

GROUND LEASE

by and between

MOUNTAIN VIEW OWNER, LLC,
a Delaware limited liability company

as Landlord

and

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT,
a California public school district and
political subdivision of the State of California

as Tenant

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GROUND LEASE

This Ground Lease (“Lease”) is entered into as of **January 24, 2025**, (**Lease Date**) by and between **MOUNTAIN VIEW OWNER, LLC**, a Delaware limited liability company (“**Landlord**”) and **MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**, a California public school district and political subdivision of the State of California (“**Tenant**”). Landlord and Tenant are sometimes referred to jointly herein as the “**Parties**,” or individually as a “**Party**”).

RECITALS:

- A.** Landlord owns that certain real property consisting of 9.84 acres located at 777 West Middlefield Road, in the City of Mountain View (“**City**”), County of Santa Clara, State of California, legally described on **Exhibit A** attached hereto and incorporated herein by this reference (APN. 153-24-005) (“**Property**”). For purposes of this Lease, the Property is divided into two (2) parcels: (i) 8 acres as depicted on **Exhibit A-1** (“**Lot 1**”); and (ii) 1.8 acres, both as depicted on **Exhibit A-1** (“**Lot 2**”).
- B.** Landlord intends to develop the Property as an integrated apartment complex consisting of seven hundred sixteen (716) residential units, a subterranean parking garage with eight hundred forty-seven (847) parking spaces; and other amenities as specified in the plans and specifications (“**Master Project**”). The Master Project will consist of:
1. Two (2) buildings with 572 market rental rate residential units, the parking structure and certain amenities located on Lot 1 (“**Market Rate Project**”); and
 2. One (1) building with 144 rental residential units located on Lot 2 for employee housing (“**EH Project**”).

All of the amenities such as the parking garage, swimming pool, and other common area facilities will be located on the Lot 1 and constructed as part of the Market Rate Project. The Market Rate Project and the EH Project share the amenities pursuant to Declaration of Covenants, Conditions, Restrictions and Establishment of Easements and Cost Sharing Obligations for 777 West Middlefield executed Landlord as declarant and recorded against the Master Project on December 6, 2022 as Instrument No. 25411919 in the Official Records of the County of Santa Clara (“**Official Records**”) which establishes reciprocal easements, rights and duties with respect to areas within the Master Project, including the Access Drives, District Parking Area, District Storage Area, the District Courtyard, the Multifamily Shared Amenities and the Public Use Area (all as defined in therein) and maintenance and cost sharing obligations between the Market Rate Project and EH Project and the rules and regulations promulgated therein (“**CC&Rs**”).

- C.** Tenant has (a) fully examined the demographic trends of the area and the impacts of the high housing costs on Tenant employees which results in high turnover and training expenses to Tenant, and (b) determined that Tenant’s employees generally lack sufficient funds to afford housing within the City.
- D.** The Teacher Housing Act of 2016 (Health & Safety Code Section 53570 et seq.) was enacted with the specific goal of facilitating affordable housing projects for use by teachers and employees of California school districts (“**Teacher Housing Act**”).
- E.** Tenant has requested and Landlord has agreed to ground lease Lot 2 to Tenant for the construction and operation of the EH Project pursuant to the Teacher Housing Act.
- F.** Section 66 of the City’s conditions of approval for the Project (approved on May 21, 2019) specify that the EH Project is to be restricted in perpetuity to renting the residential units to

Moderate Income persons (50% to 120% of AMI) or lower income persons. The residential units are to be subleased to Tenant's teachers and staff with twenty (20) units reserved for subleasing to City staff in accordance with the Funding, Joint Use and Development Restriction Agreement dated September 19, 2022, between Tenant and City. All the foregoing obligations are reflected in that certain "Agreement by and among the City of Mountain View, Mountain View Owner, LLC and Mountain View Whisman School District regarding the provision of Affordable Rental Housing Units for a Residential Project Located at 777 West Middlefield Road" dated September 19, 2022 and recorded on October 13, 2022 as Instrument No. 25386075 in the Official Records to which the Premises are subject ("**Affordability Covenant Agreement**").

- G. Prior to execution of this Lease, the Parties executed that certain Reimbursement Agreement for Design and Pre-Construction dated November 29, 2020 ("**Reimbursement Agreement**") whereby Tenant has retained Landlord (or an affiliate of Landlord) to manage the design and preconstruction activities for the EH Project on Lot 2 for Tenant. In accordance with terms specified below, Tenant entered into a construction agreement which provides for the construction of the EH Project to be paid by Tenant and will enter into a construction management agreement between Landlord and Tenant whereby Landlord shall serve as construction manager to work with the contractor for the construction of the EH Project.
- H. Landlord owns Lot 2 and is willing to lease Lot 2 to Tenant *if, and only if*, the EH Project is constructed concurrently with the Market Rate Project which is critical for integration of all the work including, but not limited to, grading, drainage, infrastructure, concrete, the underground parking garage, etc. which will make construction of both the EH Project and the Market Rate Project more efficient as to both cost and timing to complete.
- I. California law provides that "Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694), and that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.)
- J. Publicly bidding the work for the EH Project will not produce an advantage to the Tenant. Additionally, publicly bidding the work for the EH Project would be futile and would not serve the purposes of competitive bidding.

NOW, THEREFORE, for good and valuable consideration and specifically incorporating the foregoing recitals, the Parties agree as follows:

1. PREMISES; CONSTRUCTION OF EH PROJECT.

- 1.1. **Letting.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the exclusive right to use Lot 2 ("**Premises**"), upon the terms, covenants, and conditions set forth in this Lease, the Affordability Covenant Agreement and CC&Rs. Tenant and Tenant's subtenants shall have the non-exclusive right to use certain of the amenities which are described in both the Affordability Covenant Agreement and the CC&Rs as the Multifamily Shared Amenities, the right to park and use storage areas within a portion of the Market Rate Project and shall have the benefit of certain easements established within the Master Project, all as set forth in the CC&Rs.

- 1.2. **Matters of Record.** Tenant accepts the Premises subject to all matters of record as of the Lease Effective Date (as defined in Section 3.1) including, but not limited to: (i) the Affordability Covenant Agreement; and (ii) the CC&Rs as may be amended from time to time as specified therein (“**Matters of Record**”).
- 1.3. **Condition of Property.** Tenant has had an opportunity to investigate the Premises and, as of the Lease Effective Date, Tenant accepts the Premises in an “AS-IS” condition, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, with respect to any facts, circumstances, defects and conditions. Furthermore, Tenant has reviewed the Affordability Covenant Agreement and the CC&Rs with legal counsel and is aware of the effect of those documents on the EH Project.
- 1.4. **Reservations.** Landlord reserves to itself the right, from time to time, to grant, without the consent or joinder of Tenant, such non-interfering easements, rights and dedications that Landlord deems necessary to develop the Master Project, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises or the construction of the EH Project by Tenant. Tenant agrees to execute and acknowledge (if applicable) any documents reasonably requested by Landlord to effectuate any such non-interfering easement rights, dedication, map or restrictions.
- 1.5. **Memorandum of Lease.** The Memorandum of Lease in the form of attached Exhibit B (“**Memorandum of Lease**”) shall be executed by the Parties and promptly recorded in the Official Records. A Supplemental Memorandum of Lease in the form of attached Exhibit B-1 shall be executed, acknowledged and recorded by the Parties to specify the Term Trigger Date in accordance with Sections 3.2. A Supplemental Memorandum of Lease in the form attached as Exhibit B-2 shall be executed, acknowledged and recorded by the Parties acknowledging the EH Project Completion Date (as defined in Section 2.2). Upon termination of this Lease and receipt of a written request from Landlord, Tenant shall promptly execute and acknowledge a document, as approved by Tenant’s counsel and acceptable to a national title insurance company, to acknowledge the termination of the Lease which shall be recorded in the Official Records.

2. DEVELOPMENT OF EH PROJECT; PROJECT COMPLETION.

- 2.1. **Construction of EH Project.** Landlord and Tenant have executed the Reimbursement Agreement. Landlord selected a licensed general contractor pursuant to mutually agreed standards which is the general contractor constructing the Market and the EH Project (“**General Contractor**”). Tenant and General Contractor entered into a Construction Agreement for construction of the EH Project the cost of which shall be Tenant’s responsibility (“**Contractor Agreement**”). Tenant and Landlord will execute a construction management agreement for the construction of the EH Project whereby Landlord shall serve as construction manager for the EH Project (“**Management Agreement**”). The Contractor Agreement and Management Agreement are sometimes jointly referred to as the “**Construction Agreements.**”
- 2.2. **EH Project.** The EH Project shall be commenced and diligently prosecuted to completion in accordance with the Construction Agreements and the schedule provided therein. Construction of the EH Project shall be deemed completed upon the issuance of a certificate of occupancy by the City which permits Tenant’s subtenants to occupy the residential units (“**EH Project Completion**”). The date such certificate of occupancy is

issued shall be deemed the “**EH Project Completion Date.**” After the EH Project Completion, an Addendum to Memorandum of Ground Lease in the form of Exhibit B-2 shall be executed by the Parties and recorded in the Official Records. Prior to commencement of the work, Landlord shall be entitled to record a Notice of Non-Responsibility.

2.3. Ownership of EH Project. Upon EH Project Completion, Tenant shall be deemed to own the building constructed on the Premises subject to the terms of this Lease as well as any Additions, Tenant Improvements and Trade Fixtures (as defined in Section 6.3.1) all of which are sometimes hereinafter referred collectively as the “**Tenant Facilities.**” Notwithstanding any provision herein to the contrary, Tenant’s obligations under this Lease for the following sections shall commence on the EH Project Completion Date: (i) Section 6 “Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations;” (ii) Section 7 “Insurance; Indemnity;” (iii) Section 9 “Real Property Taxes;” and (iv) Section 10 “Utilities.”

