10.5 Notices.

all notices, demands and other formal communications hereunder shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, or (c) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party(ies), addressed:

- (1) if to the Lessor:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, California 94901

with copy to:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901

- (2) If to Lessee:

Centertown II, LP
c/o BRIDGE Housing Corporation
600 California St #900
San Francisco, CA 94108
Attn: General Counsel

And:

Centertown II, LP
EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan
Chief Real Estate Development Officer

With a copy to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attention: Erica Williams Orcharton

And:

NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, Ohio 43220
Attention: NAHT Asset Management

And

SAHF Affordable Housing Communities Fund 2019 (MS) Limited
Partnership
c/o NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, Ohio 43220
Attention: NAHT Asset Management

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill H. Goldstein, Esq.

The Lessor, the Leasehold Mortgagees and Lessee may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

Section 10.6 Recording of Memorandum.

The Lessor shall record the Memorandum of Ground Lease, substantially in the form attached hereto as Exhibit F (“Memorandum”), in Official Records.

Section 10.7 Accessibility; Disability Laws.

(a) Neither the Land nor the Improvements have undergone an inspection by a Certified Access Specialist (CASp).

(b) “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

(c) Since compliance with the Americans with Disabilities Act (“**ADA**”) and other federal and state disability laws (“**Disability Laws**”) is dependent upon Lessee’s specific use of the Land, Lessor makes no warranty or representation as to whether or not the Land complies with ADA or Disability Laws. In the event that Lessee’s use of the Land requires modifications or additions to the Improvements in order to be in compliance with the ADA or Disability Laws, Lessee agrees to make any such necessary modifications and/or additions at Lessee’s sole cost and expense.

Section 10.8 Non-Waiver of Breach.

Neither the failure of the Lessor or Lessee to insist upon strict performance of any of the covenants and agreements of this Ground Lease nor the failure by the Lessor or Lessee to exercise any rights or remedies upon default while the Lessor or Lessee is in default hereunder shall be deemed a waiver or relinquishment (1) of any covenant herein contained or of any of the rights or remedies of the Lessor or Lessee hereunder, (2) of the right in the future of the Lessor or Lessee to insist upon and to enforce by mandamus or other appropriate legal remedy a strict compliance with all of the covenants and conditions hereof, or (3) the right of the Lessor to recover possession of the Land after the expiration of applicable cure periods.

Section 10.9 Effectiveness: Counterparts.

This Ground Lease shall become effective upon the Commencement Date. This Ground Lease may be executed in two counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.10 Ground Lease Binding on Successors.

Subject to Section 4.2, this Ground Lease and all its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, Lessee and their respective successors and assigns. Without limiting the foregoing, all rights herein granted to any Leasehold Mortgagee shall also apply to any Leasehold Mortgagee of any successor or assign of Lessee.

Section 10.11 Relationship of Parties.

Nothing contained in this Ground Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of association whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges hereunder nor any other provisions contained in this Ground Lease, nor any act or acts of the parties hereto, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

Section 10.12 Termination: Holding Over.

This Ground Lease shall terminate without further notice upon the expiration of the Term hereof, and any holding over by Lessee after the expiration of said Term shall not constitute a renewal hereof or give Lessee any rights hereunder or in or to the Land, except as otherwise herein provided, it being understood and agreed that this Ground Lease cannot be renewed, extended or in any manner modified except in writing signed by Lessor and Lessee (and consented to by all Leasehold Mortgagees). Upon termination of this Ground Lease, Lessee shall convey the Improvements to Lessor by quit claim deed.

Section 10.13 Consents; Further Acts.

Whenever in this Ground Lease the consent or approval of either Lessor or Lessee is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval unless expressly provided otherwise herein. Each party to this Ground Lease agrees to perform any further acts and to execute and deliver any documents that may be reasonably convenient or necessary to carry out this Ground Lease.

Section 10.14 Construction of Words.

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, association, partnerships and corporation, and words of either gender shall include the other gender.

Section 10.15 Titles.

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

Section 10.16 Days of the Week.

A “**business day**,” as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 pm on the next business day.

Section 10.17 Invalidity of Particular Provisions.

If any provision of this Ground Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Ground Lease, or the application of such provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 10.18 Assignment.