3. TERM; OPTIONS TO EXTEND.

3.1. Lease Effective Date. This Lease shall commence on the date that the Memorandum of Lease is recorded (“**Lease Effective Date**”).

3.2. Term. The initial term (“**Initial Term**”) of this Lease shall commence on the date that the temporary certificate of occupancy is issued for the EH Project (“**Term Trigger Date**”) and terminate fifty-five (55) years thereafter. Landlord shall notify Tenant in writing of the Term Trigger Date and the Parties shall execute and acknowledge the Supplemental Memorandum of Lease in the form attached as Exhibit B-1 which will be recorded by Landlord in the Official Records. “**Term**” shall mean the Initial Term as may be extended by the Options to Extend pursuant to Section 3.3.

3.3. Options to Extend.

3.3.1. Options to Extend. Provided Tenant is in compliance with the conditions specified in Section 3.3.2 below, Tenant at its sole discretion shall have four (4) consecutive options each for a period of ten (10) years to extend the Term (each an “**Option to Extend**” and collectively “**Options to Extend**”) subject to all of the provisions of this Lease including the adjustment to Base Rent as set forth in Section 3.3.3. Upon exercise of an Option to Extend, the period added to the Term is hereinafter sometimes referred to as an “**Extension Period.**”

3.3.2. Exercise of Options to Extend. Provided Tenant is not in Default, Tenant shall be deemed to have exercised each Option unless Tenant provides written notice to Landlord not less than nine (9) months prior to the end of the then existing Term specifying that it does not desire to renew the Term (“**Decline to Exercise Notice**”). If Tenant provides the Decline to Exercise Notice in the time and manner specified, Tenant shall also promptly execute, acknowledge and deliver to Landlord all documents required to remove this Lease from title to the Property as specified by a national title insurance company. If Tenant does not provide the Decline to Exercise Notice, then each Extension Period shall automatically extend the Lease Term upon its same terms and conditions (unless otherwise agreed to in writing by the Parties) with the Base Rent adjusted pursuant to Section 3.3.3. Upon request of either Party, the Parties shall execute, acknowledge and record an addendum to the

Memorandum of Ground Lease in the Official Records specifying the Term as extended.

3.3.3. Base Rent for Extension Periods. The Base Rent for the first (1st) year of each Extension Period shall be adjusted as follows: the Base Rent payable for the first Lease Year as of the Rent Commencement Date (as defined in Section 4.2) shall be multiplied by a fraction the denominator of which shall be the area median income as established by adjusted median income for the City (“AMI”) as of the Rent Commencement Date and the numerator of which shall be the AMI existing as of the commencement date of the Extension Period. For example, if the AMI has increased by Fifty Percent (50%), then the Base Rent shall also increase by Fifty Percent (50%). The sum so calculated shall constitute the new annual Base Rent for the first year of the Extension Period, but in no event, shall the new annual Base Rent be less than the annual Base Rent payable for the Lease Year (defined in Section 4.8) preceding the rent adjustment plus three percent (3%). For each subsequent Lease Year during each Extension Period, the annual Base Rent shall also be adjusted annually in accordance with Section 4.4. The annual Base Rent as adjusted shall be payable in equal monthly installments.

4. RENT.

4.1. Construction Period Base Rent. Construction commenced on the parking structure for the Master Project on July 1, 2022 (“**Construction Period Commencement Date**”) and, accordingly base rent shall commence to accrue from Construction Period Commencement Date at the annual rate of **Nine Hundred Thousand Dollars (\$900,000)** (“**Construction Period Base Rent**”). The Construction Period Base Rent shall be prorated based on a three hundred sixty (360) day basis for each Lease Year (as defined below) during the Construction Period. The total amount of accrued Construction Period Base Rent shall be payable as set forth in Section 4.3. The Tenant shall only be obligated to pay the Construction Period Base Rent for a **maximum of two (2) years**, regardless of when the EH Project Completion Date occurs.

4.2. Base Rent After Construction Completion. Commencing on the EH Project Completion Date (“**Rent Commencement Date**”) and for each Lease Year thereafter during the Term, base rent shall be **One Million Nine Hundred Ten Thousand Dollars (\$1,910,000)** payable in equal monthly installments in advance on the first (1st) day of each month (“**Base Rent**”). The Base Rent shall be subject to annual adjustment as set forth in Section 4.4. If the EH Project Completion Date is not on the first day of a month, Tenant shall pay to Landlord the pro rata amount for that month. However, the first six (6) months of the Base Rent shall accrue and be payable pursuant to Section 4.3 (“**Accrued Base Rent**”).

4.3. Payment of Rent.

4.3.1. Payment of Base Rent. Commencing on the EH Project Completion Date, Tenant shall commence to pay Base Rent on the first (1st) day of each month in accordance with requirements set forth in Section 4.6.

4.3.2. Payment of Accrued Rent. Accrued Construction Period Base Rent, and Accrued Base Rent are hereafter jointly referred to as “**Accrued Rent.**” Commencing on the date six (6) months following the EH Project Completion Date, Tenant shall commence to pay the Accrued Rent in monthly payments equal to the amount of Net

Subrental Proceeds (“**Accrued Rent Payment**”). “**Net Subrental Proceeds**” shall mean gross subrents received by Tenant during the preceding month less Tenant’s reasonable property operating and maintenance costs for that period (excluding, however, current Base Rent, any financing costs or real estate taxes that may be due during such period which are Tenant’s sole responsibility). The Accrued Rent Payment shall be paid on the first (1st) day of the month and shall be accompanied by detailed written summary of the calculation of the Net Subrent Proceeds for the preceding month. If requested by Landlord, Tenant shall provide supporting accounting information to substantiate the calculation of the Net Subrent Proceeds and, upon notice, Landlord shall have the right to audit Tenant’s records. The Accrued Rent Payments shall continue until the total Accrued Rent has been paid in full which must be paid in full within three (3) years from the EH Project Completion Date.

- 4.4. Annual Base Rent Adjustment.** Commencing on the first (1st) day of the second Lease Year and each Lease Year thereafter during the Lease Term, as it may be extended upon by an Option to Extend (each, an “**Adjustment Date**”), the annual Base Rent payable under this Lease shall be increased to an amount calculated as follows: the Base Rent payable for the prior Lease Year increased by the CPI Increase. As used herein the “**CPI Increase**” shall be the percentage derived from the fraction, the numerator of which shall be the C.P.I. for the month immediately preceding the Adjustment Date less the C.P.I. for the first (1st) full calendar month of the Lease Year and the denominator of which shall be the C.P.I. for the first (1st) full calendar month of the Lease Year¹. Notwithstanding the preceding sentence, the minimum annual increase shall be not less than two percent (2%) nor more than four percent (4%). For the purposes of this Lease, “C.P.I.” means the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers, San Francisco-Oakland-Hayward, CA Area, All Items, Base Period 1982-1984=100. If at any time the C.P.I. does not exist in the form recited herein, Landlord shall substitute any official index published by the Bureau of Labor Statistics or successor thereto or similar governmental agency, as may then be in existence and shall, in Landlord’s opinion, be most nearly equivalent thereto.
- 4.5. Base Rent for Extension Periods.** The annual Base Rent for each Extension Period shall be adjusted as set forth in Section 3.3.3.
- 4.6. Payment Requirements.** Except for the Accrued Rent monthly payments, which will be paid in arrears as specified in Section 4.3.2, Tenant shall pay the monthly Base Rent and other rent or charges in advance to Landlord. Any and all rent payments shall be paid in lawful money of the United States, without offset, deduction or counterclaim, on or before the day on which it is due under the terms of this Lease. All rent payments and all other rent and charges for any period during the Term which is less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved. Payment of Rent and other charges shall be made to Landlord at its address stated herein or to such other persons and/or at such other addresses as Landlord may from time to time designate in writing to Tenant. All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to, reimbursement for funds advanced by Landlord to perform obligations of Tenant, late charges, etc. are deemed to be “**rent**” or “**Rent.**”

¹ For clarity only, this example is provided. CPI index on January 1, 2025 is 3.1. CPI index on January 1, 2026 is 3.4. $3.4 - 3.1 = .3$ divided by $3.1 = 9.67\%$. Therefore, increase will be 4% (maximum increase).

- 4.7. **Late Charge.** If any Rent that is not received by Landlord by the due date, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue amount as a late charge, which is agreed to represent a reasonable estimate of the costs incurred by Landlord on account of such delinquency. Acceptance of a late charge shall not constitute a waiver of Tenant's failure to pay the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.
- 4.8. **CC&Rs.** Tenant shall pay directly, as and when due, any and all assessments and other charges under the CC&Rs in the manner specified in the CC&Rs.
- 4.9. **Lease Year.** The term "**Lease Year**" shall be a twelve (12) month period with the First Lease Year commencing on first day of the month following the Lease Commencement Date.

5. USE.

- 5.1. **Affordable Housing Project.** Tenant shall utilize the Premises solely for constructing and operating the EH Project as an affordable housing apartment complex subleasing the residential units to (i) Tenant's employees, or (ii) those authorized persons defined in the Affordability Covenant Agreement, the CC&Rs and all Applicable Laws (as defined below) ("**Use Restrictions**"). For purposes of this Lease, "**Applicable Laws**" includes all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions, permits, and/or the requirements of any applicable fire insurance underwriter or rating bureau, relating in any manner to the Premises.
- 5.2. **Matters of Record.** Tenant shall use and sublease the residential units in accordance with the Affordability Covenant Agreement, the CC&Rs and other Matters of Record existing as of the Lease Effective Date and as may thereafter be recorded as authorized by this Lease or as approved by Tenant which approval shall not be unreasonably withheld.
- 5.3. **Continuous Operations.** From the EH Project Completion Date, Tenant shall continuously operate the EH Project as a residential facility in accordance with this Lease and the Use Restrictions.
- 5.4. **Tenant's Compliance.** Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply, and cause the Premises to comply, with all Matters of Record, and all Applicable Laws. Tenant shall not use or permit the use of the Premises or any part thereof in a manner that creates waste or nuisance, violates the Use Restrictions, or that causes material damage to other portions of the Property.
- 5.5. **Hazardous Materials.** Tenant covenants and agrees that it shall not use, store, dispose, release, handle or otherwise manage Hazardous Materials (as defined below) on the Premises or any portion of the Property except in connection with any construction, rehabilitation, operation, maintenance or repair of the Improvements or in the ordinary course of operating the EH Project, and that such conduct shall be done in compliance with all applicable federal, state and local laws. Tenant shall promptly give the Landlord written notice of any release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials which may affect the Premises. "**Hazardous Materials**" means any chemical, substance, object, condition, material, waste, or controlled substance which is or may be hazardous to human health or safety or to the environment, due to its

radioactivity, ignitability, corrosiveness, explosivity, flammability, reactivity, toxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, all chemicals, substances, materials, or wastes that are now or hereafter may be listed, defined, or regulated in any manner by any federal, state, or local government agency or entity, or under any federal, state, or local law, regulation, ordinance, rule, policy or procedure due to such properties or effects. Notwithstanding the foregoing, the term "Hazardous Materials" shall not include any substances typically used in the construction, rehabilitation, operation, maintenance or repair of an apartment complex provided that such substances are used in accordance with all Applicable Laws.

5.6. No Waste. Tenant shall not commit or suffer to be committed any waste of the Premises or Tenant Facilities. Tenant agrees to keep the Premises and the Tenant Facilities clean and clear of refuse and obstructions, and to dispose properly of all garbage, trash and rubbish in accordance with the CC&Rs and Applicable Laws.

5.7. Inspection; Compliance. Landlord and Landlord's employees, agents and consultants shall have the right at reasonable times after prior written notice to Tenant (except in the event of an emergency) to enter the Premises (subject to the limitation of the rights of subtenants of the residential units), for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Laws. The costs and expenses of any such inspections shall be paid by Landlord unless a Default of this Lease, or a violation of Applicable Laws, is found to exist or to be imminent because of a condition of or activity on, in, under or about the Premises, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation, release or contamination, in which case such costs and expenses shall be paid by Tenant. In any such case, Tenant shall upon request promptly reimburse Landlord for the reasonable costs and expenses of such inspections if such inspection finds such matters that would constitute a Default after notice to Tenant and passage of time.

6. MAINTENANCE; REPAIRS; UTILITY INSTALLATIONS; TRADE FIXTURES AND ALTERATIONS.

6.1. Tenant's Obligations. Tenant shall, at Tenant's sole cost and expense, and at all times, keep the Premises, Tenant Facilities and every part thereof in compliance with the Use Restrictions and good order, condition and repair whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises. Tenant's obligation shall include restorations, replacements or renewals when necessary to keep the Premises and Tenant Facilities or a part thereof in good order, condition and state of repair. To the extent that the Parties' maintenance or repair obligations are covered by the Affordability Covenant Agreement and/or the CC&Rs, the terms of the (i) Affordability Covenant Agreement, then (ii) the CC&Rs shall control as to the obligations of each Party.

6.2. Landlord's Obligations. Except as may be otherwise provided in a separate written agreement executed by Landlord and Tenant, Landlord has no obligation, in any manner whatsoever, to repair, maintain or replace the Tenant Facilities, or any portion thereof, or any Tenant Facilities hereafter located thereon, all of which obligations are intended to be solely that of the Tenant. Tenant expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Tenant the right to make repairs at the expense of Landlord

or to terminate this Lease by reason of any needed repairs, including, without limitation, California Civil Code Section 1932, Subsection 1.

6.3. Utility Installations; Trade Fixtures; Alterations.

6.3.1. Definitions; Consent Required. The term “**Utility Installations**” is used in this Lease to refer to any and all air lines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term “**Trade Fixtures**” shall mean any Tenant’s machinery and equipment that can be removed without doing material damage to the Premises. The term “**Alterations**” shall mean any modification of the improvements on the Premises under the terms of this Lease, other than Utility Installations or Trade Fixtures, whether by addition or deletion. The term “**Tenant Improvement**” shall mean any Alteration or Utility Installation made to the Tenant Facilities during the Term by Tenant.

6.3.2. Consent. Any Tenant Improvement that Tenant shall desire to make must comply with this Lease, the Affordability Covenant Agreement and the CC&Rs. Any Tenant Improvement made by Tenant during the Term and shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Applicable Laws (which may include prevailing wage requirements if applicable). Tenant shall promptly, upon completion thereof, furnish Landlord with copies of any as-built plans and specifications therefor.

6.3.3. Indemnification. Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use on the Premises, which claims are or may be secured by any mechanics’ or materialmen’s lien against the Premises or any interest therein. Tenant shall give Landlord not less than twenty (20) days’ notice prior to the commencement of any Tenant Improvement, and Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense, indemnify, defend and protect itself, Landlord and the Premises against the same, and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Landlord or the Premises.

If any time that Tenant is not a governmental agency, Landlord may require upon written demand to Tenant, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in amount equal to one hundred fifty percent (150%) of the amount of such contested lien claim or demand, indemnifying Landlord against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord’s attorneys’ fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

6.3.4. Ownership; Removal; Surrender/Restoration; Purchase of Premises

a. Ownership. All Tenant Improvements shall be the property of and owned by Tenant subject to this Lease. Notwithstanding the foregoing, upon the expiration

or earlier termination of this Lease, all Tenant Improvements shall become the property of Landlord and remain upon and be surrendered by Tenant with the Premises subject to the obligation of Landlord to purchase the Tenant Improvements set forth in subsection e. below. All articles of personal property, furniture and equipment and all business and Trade Fixtures owned by Tenant (specifically excluding the personal property of Tenant's subtenants occupying residential units) which is used in the operation of the EH Project ("**Operations Personal Property**") shall be and remain at the Premises and, upon termination or expiration of this Lease subject to the provisions below.

- b. Operations Personal Property.** If Tenant is not in Default of the Lease (as defined in Section 12), Tenant may remove and/or replace Operations Personal Property at any time during the Term.
- c. Personal Property.** If Tenant fails to remove any other personal property of Tenant at the Premises ("**Tenant's Personal Property**") from the Premises upon the expiration or earlier termination of this Lease, Landlord may, at its option, remove Tenant's Personal Property and store Tenant's Personal Property without liability to Tenant for loss of Tenant's Personal Property. Tenant agrees to pay Landlord upon demand any and all expenses incurred by Landlord in removing Tenant's Personal Property, including court costs, attorneys' fees and storage charges on Tenant's Personal Property, for any length of time that Tenant's Personal Property shall be in Landlord's possession. Landlord may, at its option, without notice, sell Tenant's Personal Property, or any of the same, at a private sale and without legal process, for such price as Landlord may obtain, and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and to the expenses incident to the removal and sale of Tenant's Personal Property. Tenant waives the provisions of California Civil Code Section 1980-1993.09.
- d. Surrender/Restoration.** Tenant shall surrender the Premises by the end of the last day of the Lease Term or any earlier termination date, in good operating order, condition and state of repair, ordinary wear and tear excepted. "**Ordinary wear and tear**" shall not include any damage or deterioration that would have been prevented by good maintenance practices by Tenant. Except as otherwise agreed or specified in writing by Landlord, the Premises, as surrendered, shall include the Utility Installations, Alterations and Operations Personal Property. The obligation of Tenant shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's Trade Fixtures, Tenant Improvements (if required by Landlord), furnishings and equipment all in accordance with Applicable Laws and/or good practice. Tenant's Trade Fixtures, except those included in the Operations Personal Property, shall remain the property of Tenant and shall be removed by Tenant subject to its obligation to repair and restore the Premises per this Lease. Tenant's Personal Property shall remain the property of Tenant and shall be removed by Tenant at Tenant's sole cost and expense.
- e. Landlord's Purchase of Premises.**

 - (i) **Expiration of Term.** Upon expiration of the Lease Term, Landlord shall purchase the EH Project for the then appraised value as set forth below. Not less than ninety (90) days prior to the expiration of the Lease, the Parties shall mutually agree on a MAI appraiser who shall be directed to determine

then current fair market value of only the EH Project (together with all Alterations, Tenant Improvements and Operations Personal Property) without considering the value of the underlying land but shall consider, without limitation, (i) the limitations in the Affordability Covenant Agreement and the CC&Rs; (ii) the estimated cost of any repairs or capital improvements identified by a current third party property condition report to bring the Tenant Improvements into compliance with this Lease; and (iii) the net operating income. (“**Appraisal**”).

- (ii) **Purchase and Sale Terms.** Within thirty (30) days of receipt of the Appraisal, Landlord shall have thirty (30) days to prepare and deliver to Tenant a purchase and sale agreement with joint escrow instructions in which the appraised value shall be the purchase price, and which shall contain standard requirements including, but not limited to, the issuance of an ALTA (non-extended) owner’s policy of title insurance after review at Tenants expense, a bill of sale for all Operations Property, assignment and assumption of all existing residential unit subleases, assignment of security deposits, proration of real and personal property taxes, proration of subrents, allocation of costs (including utilities), proration of real estate taxes, as applicable, execute a document to evidence termination of this Lease, execute any documents as may be required by the title company, proration of Rent under this Lease, payment of documentary transfer taxes by seller, and other standard or reasonable provisions for a sale of real property. A reputable title company acceptable to Landlord shall provide title and escrow services. At closing, Tenant shall be responsible to pay any monetary liens against its leasehold interest. If this Lease is terminated due to the Default of Tenant, Landlord shall purchase the EH Project pursuant to the foregoing, however, the purchase price shall be offset by all costs and expenses to which Landlord is entitled to recover for Tenant’s Default.
- (iii) **If Tenant is in Default.** If Tenant is in Default, Landlord shall have all remedies set forth in Section 12 including the right to elect to terminate this Lease. If Landlord elects to terminate this Lease, Landlord shall not be obligated to purchase EH Project pursuant to the subsection (i) above.