(a) Except as provided in this Section or Article 4, Lessee shall not assign or transfer its interest in the Development or sublease all or any part of the Development or allow any other person or entity (except Lessee’s authorized representatives) to occupy or use all or any part of the Development without first obtaining Lessor’s written consent, which shall not be unreasonably withheld, provided, however, that nothing contained herein shall prohibit Lessee from conducting a multi-family residential rental business on the Development, including the renting of Dwelling Units to Residents, in accordance with the terms of this Ground Lease, nor require Lessee to obtain Lessor’s consent thereto. Lessee shall have the right to encumber its leasehold interests in accordance with Article 44. Any assignment or transfer without Lessor’s consent shall be voidable, and, at Lessor’s election, shall constitute a default. No consent to any assignment or transfer shall constitute a waiver of this Section.

(b) If Lessee or any approved successor is a partnership, a withdrawal or change, voluntarily, involuntarily or by operation of law, of a general partner or the dissolution of the partnership, or the transfer of any interest resulting from the death or incapacity of a general partner, shall be deemed a voluntary assignment requiring Lessor’s consent; provided, however, that:

(i) a transfer of any interest among the partners or to an entity wholly owned or controlled by the partner making the transfer, shall not be deemed a prohibited assignment or an assignment which requires the consent of Lessor;

(ii) the removal of a general partner by the investor limited partner pursuant to the terms of the partnership agreement shall not be deemed a voluntary assignment which requires the consent of Lessor as long as the Lessor has the prior right to approve the substitute general partner; and

(iii) Landlord consents to those purchase options and rights of first refusal in favor of Lessee's general partner or its designee pursuant to the terms of Lessee's partnership agreement, and agrees that transfer of title to the Development in accordance therewith shall not constitute a default under this Ground Lease nor require Lessor's consent, provided that Lessee gives Lessor at least 30 days prior written notice of such transfer, accompanied by documentation reasonably requested by Lessor and contact information for such transferee, and provided that the transferee agrees to assume the duties and obligations of the original Lessee respecting the Lease on the same terms as those imposed on the original Lessee.

(c) If Lessee or an approved successor is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the sale or transfer of more than 50% of the capital stock of Lessee, or more than 50% of the value of the assets of Lessee, shall be deemed a voluntary assignment requiring Lessor's consent.

(d) Anything contained in this Section to the contrary notwithstanding, a transfer by Lessee or an approved successor hereunder of the leasehold estate or any interest therein, to an entity wholly owned or controlled by Lessee or approved successor shall not constitute a voluntary assignment or require the prior approval of Lessor. Nothing contained herein shall prohibit the Lessee or require the consent of Lessor to a transfer of any interest by Lessee resulting from a sale of stock or interest by the Lessee to the public through a recognized exchange or over-the-counter.

(e) Except as otherwise specifically provided herein, no interest of Lessee in this Ground Lease shall be assignable by operation of law (including, without limitation, the transfer of this Ground Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

(i) If Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Lessee is the bankrupt; provided, however, that in the case of an involuntary petition for bankruptcy, Lessee shall have 90 days to cause such petition to be withdrawn or dismissed.

(ii) If a writ of attachment or execution is levied on this Ground Lease, which writ is not withdrawn or dismissed within 90 days.

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the premises, which appointment is not withdrawn or dismissed within 90 days.

(f) An involuntary assignment shall constitute a default by Lessee and Lessor shall have the right to exercise its remedies under this Ground Lease.

(g) Except as otherwise permitted herein, Lessor reserves the right to condition such consent upon the conditions that the financial net worth and business experience of the proposed assignee or transferee is, in the opinion of Lessor, reasonably comparable to that of Lessee.

Subject to the above condition, Lessor agrees not to unreasonably withhold its consent to any assignment or transfer.

(h) Lessee agrees to pay Lessor for Lessor's actual and reasonable costs including attorney's fees, incurred in conjunction with the processing and documentation of any such requested consent, assignment, transfer of ownership of this Ground Lease or Lessee's interest in and to the premises; provided, however, that Lessee's total obligation hereunder shall not exceed \$2,500 for each transaction, subject to adjustment by the CPI increase (if any) from and after the Commencement Date.

(i) Each transfer or assignment to which there has been consent shall be subject to Section 10.20 and shall pursuant to be an instrument in writing in form satisfactory to Lessor, and shall be executed by the transferor or assignor, and the transferee or assignee, shall agree in writing for the benefit of the Lessor herein to assume, to be bound by, and to perform the terms, covenants and conditions of this Ground Lease to be done, kept and performed by Lessee, including the payment of all amounts due or to become due under this Ground Lease directly to Lessor. One executed copy of such written instrument shall be delivered to Lessor. Failure to first obtain in writing Lessor's consent or failure to comply with this provision shall operate to prevent any such transfer or assignment from becoming effective.

(j) As used in this Section 10.18, the term "involuntary assignment" shall not include any judicial or non-judicial proceeding against the Development by a Leasehold Mortgagee.

Section 10.19 Applicable Law.

This Ground Lease shall be governed by and construed in accordance with the laws of the State of California, including its statutes of limitations but without regard to its conflict of laws principles.

Section 10.20 Requests for Approval.

Whenever Lessor or Lessee is required to obtain prior written consent on any matter from the other party, and no specific time for response is set by terms of this Ground Lease, then after notice has been duly given as required by this Ground Lease and no response has been given to the other party for ten business days after receipt of such notice, and three business days after further notice specifically identified in all **BOLD ALL CAPITAL LETTERS** as a "**SECOND NOTICE**" and specifically stating "**FAILURE TO RESPOND BY [INSERT SPECIFIC THREE BUSINESS DAYS RESPONSE DEADLINE] WILL BE DEEMED APPROVAL OF THE MATTERS CONTAINED IN THE ORIGINAL NOTICE DATED [INSERT ORIGINAL NOTICE DATE],**" then written consent shall be deemed to have been given by the party failing to respond.

Section 10.21 Non-Recourse and Non-Liability.

(a) Notwithstanding any other provision in this Ground Lease, Lessee, its partners and their respective successors and assigns, shall not have any personal liability under this Ground Lease. In the event of any default by Lessee, Lessor's remedy shall be limited to its right to terminate this Ground Lease and recover the Development as provided herein. Lessor may seek appropriate interim remedies not inconsistent herewith, but, in no event, shall Lessor assert any claim or have any right to seek or obtain any judgment against Lessee or any partners of Lessee for rent, damages or any other obligations, or exercise any offset against any assets of Lessee held by Lessor or funds owed by Lessor to Lessee or any of its partners.

(b) Similarly, no member, official or employee of Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or its successors, or on any obligations under the terms of this Ground Lease. Lessee hereby waives and releases any claim it may have against the members, officials or employees of Lessor with respect to any default or breach by Lessor or for any amount which may become due to Lessee or its successors, or on any obligations under the terms of this Ground Lease.

Section 10.22 List of Exhibits.

The following Exhibits are attached hereto and incorporated herein by this reference:

- Exhibit A: Land Legal Description
- Exhibit B: Initial Leasehold Mortgagees and Investor(s)
- Exhibit C: HCD Rider
- Exhibit D: TCAC Rider
- Exhibit E: Schedule of Performance
- Exhibit F: Memorandum
- Exhibit G: _____
- Exhibit H: _____

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

Approved as to Form:

Lessor's Attorney

Attest:

City Clerk

LESSOR:

CITY OF SAN RAFAEL, a municipal corporation

By: _____
City Manager

LESSEE:

CENTERTOWN II, LP., a California limited Partnership

By: Centertown II, LLC,
a California limited liability company, its managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation, its managing member

By: _____
Smitha Seshadri,
Executive Vice President

By: EAH Inc.,
a California nonprofit public benefit
corporation, its managing member

By: _____
Welton Jordan,
Assistant Secretary and Chief
Real Estate Development Officer

Exhibit A

LAND LEGAL DESCRIPTION

All the lands shown upon that certain Map entitled, "Map of Centertown, an Air-Space Condominium", filed for record on December 13, 1983 in Volume 18 of Maps, at Page 98, Marin County Records.

PARCEL One-A:

Beginning at a point on the Westerly line of "C" Street distant thereon 109 feet and 8 inches Northerly from the intersection of said Westerly line of "C" Street and the Northerly line of Second Street, said point of beginning being the Southeast corner of that Lot conveyed by Loretta Ceaser to John Mirata by Deed recorded in Book 165 of Deeds, at Page 269, running thence Westerly at a right angle to "C" Street and along the Southerly line of the Lot so conveyed by Ceaser to Mireta 150 feet; thence Southerly at a right angle 42 feet; thence Easterly at a right angle 150 feet to the Westerly line of "C" Street thence Northerly along the said line of "C" Street 42 feet to the point of beginning.