7. INSURANCE; INDEMNITY.

7.1 Payment for Insurance. Tenant shall pay for all insurance required under this Section 7, and that permitted to be carried by Landlord under Section 7.2.2. Premiums for policy periods commencing prior to or extending beyond the Lease Term shall be prorated to correspond to the Lease Term. Payment shall be made by Tenant directly to the insurer in the normal course of Tenant’s business, on or before the due date, including any grace period.

7.2 Liability Insurance.

7.2.1 Carried by Tenant. Tenant shall obtain and keep in force during the Lease Term public liability insurance in form, content and policy in an amount equal to the greater of: (a) Fifteen Million Dollars (\$15,000,000) for each occurrence which amount shall may be reasonably adjusted by Landlord from time to time upon written notice, or (b) such amount as is or may be reasonably required by the holders of any mortgages or deeds of trust on Landlord’s interest in the Premises (“**Landlord’s Lender(s)**”), and as to which prior written notice has been given to Tenant, issued

by an insurance company approved by Landlord and Landlord's Lender(s). At a minimum, such insurance shall include a Commercial General Liability policy of insurance protecting Landlord (as an additional insured) against claims arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. The policy shall not contain any intra-insured exclusions as between insured persons or organizations but shall include coverage for liability assumed under this Lease as in "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance required by this Lease, or such larger amount as carried by Tenant, shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

7.2.2 Carried by Landlord. Landlord may obtain such additional liability insurance, if any, as Landlord deems appropriate to protect Landlord's interest in the Premises and to satisfy Landlord's Lenders. Such insurance, if obtained, shall be secondary to insurance to be obtained by Tenant under this Lease, and shall not limit or modify Tenant's obligations hereunder and shall be solely for the benefit of Landlord.

7.3 Property Insurance.

7.3.1 Premises. Tenant shall obtain and keep in force a policy or policies insuring for losses or damages to the Premises (including all Tenant Facilities) initially equal to Sixty Million Dollars (\$60,000,000). Each policy shall be issued by an insurer meeting the requirements of Section 7.5. The amount of such insurance shall be equal to the full replacement cost of the Tenant Facilities, as the same shall exist from time to time. Such policy or policies shall insure against additional costs resulting from debris, removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. If required by Landlord, Tenant shall also obtain and keep in force such insurance as is, from time to time, carried by owners/operators of similar properties, including, but not limited to, business interruption insurance and worker's compensation insurance. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, and waiver of subrogation. If such insurance coverage has a deductible clause, the per occurrence deductible amount shall be no more than the lesser of: (i) Two Hundred Fifty Thousand Dollars (\$250,000), or (ii) Ten Percent (10%) of the coverage amount unless it is for earthquake or earth movement insurance coverage for which the maximum deductible shall be Twenty Percent (20%) of the coverage amount.

7.3.2 Rental. Tenant shall obtain and keep in full force during the Term, a policy or policies in the name of Landlord with loss payable to Landlord, insuring the loss of the Rent payable by Tenant to Landlord under this Lease for two (2) years (including all real estate taxes, insurance costs, and any scheduled rental increases). The amount of coverage shall be adjusted annually to reflect the projected rental income, property taxes, insurance premium costs and other expenses, if any, otherwise payable by Tenant, for the next two (2) year period. Tenant shall be liable for any deductible amount in the event of such loss.

- 7.4 Personal Property Insurance.** Tenant shall procure and maintain appropriate insurance on all of Tenant's Personal Property and Operations Personal Property but shall not be required to procure and maintain insurance for sub-tenant's Personal Property.
- 7.5 Insurance Policies.** All policies as to form and content shall be reasonably approved by Landlord, and when so approved, such coverages shall remain for the Term of the Lease. The insurance requirements (types and/or amounts) may be increased from time to time upon written demand of Landlord to be consistent with market requirements and as may be required by Landlord's Lender. Tenant shall pay premiums for all insurance required to be furnished under the Lease in a timely manner, including any grace period. Copies of policies, certificates of insurance and evidence of payment of premiums shall be delivered to Landlord at least ten (10) days prior to expiration of any policies and anytime upon Landlord's request. All insurers shall be licensed in the State of California and shall have and continue to have a General Policyholder Rating of at least "A" and a Financial Rating of at least "X" in Best's Insurance Guide. If Tenant changes insurers, any such replacement coverage shall provide for tail coverage of not less than one (1) year. All policies shall require at least thirty (30) days' notice to the insured(s) and/or loss payee(s) of cancellation or non-renewal. If Tenant shall fail to procure and/or maintain insurance required hereunder, Landlord may, upon five (5) business days prior written notice to Tenant, but shall not be required to, procure and maintain the same, with the expense thereof to be paid by Tenant to Landlord within ten (10) days after demand for payment by Landlord.
- 7.6 Waiver of Subrogation.** All policies of insurance required hereunder shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss. Tenant waives any rights of recovery against Landlord for injury or loss due to hazards covered by policies of insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.
- 7.7 Indemnity.** Tenant shall indemnify, protect, and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, subtenants, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents, contractors, and subtenants and out of any Default by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in Default of this Lease. If Landlord, in its discretion, tenders its defense to Tenant, then Tenant shall immediately defend Landlord at Tenant's expense and shall keep Landlord informed as to the defense as Landlord may request. Landlord shall have the right to approve any counsel Tenant intends to use in such defense, which approval shall not be unreasonably withheld.
- 7.8 Exemption of Landlord from Liability.** Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage,

obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. However, this Section shall not apply to any liability of Landlord under the terms of the Reimbursement Agreement.

7.9 Comparable Limits on Insurance Requirements. Notwithstanding all requirements in this “INSURANCE; INDEMNITY” section, Tenant is not obligated to carry insurance coverages or limits for the EH Project, that are in excess of the coverages or in excess of the pro-rata limits, compared to the insurance requirements for coverages and limits that are required for other affordable housing projects in the area of the Project.

8. DAMAGE OR DESTRUCTION.

8.1 Definitions.

“**Premises Minor Damage**” shall mean damage or destruction to the Tenant Improvements, the repair cost of which damage or destruction is less than Fifteen Percent (15%) of the replacement cost of the EH Project.

“**Premises Major Damage**” shall mean damage or destruction to the Tenant Improvements, the repair cost of which damage or destruction is equal to Fifteen Percent (15%) of the replacement cost of the EH Project or greater.

“**Insured Loss**” shall mean damage or destruction which was caused by an event which is covered by insurance purchased by Tenant or covered by the insurance Tenant is required to purchase under this Lease, irrespective of any deductible amounts or coverage limits involved.

“**Replacement Cost**” shall mean the cost to repair or rebuild the Tenant Improvements which inure to Landlord upon Lease termination to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws.

8.2 Damage or Destruction.

8.2.1 Premises Minor Damage – Insured Loss. If an Insured Loss occurs, Tenant shall, at its sole expense (using any insurance proceeds available), repair such damage as soon as reasonably possible, and this Lease shall continue in full force and effect. Tenant shall be solely responsible for any deductible.

8.2.2 Premises Minor Damage – Uninsured Loss. If a Premises Minor Damage loss occurs which is not an Insured Loss, Tenant shall, at its sole expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

8.2.3 Premises Major Damage – Insured Loss. If a Premises Major Damage loss occurs which is an Insured Loss, Tenant shall promptly cause the Tenant Facilities to be restored to the condition and character to that existing prior to the damage or destruction. All restoration shall be promptly commenced and diligently prosecuted to completion in accordance with Section 8.3. The insurance proceeds shall be used to restore the Premises and the Parties shall mutually agree regarding a process for

the control and disbursement of the insurance proceeds for such reconstruction. Tenant shall remain responsible for any shortfall needed to complete the restoration and shall pay same to Landlord for such work. If Tenant is unable to provide all or part of such amount, Landlord shall advance the shortfall amount which shall bear interest at the then current commercial rate for construction loans by financial institutions, fully amortized over a ten (10) year period and evidenced by a promissory note in favor of Landlord in a form reasonably satisfactory to Landlord secured by a deed of trust insured by a title policy in first lien position against the leasehold interest.

8.2.4 Premises Major Damage – Uninsured Loss. If a Premises Major Damage loss occurs, which is not an Insured Loss (unless caused by negligent or willful act of Tenant or Landlord, in which event the Party responsible shall make the repairs at their sole expense and this Lease shall continue in full force and effect), Tenant shall not have the right to terminate this Lease, and Tenant shall, at its sole expense, either: (a) raze and remove all improvements and shall thereafter maintain the Premises in a good, clean, safe and presentable condition, including the installation of appropriate fencing, in accordance with Applicable Laws; or (b) Tenant may elect, in lieu of such razing and removal, to instead promptly repair such damage at its sole expense. Landlord shall not be under any duty or obligation to restore, replace or rebuild the improvements, at any time, or to contribute any insurance proceeds from insurance carried by Landlord or other funds towards the cost of doing so, except as otherwise expressly provided in this Section 8. Notwithstanding the foregoing, in the event that Tenant does not elect to rebuild the EH Project, Landlord shall have the right, in its sole and absolute discretion, to elect to terminate this Lease upon written notice to Tenant with no obligation to purchase under Section 6.3.4.e above.

8.3 Repair Obligations. Any time Tenant is obligated or elects to repair damage pursuant to this Section 8, Tenant agrees that any such repair shall be subject to such requirements as reasonably imposed by Landlord to protect its interest and in compliance with the Affordability Covenant Agreement and the CC&Rs. Tenant shall reasonably coordinate all repair obligations with the Landlord. Both Parties specifically agree that repair of any damage shall be performed consistent with the design, size and quality of the Tenant Improvements as of the time of the damage, without regard to reasonable wear and tear.