Being a portion of Block 15 of the Townsite of the Town of San Rafael.

The above Parcels being all the lands, as shown upon that Parcel Map entitled, "Parcel Map Being a Reversion to Acreage of Lands of San Rafael Redevelopment Agency as described in Doc. No. 89-0044735 and Doc. No. 89-0069342, Marin County Records, Portion Block 15 'Map of Townsite of San Rafael' recorded in Rack 1, Pull 4, Marin County Records, San Rafael, Marin County, California", filed for record on August 1, 1990 in Volume 24 of Parcel Maps, at Page 92, Marin County Records.

Excepting from the above described parcel all buildings, structures and improvements of every kind, now existing or to be constructed on or under the surface of the above described property for a term of years equal to and to run concurrently with the term of that certain Ground Lease between the City of San Rafael, a municipal corporation, as lessor and Centertown II, LP, a California limited partnership, as lessee a Memorandum of which was recorded _____, 2021 as Document No. 2021-_____, and any amendments thereto, Marin County Records.

APN: 011-254-19

Exhibit A

Exhibit B

INITIAL LEASEHOLD MORTGAGES AND INVESTOR(S)

Loans Secured by Leasehold Mortgages

1. Umpqua Bank – \$ _____
2. Department of Housing and Community Development – \$ _____
3. County of Marin – \$ _____
4. City of San Rafael – \$ _____
5. BRIDGE and EAH (Seller Loan) – \$ _____

Leasehold Mortgagees

Umpqua Bank
One Capitol Mall, Suite 610
Sacramento, California 95814
Attention: Monica Sharp

Department of Housing and Community Development
State of California
Asset Management and Compliance
P.O. Box 952054
Sacramento, CA 94252-2054
Attn: Program Manager
LPR Loan No.: _____

County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Attention: Housing and Federal exhibit eGrants Division

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, California 94901
Attention: _____
_____@cityofsanrafael.org

With copy to:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attn: Robert Epstein, City Attorney
rob.epstein@cityofsanrafael.org

Exhibit B

BRIDGE Housing Corporation
600 California St #900
San Francisco, CA 94108
Attn: General Counsel

EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Chief Real Estate Development Officer

Investor(s)

NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, Ohio 43220
Attention: NAHT Asset Management

And:

SAHF Affordable Housing Communities Fund 2019 (MS) Limited Partnership
c/o NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, Ohio 43220
Attention: NAHT Asset Management

With copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill H. Goldstein, Esq.

Exhibit B

Exhibit C

HCD RIDER

[to be attached]

Exhibit C

Exhibit D

TCAC RIDER

[to be attached]

Exhibit D

Exhibit E

SCHEDULE OF PERFORMANCE

Construction Financing Closing	On or about October 2021
Start of Construction	On or about November 1, 2021
Construction Complete	Nov 30, 2022 but no later than December 31, 2023
	_____ 20__
	_____ 20__
	_____ 20__

Exhibit E

Exhibit F

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

APN Nos. _____ Space Above This Line For Recorder's Use

To be recorded without fee per Government Code Section 27383
Exempt from Building Homes and Jobs Acts fee Per Government Code Section 27388.1(a)(2)

THE UNDERSIGNED DECLARES: DOCUMENTARY TRANSFER TAX IS \$ _____
_____ Computed on full value of property conveyed, or
_____ Computed on full value less liens and encumbrances
remaining at time of sale.
_____ Unincorporated area X City of San Rafael

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease is made and entered into as of this _____ day
of _____, 2021 by and between the CITY OF SAN RAFAEL, a municipal corporation
("Lessor") and CENTERTOWN II, LP, a California limited partnership ("Lessee").

RECITALS

A. Lessor is the owner of all that certain real property (the "Land") situated in the City
of San Rafael, County of Marin, California, commonly known as 855 "C" Street, and more
particularly described in Exhibit A attached hereto.

B. Lessor wishes to lease to Lessee and Lessee wishes to lease from Lessor the
Land together with all rights, privileges and easements appurtenant to the Land.