8.4 Waiver. Tenant waives the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and the provisions of this Lease shall govern in case of such destruction.

9. REAL PROPERTY TAXES.

9.1 Payment of Taxes. Subject to any exemptions, Tenant shall pay any and all Real Property Taxes (as defined in Section 9.2), applicable to the Premises during the Term of this Lease. All such payments shall be made at least ten (10) days prior to the due date of the applicable installment. Tenant shall promptly (at least five (5) days prior to the due date) furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect, and Tenant may apply to the County for reimbursement of any overpayments after

such proration. If Tenant shall fail to pay any Real Property Taxes required by this Lease to be paid by Tenant, Landlord shall have the right to pay the same, and Tenant shall reimburse Landlord therefor upon demand. Tenant shall have the right, upon receipt of Landlord's prior written consent (which shall not be unreasonably withheld) to prosecute an appeal to the taxing authorities of the Real Property Taxes; provided, however, that Tenant shall at all times be obligated to pay the Real Property Taxes assessed during the pendency of such appeal.

9.2 Definition of "Real Property Taxes." As used herein, the term "**Real Property Taxes**" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, possessory and any license fee, commercial rental tax, improvement bond or bonds, levy or tax imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, or any community facilities district or improvement bond, levied or assessed against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, Landlord's right to Rent or other income therefrom, and/or Landlord's business of leasing the Premises. The term "**Real Property Taxes**" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Laws taking effect, during the Term of this Lease, including, but not limited to, a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall timely pay all installments coming due and payable during the Term.

9.3 Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon any Tenant Improvements, Tenant's Personal Property and Operations Personal Property. Tenant shall, when possible, timely make appropriate filings with the County Assessor seeking to cause its Trade Fixtures, Tenant Improvements, furnishings, equipment, Tenant's Personal Property, Operations Personal Property and all personal property to be assessed and billed separately as personal property, and not assessed to the real property of Landlord.

10. UTILITIES. Tenant shall be responsible to directly contract for and promptly pay all utilities to the Premises including, but not limited to, water, gas, heat, light, power, telephone, cable, satellite, data, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon and installation and termination fees related thereto.

11. ASSIGNMENT AND SUBLETTING.

11.1 Landlord's Consent Required.

(a) **Subleasing.** Tenant may sublease the Premises for standard subleasing of residential units to subtenants authorized in Section 5.1. Tenant may not sublease the Premises for any other purpose or to any other subtenant.

(b) **Assignment.** Tenant shall not voluntarily or by operation of law assign, mortgage, encumber or otherwise transfer (collectively, "**Assignment**") all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent which shall not be unreasonably withheld provided the

requirement set forth in subsection c. below.

- (c) **Requirements for Assignees.** The Parties agree that it would be reasonable for Landlord to withhold consent in the event that:
- i. The transferee's contemplated use of the Premises following the proposed transaction conflicts with Section 5.1 of the Lease.
 - ii. In Landlord's reasonable business judgment, the transferee lacks sufficient business reputation and/or experience to operate an affordable residential housing project as required under this Lease and the Affordability Covenant Agreement.
 - iii. The proposed transferee has less than a Triple-A credit rating by Standard & Poor, Moody or another top tier rating agency.
 - iv. In Landlord's reasonable judgment, the present net worth of the transferee is insufficient to justify Landlord's consent.

Moreover, Landlord shall be entitled to be reasonably satisfied that each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded Landlord by this Lease is not impaired or diminished by such Assignment. Landlord and Tenant acknowledge that the express standards and provisions set forth in this Lease dealing with Assignment, including those set forth in this subsection (a) have been freely negotiated and are reasonable at the date hereof. No withholding of consent by Landlord for any reason deemed sufficient by Landlord shall give rise to any claim by Tenant or any proposed assignee to recover contract damages or to any abatement of rent or entitle Tenant to terminate this Lease. In this connection, Tenant hereby expressly waives its rights under California Civil Code Section 1995.310.

- (d) **Public Entities.** At any time that the Tenant is a public entity, merger of Tenant with another public entity shall constitute an Assignment requiring Landlord's consent which shall not be unreasonably withheld provided the assignee shall assume all obligations in a form acceptable to Landlord.
- (e) **Profits.** At any time that the Tenant is a non-public entity, the cumulative transfer of securities holding more than fifty percent (50%) of the voting rights of Tenant shall constitute a change in control for this purpose. The involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Tenant's assets occurs, which results or will result in a reduction of the Net Worth of Tenant by an amount equal to or greater than (i) twenty-five percent (25%) of such Net Worth of Tenant as it was represented to Landlord prior to the Lease Effective Date, or (ii) as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Tenant was or is greater, shall be considered an Assignment of this Lease by Tenant to which Landlord may reasonably withhold its consent in accordance with Section 11.1 above. "**Net Worth of Tenant**" for purposes of this Lease shall be the net worth

of Tenant established under generally accepted accounting principles consistently applied.

- (f) **Transfer without Consent.** An assignment or subletting of Tenant's interest in this Lease without Landlord's specific prior written consent is a non-curable Default, after which Landlord, without the necessity of any notice to Tenant and/or grace period, shall have the right to terminate this Lease.

11.2 Terms and Conditions Applicable to Assignment.

- (a) Regardless of Landlord's consent, any assignment shall not: (i) be effective without the express written assumption by such assignee of the obligations of Tenant under this Lease, or (ii) alter the primary liability of Tenant for the payment of Base Rent and other sums due Landlord hereunder or for the performance of any other obligations to be performed by Tenant under this Lease.
- (b) Landlord may accept any Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an Assignment. Neither a delay in the approval or disapproval of such Assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for the Default by Tenant of any of the terms, covenants or conditions of this Lease.
- (c) The consent of Landlord to any Assignment shall not constitute a consent to any subsequent Assignment by Tenant or to any subsequent or successive Assignment by the transferee. However, Landlord may consent to subsequent Assignments or any amendments or modifications thereto without notice to or consent by Tenant or any entity liable on this Lease.
- (d) In the event of any Default of Tenant's obligations under this Lease, Landlord may proceed directly against Tenant, or anyone else responsible for the performance of the Tenant's obligations under this Lease without first exhausting Landlord's remedies against any other person or entity responsible for same to Landlord, or any security held by Landlord or Tenant.
- (e) Each request for consent to an Assignment shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee. Tenant agrees to provide Landlord with such other or additional information and/or documentation as may be reasonably requested by Landlord.
- (f) Any assignee of this Lease shall, by reason of accepting such Assignment, be deemed, for the benefit of Landlord, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the Term of the Lease.
- (g) For any Assignment, Landlord may condition its consent that it shall be entitled to be paid , as additional rent, fifty percent (50%) of all net sums or other consideration payable to and for the benefit of Tenant by the transferee on account of the Assignment, as and when such sums and other consideration are due and payable to or for the benefit of Tenant (or, if Landlord so requires, and without any release of Tenant's liability for the same, Tenant shall instruct the

transferee to pay all or any part of such sums and other consideration directly to Landlord). As used in this Section, "net sums or other consideration" shall include without limitation the then fair value of any non-cash consideration and shall be calculated after first deducting reasonable costs incurred by Tenant in connection with the Assignment, including without limitation commissions payable to a broker not affiliated with Tenant, space modification costs in connection with the Assignment, reasonable legal costs, free rent concessions to the transferee, and lease take-over costs. The Parties agree that this provision is fair in that the Base Rent in this Lease was specifically negotiated at below fair market rent considering the EH Project was for affordable housing. Therefore, this provision is fair and reasonable as any amounts paid to Tenant for an assignment reflects the disparity and Landlord shall be entitled to such payment as specified above.

12. DEFAULT; REMEDIES

12.1 Default. Tenant shall be deemed in default of this Lease upon the occurrence of any of the following ("Default"):

- (a) The EH Project ceases to be operated or breaches any of the Use Restrictions.
- (b) The failure by Tenant to make any payment of Base Rent or any other monetary payment required to be made by Tenant under this Lease within five (5) days of written notice by Landlord to Tenant.
- (c) Tenant is in default of the CC&Rs and/or the Affordability Covenant Agreement..
- (d) Tenant is in default of the Reimbursement Agreement and/or the Construction Agreements.
- (e) Tenant assigns this Lease or subleases except in compliance with Section 11.
- (f) Tenant fails to provide insurance in accordance with Section 7.
- (g) A default by Tenant as to the terms, covenants, conditions or provisions of this Lease that are to be observed, complied with or performed by Tenant, other than those described in subsections (a), (b), (c), or (d) above, where such default continues for a period of thirty (30) days after receipt of written notice thereof by or on behalf of Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Default of this Lease by Tenant if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.
- (h) The occurrence of any of the following events: (i) the making by Tenant of any general arrangement or Assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within one hundred twenty (120) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the

Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subsection (e) is contrary to any applicable law, such provision shall be of no force or effect. and not affect the validity of the remaining provisions.

Any notice required to be given by Landlord under this Section shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure.

12.2 Remedies. Upon a Default by Tenant, Landlord may at its option (but without obligation to do so), perform such duty or obligation on Tenant's behalf, including, but not limited to, the obtaining of reasonably required bonds, repair and maintenance, compliance with the Affordability Covenant Agreement, compliance with the CC&Rs, insurance policies, or governmental licenses, permits or approvals. The ordinary and necessary costs and expenses of any such performance by Landlord shall be due and payable by Tenant to Landlord upon invoice therefor.

In the event of a Default of this Lease by Tenant, with or without further notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Default, Landlord may:

- (a) Terminate this Lease and Tenant's right to possession of the Premises and to purchase the Premises pursuant to Section 6.3.4.e.
- (b) Continue the Lease and Tenant's right to possession in effect (California Civil Code §1951.4) after Tenant's Default and recover the Rent as it becomes due. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Landlord's interest under the Lease shall not constitute a termination of the Tenant's right to possession.
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of California.
- (d) The expiration or earlier termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Tenant's occupancy of the Premises or this Lease.