AGREEMENT

NOW, THEREFORE, Lessor and Lessee hereby agree as follows:

1. Upon the covenants and conditions and for the consideration set forth in
that certain unrecorded Ground Lease of even date herewith by and between Lessor and Lessee
(hereinafter referred to as the "Ground Lease"), Lessor does hereby lease the Land to Lessee,
and Lessee does hereby lease the Land from Lessor. By this reference the Ground Lease is
incorporated in this instrument and made a part hereof.

2. The term of the Ground Lease shall commence on _____,
2021, and shall terminate at midnight on _____, 2120, unless the term is
sooner terminated under the Ground Lease.

Exhibit F

3. Fee simple title to all buildings, structures and improvements that now, or may from time to time be situated upon, the Land and all equipment, partitions, machinery and fixtures that are now or may from time to time be used or intended to be used in connection with such improvements shall be and remain in Lessee throughout the term of the Ground Lease.

4. Lessee shall pay to Lessor during the term of the Ground Lease certain rent described more particularly in the Ground Lease.

5. Section 7.4 of the Ground Lease titled "Lessee's Right of First Refusal" grants Lessee the right of first refusal to purchase the property described in the Ground Lease. Reference is made to the Ground Lease for further particulars relating to Lessee's right of first refusal. Notice is hereby given that Lessee's right may be assigned to certain Leasehold Mortgagees defined in the Ground Lease.

6. This Memorandum of Ground Lease shall not be deemed to modify, alter or amend the Ground Lease. In the event any conflict exists between the Ground Lease and this instrument, the Ground Lease shall for all purposes govern and determine the relationship between Lessor and Lessee and their respective rights and duties.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Ground Lease effective as of the date first above written.

Approved as to Form:

LESSOR:

CITY OF SAN RAFAEL, a
municipal corporation

Lessor's Attorney

By:

[Name]

[Title]

Attest:

Secretary

LESSEE:

CENTERTOWN II, LP., a California limited
Partnership

Centertown II, LLC,
a California limited liability company, its
managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation, its
managing member

Exhibit F

By: Smitha Seshadri,
Executive Vice President

By: EAH Inc.,
a California nonprofit public benefit corporation, its
managing member

By: _____
Welton Jordan,
Assistant Secretary and Chief Real Estate
Development Officer

Exhibit F

NOTARY

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

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY

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

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit F

Exhibit A

LAND LEGAL DESCRIPTION

[same as Exhibit A above]

APN: 011-254-19

Exhibit F

CITY OF SAN RAFAEL

NOTICE OF PUBLIC HEARING

The City Council of the City of San Rafael will hold a public hearing:

- PURPOSE:** Public Hearing: To consider adoption of an ordinance approving a Ground Lease of real property at 855 C Street, to Centertown II, LP, a California limited partnership, for 99 years. This Lease is the next stage of the transaction contemplated by Resolution No. 14851, adopted by the City Council of the City of San Rafael on August 17, 2020, which approved an agreement granting an option to lease the property to Centertown II, LLC, which is an affiliate of Centertown II, LP.
- DATE/TIME/PLACE:** Monday, September 13, 2021 at 7:00 p.m.
Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County Shelter in Place Order, the San Rafael City Council hearing of September 13, 2021 will not be physically open to the public and the meeting will be streamed live to YouTube at www.youtube.com/cityofsanrafael. Instructions on how to participate online will be available on the YouTube channel. You will also be able to listen/speak by telephone. The number will be provided on agenda.
- WHAT WILL HAPPEN:** You may comment on the proposed Lease Agreement ordinance. The City Council will consider all public testimony and will then decide whether to pass the Lease to print.
- IF YOU CANNOT ATTEND:** You may send a letter to City Clerk, City of San Rafael, 1400 Fifth Avenue, Room 209, San Rafael, CA 94903 or by email Lindsay.Lara@cityofsanrafael.org.
- FOR MORE INFORMATION:** You may contact Danielle O’Leary, Director of Economic Development and Innovation, at (415) 485-3460 or Danielle.OLeary@cityofsanrafael.org. Office hours are Monday through Friday, 8:30 a.m. to 5:00 p.m.

SAN RAFAEL CITY COUNCIL

/s/ LINDSAY LARA
LINDSAY LARA, City Clerk