12.3 Default by Landlord. Landlord shall not be deemed in default of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Section 12.3, a reasonable time shall in no event be less than thirty (30) days, or such longer time period as may be specifically provided herein for a Default of the same obligation by Tenant, after receipt by Landlord and/or the holder of any mortgage or deed of trust covering the Premises whose name and address shall have been furnished Tenant in writing for such purpose, of written notice specifying wherein such obligation of Landlord has not been performed; provided, however, that if the nature of Landlord's obligation is such that more than the permitted time is reasonably required for its performance, then Landlord shall not be in default of this Lease if performance is commenced within such permitted time and thereafter diligently pursued to completion.

13. CONDEMNATION.

13.1 Process and Allocation of Award. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "**Condemnation**"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty percent (20%) of the land area in the Premises is taken by condemnation or Tenant's access to the Premises is adversely and materially impaired or as a result of which Tenant is unable to reasonably conduct its normal business on the Premises, Tenant may, at Tenant's option, provided such is permitted by the Affordability Covenant Agreement, to be exercised in writing within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease at the sooner of (i) the date the condemning authority takes such possession or (ii) the date of the impairment. If Tenant elects to terminate the Lease pursuant to the foregoing, all condemnation proceeds shall be paid to Landlord to be used for the reconstruction of the Tenant Facilities to the extent practicable. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the area of the Premises taken bears to the total area of the Premises. Any award for the taking of all or a portion of in Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be allocated between Landlord and Tenant with Landlord entitled to the value of the land and Tenant entitled to the reduced value of the leasehold interest. Any severance damages shall be paid to Tenant provided that Tenant shall use same to promptly repair the Tenant Facilities. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall to the extent of its net severance damages received, over and above the legal and other expenses incurred by Landlord in the condemnation matter, repair any damage to the Premises caused by such condemnation, except to the extent that Tenant has been specifically reimbursed therefor by the condemning authority. Tenant shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

13.2 Tenant Waiver. The provisions of California Code of Civil Procedure Sections 1265.110, 1265.120, and 1265.130, which permit Tenant to terminate or seek termination of this Lease in the event of Condemnation, are hereby waived by Tenant, and the provisions of this Lease shall govern in case of any such Condemnation of the Premises or any part thereof.

14. TENANCY STATEMENT. Within fifteen (15) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a "**Tenant Estoppel Certificate**" in a form reasonably required by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein.

- a. Tenant's failure to deliver such Tenant Estoppel Certificate within such time shall be conclusive upon Tenant (i) that this Lease is in full force, without modification except as may be represented by Landlord, (ii) that there are no uncured Defaults in Landlord's performance, and (iii) that not more than one (1) month's rental has been paid in advance. If Tenant fails to deliver the Estoppel Certificate within ten (10) days after a second written demand which demand will specifically cite to this provision, Landlord may declare Tenant in default under this Lease.

- b. If Landlord desires to sell, appraise, finance or refinance Landlord's interest in the Premises, or any part thereof, Tenant shall deliver, to any potential broker, buyer or lender designated by Landlord, such financial statements of Tenant as may be reasonably requested or required by such lender, including financial statements for the past three (3) years. All such financial statements shall be received by such party in confidence and shall be used only for the purposes related to such sale, appraisal, finance or refinance transaction.

15. SUBORDINATION; ATTORNMENT; NON-DISTURBANCE; LEASEHOLD FINANCING.

- 15.1 **Subordination.** Subject to the non-disturbance requirements in Section 15.3, this Lease shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed by Landlord upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees that the lender or lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord's default with respect to any such obligation, Tenant will give any lender whose name and address have been furnished Tenant in writing for such purpose notice of Landlord's default and allow such Lender thirty (30) days following receipt of such notice for the cure of such default before invoking any remedies Tenant may have by reason thereof. If any Lender shall elect to have this Lease superior to the lien of its Security Device and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.
- 15.2 **Attornment.** Subject to the non-disturbance provisions below, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior Landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord, or (iii) be bound by prepayment of more than one (1) month's rent.
- 15.3 **Non-Disturbance.** With respect to Security Devices entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving assurance (a "**non-disturbance agreement**") from the Lender that Tenant's possession of the Premises and this Lease, including the Options to Extend, will not be disturbed so long as Tenant is not in Default hereof and attorns to the record owner of the Premises.
- 15.4 **Documents.** The agreements contained in this Section shall be effective without the execution of any further documents; provided, however, that, upon written request from Landlord or a broker, purchaser or lender in connection with a sale, financing or refinancing of the Premises, Tenant and Landlord shall execute such further writings as Landlord may request to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as provided herein.
- 15.5 **Leasehold Financing.** Provided Tenant is not in Default of this Lease, Tenant shall have the right, from time to time, to finance its leasehold interest to be secured by a deed of trust or mortgage ("**Leasehold Mortgage**") and Landlord agrees to the following provisions for the protection of the holder of the leasehold mortgage or deed of trust ("**Leasehold Mortgage**"). Upon Landlord receiving written notice from Tenant and a

Leasehold Mortgagee providing a recorded copy of Leasehold Mortgage and contact information for the Leasehold Mortgagee, the following provisions will apply.

- A. **Right to Receive Notices.** Landlord shall provide to Leasehold Mortgagee a copy of each notice given by Landlord to Tenant at the same time as and whenever any such notice will be given by Landlord to Tenant.
- B. **Right to Perform on Tenant's Behalf.** Landlord agrees to accept performance by the Leasehold Mortgagee of any term, covenant, condition, or limitation to be performed and observed under this Lease by Tenant, with the same force and effect as though performed and observed by Tenant.
- C. **Time Period for Performance.** Performance by the Leasehold Mortgagee pursuant to this provision must occur within the time stated in the Lease for Tenant to cure such Default, plus (1) an additional period of three (3) days with respect to a Default by Tenant in the payment of a sum of money due under the Lease, or (2) with respect to any Default by Tenant other than a default in the payment of money, either (a) an additional period of three (3) days, or (b) such additional period (including time promptly and diligently to obtain possession, if necessary, in order to cure the Default) as may be needed to remedy the Default, provided that in the latter case, the Leasehold Mortgagee delivers to Landlord within five (5) days after the expiration of the grace period applicable to the Default (i) an instrument unconditionally agreeing to promptly and diligently remedy such Default to the extent that such Default is capable of being remedied by Leasehold Mortgagee (other than a Default not susceptible of being remedied by Leasehold Mortgagee), and (ii) if the Leasehold Mortgagee guaranteeing the remedying of such Default is not an institution, such security as Landlord reasonably requires to assure the remedying of such Default.
- D. **Acceptance of Cure.** Landlord agrees that the curing or remedying of any Default by Leasehold Mortgagee within the time stated above will be deemed the equivalent of a cure or remedy by Tenant pursuant to this Lease. In addition, with respect to any Default that cannot be cured by Leasehold Mortgagee until it obtains possession, or which is not susceptible of being cured by Leasehold Mortgagee, Landlord agrees to take no action to terminate this Lease or invoke its right under this Lease (including purchasing pursuant to Section 6.3.4.e) until said Leasehold Mortgagee will have been given a reasonable time to obtain possession and to cure such Default (other than Defaults not susceptible of being cured by said Leasehold Mortgagee). However, Landlord's agreement not to terminate or take possession is conditioned on the following:
 - i. Leasehold Mortgagee will supply to Landlord the instruments guaranteeing the remedying of any Default as specified above.
 - ii. Leasehold Mortgagee must fully perform all the obligations of Tenant under this Lease that can be performed without possession of the Premises (other than any Default not susceptible of being cured by the Leasehold Mortgagee).
 - iii. Leasehold Mortgagee diligently proceeds, in good faith, to (1) enforce its remedies under the Leasehold Mortgage so as to obtain possession; or (2) foreclose its Leasehold Mortgage or otherwise acquire Tenant's leasehold estate.
 - iv. If Leasehold Mortgagee obtains possession of the Premises (during the time it is enforcing its foreclosure remedy or as a result of it), then Leasehold Mortgagee must promptly and diligently cure all defaults of Tenant under this Lease that are

susceptible of being cured by such Leasehold Mortgagee and that remain uncured. Thereafter, while in possession, Leasehold Mortgagee will perform fully all of Tenant's obligations under this Lease. The term "possession" as used in this Section includes possession by Leasehold Mortgagee through a receiver.

- 16. LANDLORD'S LIABILITY.** The term "**Landlord**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. Upon a transfer or assignment of Landlord's title or interest in the Premises, the transferring or assigning Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease, whether incurred or accruing before or after such transfer or assignment, upon such obligations or covenants being assumed by the new Landlord. As a result, the obligations and/or covenants in this Lease to be performed by the prior Landlord shall be binding only upon the new Landlord following their assumption by the new Landlord. In the absence of such an assumption, the prior Landlord shall remain obligated pursuant to the terms of this Lease. Tenant and all successors and assigns agree that, in the event of any actual or alleged failure, breach or default under this Lease by Landlord: (a) the sole and exclusive remedy shall be against the Landlord's interest in the Premises; (b) no individual Landlord or any equity owner of a Landlord which is a legal entity ("**Owner**") shall be named as a party in any suit or proceeding (except as may be necessary to secure jurisdiction of the partnership, if applicable); (c) no Owner shall be required to answer or otherwise plead to any service of process; (d) no judgment will be taken against any Owner; (e) no writ of execution will ever be levied against the assets of any Owner; (f) the obligations of Landlord under this Lease do not constitute personal obligations of any Owner, or his or its individual directors, officers, managers, members or shareholders, and Tenant shall not seek recourse against the Owner, or his or its directors, officers, managers, members or shareholders, or any of their personal assets for satisfaction of any liability in respect to this Lease; and (g) any claim, defense, or other right of Tenant arising in connection with this Lease or negotiations before this Lease was signed shall be barred unless Tenant files an action or interposes a defense based thereon within one hundred eighty (180) days after the date of the alleged event on which Tenant is basing its claim, defense or right. In the event of a breach or default by Landlord under this Lease, in no event shall Tenant have the right to terminate this Lease as a result of such breach or default, and Tenant's remedies (subject to the provisions of this Section 16) shall be limited to damages and/or an injunction with such obligations or covenants being assumed by the new Landlord. As a result, the obligations and/or covenants in this Lease to be performed by the prior Landlord shall be binding upon the new Landlord following their assumption by the new Landlord.
- 17. SEVERABILITY.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
- 18. INTEREST.** In addition to the late charge provided in Section 5, any monetary payment due Landlord, other than late charges, not received by Landlord within twenty (20) days following the date on which it was due shall bear interest from the twenty-first (21st) day after it was due until paid in full at the rate of seven percent (7%) but not in excess of the maximum rate permitted by applicable law.
- 19. TIME OF ESSENCE.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.
- 20. BROKERS.** Landlord and Tenant each represent and warrant to the other Party that it has not engaged or had any dealings with any broker or agent in connection with this Lease. Landlord and Tenant each shall indemnify, protect, hold harmless and defend the other Party from and

against any and all claims, losses, damages, costs or expenses (including, without limitation, attorneys' fees and all court costs) arising out of their breach of this representation and warranty.

- 21. NO PRIOR OR OTHER AGREEMENTS.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein and no other prior or contemporaneous agreement or understanding (including, but not limited to, the Master Development Agreement executed July 16, 2019) shall be effective except as specifically stated herein.
- 22. NOTICES.** All notices or demands shall be in writing and shall be served personally, by overnight courier, or by express or certified mail. Any notice to be provided in this Lease shall be concurrently provided to any lender. Service shall be deemed conclusively made at the time of service if personally served; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

| | |
|-----------------|--|
| If to Landlord: | MOUNTAIN VIEW OWNER, LLC c/o Miramar Capital 100 Wilshire Blvd, Suite 650 Santa Monica, CA 90401 Attn: Perry Hariri, Project Manager |
| With a copy to: | Aleshire & Wynder, LLP 18881 Von Karman Ave, Suite 1700 Irvine, CA 92612 Attn: Anne Nelson Lanphar, Esq. |
| If to Tenant: | Mountain View Whisman School District 1400 Montecito Avenue Mountain View, CA 94043 Attn: Superintendent. |
| With a copy to: | Orbach Huff & Henderson 6200 Stoneridge Mall Road, Suite 225 Pleasanton, CA 94588 Attn: Philip J. Henderson, Esq. |

Either party may at any time, by written notice to the other party, specify a different address for notice purposes.

- 23. NO WAIVERS.** To the extent permitted by applicable law, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a Default under this Lease, and no acceptance of Rent during the continuance of such Default, shall constitute a waiver of any such Default or of any such term. No waiver of any Default shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Landlord with respect to any other then existing or subsequent Default.
- 24. NO RIGHT TO HOLDOVER.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease.

25. **CUMULATIVE REMEDIES.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
26. **COVENANTS AND CONDITIONS.** All provisions of this Lease to be observed or performed by a Party are both covenants and conditions.
27. **BINDING EFFECT; CHOICE OF LAW.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County of Santa Clara.
28. **ATTORNEY'S FEES.** In the event of a dispute between the Parties arising out of or in connection with this Lease, which results in arbitration or litigation, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs of suit incurred by the prevailing Party.
29. **LANDLORD'S ACCESS; SHOWING PREMISES.** Subject to the rights of subtenants occupying residential units in the EH Project, Landlord and Landlord's agents shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements or additions to the Premises as Landlord may reasonably deem necessary. All such activities of Landlord shall be without abatement of Rent or liability to Tenant.
30. **SIGNS.** Tenant shall not place any sign upon the Premises, except that Tenant may, with Landlord's prior written consent, install such signs as may be reasonably required to advertise the EH Project provided that Tenant complies with all applicable City ordinances and the CC&Rs.
31. **TERMINATION; MERGER.** Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Default by Tenant, shall automatically terminate any unauthorized sublease or lesser estate in the Premises, provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any or all existing subtenancies pursuant to the terms thereof.
32. **CONSENTS.** Except as otherwise provided in this Lease, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Landlord's consent to any act or assignment of this Lease of the Premises by Tenant shall not constitute an acknowledgment that no Default by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then-existing Default, except as may be otherwise specifically stated in writing by Landlord at the time of such consent.
33. **QUIET POSSESSION.** Upon payment by Tenant of the Rent for the Premises and the observance and performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession of the Premises for the entire Term hereof subject to all of the provisions of this Lease.
34. **HOLDING OVER.** This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Premises, except as

otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

35. **SECURITY MEASURES.** Tenant hereby acknowledges that the Rent hereunder does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its subtenants, agents and invitees and the Premises from the acts of third parties.
36. **AUTHORITY.** Each individual executing this Lease on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf, and they shall deliver to the other Party evidence satisfactory to that Party of such authority.
37. **AMENDMENTS.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. Any amendments or modifications are subject to the requirements pursuant to Section 6.3.4.e or any lender.
38. **RECITALS.** The recitals set forth above are incorporated into this Lease and made a part hereof.
39. **FORCE MAJEURE.** A Party's failure to perform related to any cause beyond the Party's reasonable control including, without limitation, any act of God, fire, terrorism, quarantine, pandemic or other casualty or accident, pandemic, quarantine, strike, lock-out, factory shut-down or altercation, embargo, or riot (excluding all financial obligations) shall not be considered a Default hereunder. No prevention, delay, or stoppage of performance shall be excused unless: (a) the Party notifies the other Party within ten (10) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Section 39; and (b) the Party diligently takes all reasonable actions necessary to cure the prevention, delay or stoppage and the Party effects such cure within a reasonable time.
40. **COUNTERPART EXECUTION.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.
41. **EXHIBITS.** Exhibits A, A-1, B, B-1 and B-2 attached hereto are incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Ground Lease on the dates specified below.

TENANT:

LANDLORD:

Dated: _____, 2025

Dated: _____, 2025

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT, a California public school district and political subdivision of the State of California

MOUNTAIN VIEW OWNER, LLC, a Delaware limited liability company

By: _____
William Lambert, Governing Board
President

By: _____
Perry Hariri, Managing Member

ATTESTED:

By: _____
Lisa Henry, District Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Mountain View, County of Santa Clara, State of California legally described as follows:

LOT 1:

PARCEL A:

PARCEL 1 AS SHOWN ON PARCEL MAP (2 PARCEL SUBDIVISION) FILED FOR RECORD DECEMBER 6, 2022 IN BOOK 950 OF MAPS, AT PAGES 3 THROUGH 10, SANTA CLARA COUNTY RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS FOR 777 WEST MIDDLEFIELD" RECORDED DECEMBER 6, 2022 AS INSTRUMENT NO. 25411919, OF OFFICIAL RECORDS.

LOT 2:

PARCEL A:

PARCEL 2 AS SHOWN ON PARCEL MAP (2 PARCEL SUBDIVISION) FILED FOR RECORD DECEMBER 6, 2022 IN BOOK 950 OF MAPS, AT PAGES 3 THROUGH 10, SANTA CLARA COUNTY RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS FOR 777 WEST MIDDLEFIELD" RECORDED DECEMBER 6, 2022 AS INSTRUMENT NO. 25411919, OF OFFICIAL RECORDS.

EXHIBIT A-1

DEPICTION OF LOT 1 AND LOT 2

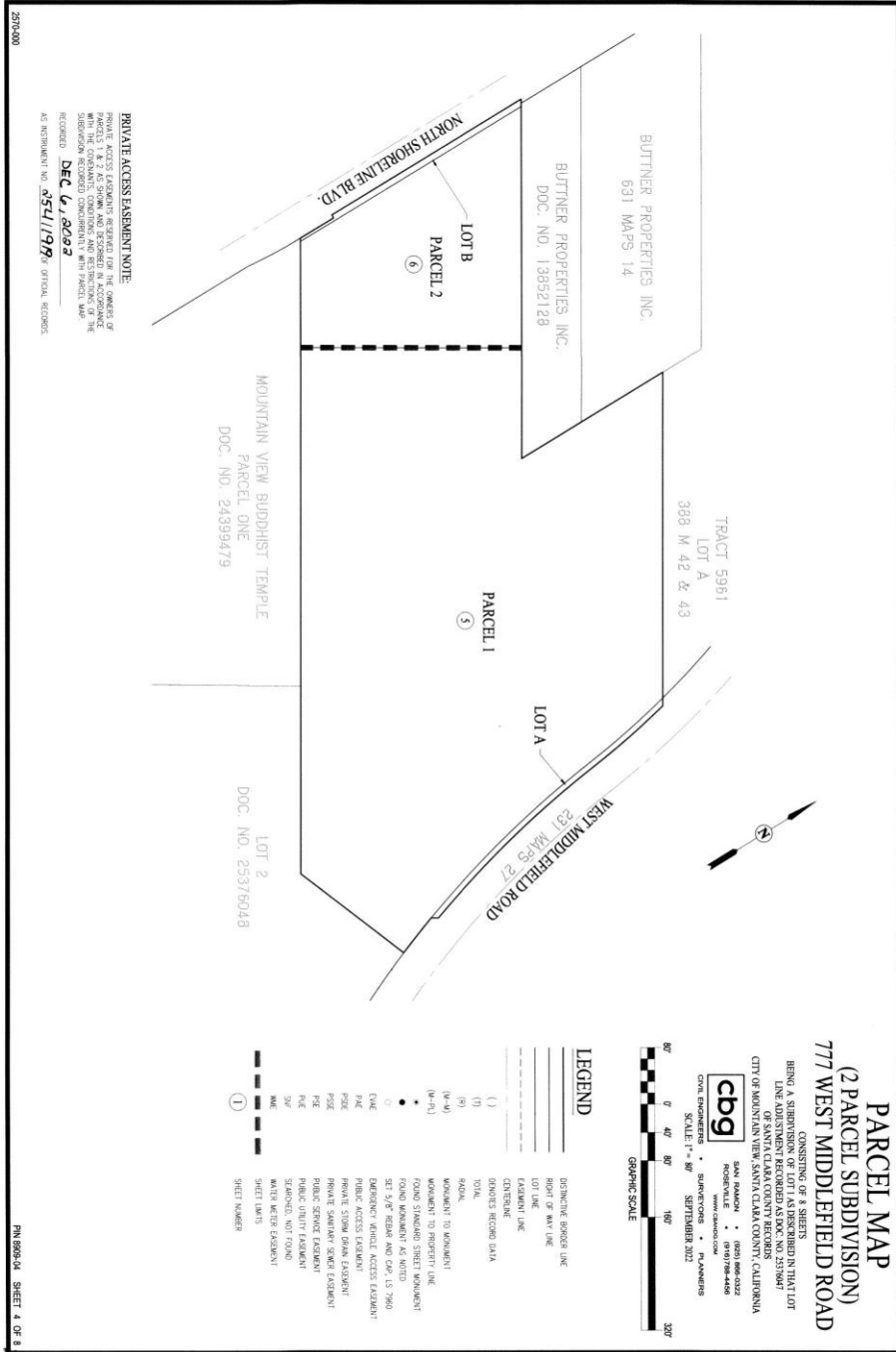


EXHIBIT B

MEMORANDUM OF LEASE

**Recording Requested by and
When Recorded Mail to:**

MOUNTAIN VIEW OWNER, LLC
c/o Miramar Capital
100 Wilshire Blvd, Suite 650
Santa Monica, CA 90401
Attn: Perry Hariri, Project Manager

APN 153-24-027

(Space Above This Line For Recorder's Office Use Only)
EXEMPT FROM RECORDING FEE PER GOV. CODE §27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") dated _____, 2025 is made by and between **MOUNTAIN VIEW OWNER, LLC**, a Delaware limited liability company ("**Landlord**") and **MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**, a California public school district and political subdivision of the State of California ("**Tenant**").

RECITALS:

Landlord and Tenant have entered into that certain Ground Lease dated _____, 2025 ("**Lease**") whereby Landlord leased the real property in the City of Mountain View, County of Santa Clara, State of California legally described on Exhibit A attached hereto and incorporated herein by reference ("**Property**"). An affordable housing project is to be constructed on the Property pursuant to the terms of the Lease ("**EH Project**").

NOW, THEREFORE, the parties agree and acknowledge the following:

1. **Definitions.** Defined terms used herein not specifically defined in this Memorandum shall have the meanings set forth in the Lease.
2. **Term.** The term of the Lease is fifty-five (55) years commencing on the Term Trigger Date which is the date that the City issues the temporary certificate of occupancy for EH Project. The Term is subject to being extended for four (4) consecutive periods of ten (10) years each. The Parties shall execute, acknowledge and record Supplemental Memorandum of Lease specifying the Term Trigger Date.
3. **Construction Completion Date.** Pursuant to Section 2.2 of the Lease, "Construction Completion Date" is the date that the EH Project is completed as evidenced by the City's issuance of a certificate of occupancy for the EH Project. The Parties shall execute, acknowledge a Supplemental Memorandum of Lease specifying the Construction Completion Date.
4. **Discrepancy.** All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference as though set forth herein and in the event of a discrepancy between the terms of the Lease and this Memorandum, the terms and conditions of the Lease shall govern and nothing herein shall be construed to be a modification of or

amendment to any of the terms and conditions of the Lease.

IN WITNESS WHEREOF, Tenant and Landlord have duly executed and delivered this Memorandum of Lease as of the day and year first above written.

TENANT:

LANDLORD:

Dated: _____, 2025

Dated: _____, 2025

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT, a California public school district and political subdivision of the State of California

MOUNTAIN VIEW OWNER, LLC, a Delaware limited liability company

By: _____
William Lambert, Governing Board
President

By: _____
Perry Hariri, Managing Member

ATTESTED:

By: _____
Lisa Henry, District Clerk

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

That certain real property in the City of Mountain View, County of Santa Clara, State of California legally described as follows:

PARCEL ONE:

PARCEL 2 AS SHOWN ON PARCEL MAP (2 PARCEL SUBDIVISION) FILED FOR RECORD DECEMBER 6, 2022 IN BOOK 950 OF MAPS, AT PAGES 3 THROUGH 10, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS FOR 777 WEST MIDDLEFIELD" RECORDED DECEMBER 6, 2022 AS INSTRUMENT NO. 25411919, OF OFFICIAL RECORDS.

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2025 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2025 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

EXHIBIT B-1

SUPPLEMENTAL MEMORANDUM OF LEASE

(Term Trigger Date)

**Recording Requested by and
When Recorded Mail to:**

MOUNTAIN VIEW OWNER, LLC
c/o Miramar Capital
100 Wilshire Blvd, Suite 650
Santa Monica, CA 90401
Attn: Perry Hariri, Project Manager

APN _____

(Space Above This Line For Recorder's Office Use Only)
EXEMPT FROM RECORDING FEE PER GOV. CODE §27383

SUPPLEMENTAL MEMORANDUM OF LEASE

THIS SUPPLEMENTAL MEMORANDUM OF LEASE ("**Addendum**") dated _____, 202__ is made by and between **MOUNTAIN VIEW OWNER, LLC**, a Delaware limited liability company ("**Landlord**") and **MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**, a California public school district and political subdivision of the State of California ("**Tenant**").

RECITALS:

Landlord and Tenant entered into that certain Ground Lease dated _____, 2025 ("**Lease**") whereby Landlord leased the real property in the City of Mountain View, County of Santa Clara, State of California legally described on Exhibit A attached hereto and incorporated herein by reference ("**Property**"). An affordable housing project is to be constructed on the Property pursuant to the terms of the Lease ("**EH Project**"). A Memorandum of Lease was recorded on _____, 2025 as Instrument No. _____ in the Official Records of Santa Clara County ("**Memorandum**").

NOW, THEREFORE, the parties agree and acknowledge that the Term Trigger Date was _____, 20__.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Tenant and Landlord have duly executed and delivered this Supplemental Memorandum of Lease as of the day and year first above written.

TENANT:

LANDLORD:

Dated: _____, 2025

Dated: _____, 2025

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT, a California public school district and political subdivision of the State of California

MOUNTAIN VIEW OWNER, LLC, a Delaware limited liability company

By: _____
William Lambert, Governing Board
President

By: _____
Perry Hariri, Managing Member

ATTESTED:

By: _____
Lisa Henry, District Clerk

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

That certain real property in the City of Mountain View, County of Santa Clara, State of California legally described as follows:

PARCEL ONE:

PARCEL 2 AS SHOWN ON PARCEL MAP (2 PARCEL SUBDIVISION) FILED FOR RECORD DECEMBER 6, 2022 IN BOOK 950 OF MAPS, AT PAGES 3 THROUGH 10, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS FOR 777 WEST MIDDLEFIELD" RECORDED DECEMBER 6, 2022 AS INSTRUMENT NO. 25411919, OF OFFICIAL RECORDS.

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

EXHIBIT B-2

SUPPLEMENTAL MEMORANDUM OF LEASE
(EH Project Completion Date)

**Recording Requested by and
When Recorded Mail to:**

MOUNTAIN VIEW OWNER, LLC
c/o Miramar Capital
100 Wilshire Blvd, Suite 650
Santa Monica, CA 90401
Attn: Perry Hariri, Project Manager

APN _____

(Space Above This Line For Recorder's Office Use Only)
EXEMPT FROM RECORDING FEE PER GOV. CODE §27383

SUPPLEMENTAL MEMORANDUM OF LEASE

THIS SUPPLEMENTAL MEMORANDUM OF LEASE ("**Memorandum**") dated _____, 202__ is made by and between **MOUNTAIN VIEW OWNER, LLC**, a Delaware limited liability company ("**Landlord**") and **MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**, a California public school district and political subdivision of the State of California ("**Tenant**").

RECITALS:

Landlord and Tenant have entered into that certain Lease dated _____, 202__ ("**Lease**") whereby Landlord leased the real property in the City of Mountain View, County of Santa Clara, State of California legally described on Exhibit A attached hereto and incorporated herein by reference ("**Property**"). A Memorandum of Lease was recorded on _____, 20__ as Instrument No. _____ in the Official Records of Santa Clara County ("**Memorandum**") and that certain Supplemental Memorandum of Lease dated _____, 20__ and recorded on _____, 20__ as Instrument No. _____ in the Official Records of Santa Clara County.

NOW, THEREFORE, the parties agree and acknowledge that the EH Project Completion Date was _____, 20__.
was _____, 20__.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Tenant and Landlord have duly executed and delivered this Supplemental Memorandum of Lease as of the day and year first above written.

TENANT:

LANDLORD:

Dated: _____, 2025

Dated: _____, 2025

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT, a California public school district and political subdivision of the State of California

MOUNTAIN VIEW OWNER, LLC, a Delaware limited liability company

By: _____
William Lambert, Governing Board
President

By: _____
Perry Hariri, Managing Member

ATTESTED:

By: _____
Lisa Henry, District Clerk

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

That certain real property in the City of Mountain View, County of Santa Clara, State of California legally described as follows:

PARCEL ONE:

PARCEL 2 AS SHOWN ON PARCEL MAP (2 PARCEL SUBDIVISION) FILED FOR RECORD DECEMBER 6, 2022 IN BOOK 950 OF MAPS, AT PAGES 3 THROUGH 10, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS FOR 777 WEST MIDDLEFIELD" RECORDED DECEMBER 6, 2022 AS INSTRUMENT NO. 25411919, OF OFFICIAL RECORDS.

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL: