

**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED GROUND LEASE
(Emeryvilla Apartments)**

THIS FIRST AMENDMENT TO FIRST AMENDED AND RESTATED GROUND LEASE (this “**Amendment**”) is made and entered into as of the [] day of [], 2024 (“**Effective Date**”) by and between the City of Emeryville, a municipal corporation, as successor in interest to the Redevelopment Agency of the City of Emeryville (the “**Lessor**”), and Emeryvilla Apartments LP, a California limited partnership (the “**Tenant**”). The Lessor and the Tenant are sometimes collectively referred to as the “**Parties**.”

WITNESSETH:

WHEREAS, Lessor and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (the “**Sponsor**”) entered into that certain Ground Lease dated as of June 1, 1989, the same which was amended and restated by that certain First Amended and Restated Ground Lease by and between the Lessor and Emeryville Senior Housing, Inc., a California nonprofit public benefit corporation, as successor in interest to the Sponsor (the “**Previous Tenant**”) entered into as of August 28, 1991 (collectively, the “**Lease**”), and constructive notice of the Lease was given by that certain Memorandum of Lease entered into as of August 28, 1991, recorded as Document No. 291258136 in the Alameda County Official Records (the “**Memorandum**”). All capitalized terms used in this Amendment and not defined herein shall mean as defined in the Lease.

WHEREAS, Tenant and Previous Tenant have entered into that certain Option to Lease and Purchase Agreement entered into as of July 3, 2024 (the “**PSA**”) pursuant to which the Tenant intends to purchase the Improvements located on the Land and be assigned the Lease by the Previous Owner (the “**Acquisition**”);

WHEREAS, Tenant has received a loan from PGIM Real Estate Agency Financing, LLC, a Delaware limited liability company (“**Prudential**”) to finance the Acquisition in the amount of _____ (the “**Acquisition Loan**”);

WHEREAS, Prudential intends to transfer the Acquisition Loan to Fannie Mae (“**Fannie Mae**”);

WHEREAS, Fannie Mae as a condition to purchasing the Acquisition Loan from Prudential requires that the Lease be amended to reflect certain underwriting requirements (the “**Required Lease Provisions**”);

WHEREAS, Lessor has agreed to amend the Lease in order to incorporate the Required Lease Provisions and facilitate the Acquisition;

WHEREAS, Lessor and Tenant wish to amend the Initial Term of the Lease for an initial period of ninety-nine (99) years.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth in the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Fannie Mae Provisions.

- a. Conflict. In the event of any conflict between any provision contained elsewhere in the Lease and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.
- b. Non-Merger. No union of the interests of the Lessor and Lessee shall result in a merger of the Lease into any superior leasehold interest or the fee interest in the Property.
- c. Permitted Transfer for Foreclosure Events; Continuing Regulatory Restrictions. Notwithstanding anything to the contrary in the Lease, this Lease may be assigned or transferred, without the consent of the Lessor, to the purchaser at any foreclosure sale arising from or relating to a deed of trust or mortgage encumbrance on the leasehold estate approved by the Lessor (a "Permitted Encumbrance"), whether judicial or nonjudicial, or to the beneficiary or mortgagee under any Permitted Encumbrance, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of Lessee's leasehold interest in the Lease in lieu of foreclosure to the holder of a Permitted Encumbrance, or its nominee, and may thereafter be assigned by such holder of a Permitted Encumbrance or its nominee to a third party without the Lessor's consent; but any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby. In such event all provisions of this Lease regarding occupancy and rent contained in Section 2.4 of the Lease shall remain in full force and effect. Lessor's prior written consent to any encumbrance on the leasehold estate created by the Lease shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Lessor shall not withhold consent to any encumbrance that refinances a previously approved mortgage or deed of trust provided that the amount of the loan securing the deed of trust does not exceed the amount of the prior approved loan plus reasonable closing costs. Lessor hereby approves a deed of trust on the leasehold estate securing a loan in the original principal amount of _____ granted to Prudential and the assignment of such deed of trust to Fannie Mae.

- d. Notice to and Rights of Lender. When giving notice to Lessee pursuant to any provision of this Lease, with respect to any default hereunder or otherwise, the Lessor shall also serve a copy of each such notice upon each holder of a Permitted Encumbrance which shall have given Lessor a written notice specifying its communication information, if not set forth in this Lease. No notice to Lessee under this Lease shall be effective unless a copy of the same is delivered to each such holder of a Permitted Encumbrance and an Investor Partner entitled to or requesting such notice. Notwithstanding any apparent contrary provision of this Lease, the consent of the Lessor shall not be required with respect to a transfer of title to the leasehold interest in the Project, and the related transfer of the Lessee's rights under this Lease, to a foreclosing holder of a Permitted Encumbrance. If a holder of Permitted Encumbrance completes its foreclosure, such foreclosing Lender, may make one subsequent transfer of the Project and of this Lease and/or the beneficial ownership interests in Lessee (as applicable), to a third party without the Lessor's consent, if such transferee agrees in writing to assume and to perform all of the obligations under this Lease other than (i) breaches and defaults which existed prior to the transfer to such transferee and which are incurable nonmonetary breaches or defaults or (ii) are breaches or defaults that can only be cured by a previous tenant no longer in possession of the Property or (iii) monetary claims by the Lessor against the Lessee for indemnification under this Lease for claims that arose prior to the transfer. Such right to a single transfer shall apply to each foreclosure transfer in which the foreclosure transferor is the holder of a Permitted Encumbrance or an encumbrance permitted by Lessor, so there may be more than one single subsequent transfer pursuant to these provisions.
- e. Foreclosure by Lender; Cure of Lessee Defaults. In the event Lessee shall default in the performance of any of the terms, conditions, covenants and agreements of this Lease on Lessee's part to be performed, each holder of a Permitted Encumbrance shall have the right, but not the obligation, to cure or make good such monetary and/or nonmonetary default or cause the same to be cured or made good whether the same consists of the failure to pay rent or other amounts which may become owing hereunder or the failure to perform any other matter or thing, and Lessor shall accept such performance on the part of any such Lender as though the same had been done or performed by Lessee. In the case of a default by Lessee in the payment of money, after the expiration of all applicable grace and cure periods, Lessor will take no action to exercise any other remedy by reason thereof unless such default is not cured within 30 days after each Lender, who has given Lessor its communication information receives written notice from Lessor that such default was not timely cured, it being the intent hereof and the understanding of the Parties that each such Lender entitled to such notice shall be allowed up to but not in excess of 30 days after the service of such notice to cure any such default of or breach by Lessee in the payment of rent or in the making of

any other monetary payment required under the terms of this Lease. In the case of any non-monetary default by Lessee, Lessor will take no action to exercise any remedy by reason thereof if, within 90 days after the expiration of all applicable grace and cure periods available to Lessee for curing said default and Lessor's delivery of written notice thereof to each holder of a Permitted Encumbrance who has given Lessor its communication information, such Party commences a non-monetary cure and thereafter diligently prosecutes the same to completion within a reasonable period of time. The commencement of judicial or non-judicial foreclosure proceedings by the Lender shall be deemed the commencement of such a non-monetary cure provided that: (i) the Lender thereafter diligently prosecutes the same (provided, however, that if the Lender is prevented or restrained by a court of competent jurisdiction or by reason of any law, regulation, order, stay or rule from so proceeding, the time period set forth above, and the time within when such Lender shall be required to cure such default, shall be tolled, and provided further that if the default is cured, the Lender may discontinue such proceedings and/or possession); and (ii) upon acquisition by either the Lender or any other direct purchaser or direct transferee of Lessee's interest under this Lease, whether at a judicial foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure, such Lender, purchaser or transferee commences, within 90 days after acquiring such interest, and thereafter diligently prosecutes to completion the cure of all defaults hereunder reasonably capable of being cured by such Lender or transferee. Notwithstanding the generality of the foregoing, no Lender, purchaser or transferee shall be obligated to cure or remedy any breach or default of Lessee which existed prior to completion of such a foreclosure, and are (x) incurable non-monetary breaches or defaults, (y) are non-monetary breaches or defaults that can only be cured by a previous tenant no longer in possession of the Premises, or (z) are monetary claims by the Lessor against the Lessee for indemnification under this Lease for claims that arose prior to the Lender, purchaser or transferee taking title to the Project (such events shall be collectively "**Excluded Breaches or Defaults**"). The time available to any Lender to initiate foreclosure proceedings as aforesaid shall be deemed extended by the reasonable number of days of delay occasioned by circumstances beyond the Lender's reasonable control. During the period that such Lender shall be in possession of the Project during the pendency of any foreclosure proceedings instituted by any Lender, Lender shall pay or cause to be paid any rent or other charges of whatever nature payable by Lessee hereunder which accrue during such period. Any such transferee, including, without limitation, any foreclosing Lender, shall be liable to perform the obligations imposed on Lessee by this Lease incurred or accrued only during the period such person or entity has ownership of said leasehold estate of Lessee. Notwithstanding anything set forth above, the Lessor shall be entitled to enforce the provisions of Section 2.4 of the Lease and the Affordable Housing Agreement after providing notice and cure rights as set forth in the Lease and the Affordable Housing Agreement.

- f. Obligation to Enter into New Lease. In the event that this Lease is terminated by reason of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, by operation of law or for any other reason, Lessor shall, upon the written request of the senior-most Lender holding a Permitted Encumbrance, enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Lender that (i) is designated in the written request of the senior-most Lender that has a collateral interest in this Lease, and (ii) provides written notice of its desire to enter into a new lease, providing that such designated encumbrance holder makes its request for a new lease within 60 days after the date it receives written notice of termination of this Lease and either promptly cures all then-existing monetary breaches and defaults other than those Excluded Breaches or Defaults or agrees to cure all then-existing non-monetary breaches and defaults other than those Excluded Breaches or Defaults within the time periods permitted for the same under this Lease and thereafter diligently pursues such cure until completion and agrees to diligently cure any default pursuant to Section 2.4 of the Lease. Such a new lease (“**New Lease**”) shall be on all the same terms and conditions as are then contained in this Lease but shall be for the then-remaining Term of this Lease. The Lessor shall give written notice of any lease termination event to all Lenders which have provided their notice addresses to and have requested such notice from the Lessor, in writing, holding an encumbrance on either Lessee’s entire leasehold estate under this Lease or all of the beneficial ownership interests in Lessee within 30 days after the occurrence of such event which notice shall state (x) that this Lease has terminated in accordance with this Section, and (y) that such Lenders or holders of other encumbrances have 60 days following receipt of such notice in which to exercise their rights to a New Lease under this Section or else they will lose such right. Should more than one Lender make such a demand, only the demand of the senior-most in lien priority Lender will be honored. Such New Lease shall be executed and delivered by the Lessor and by the entity requesting the New Lease within a reasonable period after the request therefore, not to exceed 120 days. After such termination and cancellation of this Lease and prior to the expiration of the period within which any Lender may elect to request such New Lease from Lessor, except in the ordinary course of business for a residential tenant, the Lessor shall refrain from terminating any existing sublease and from executing any new subleases except subleases that are compliant with Section 2.4 of the Lease and the Affordable Housing Agreement or otherwise encumbering the Premises without the prior written consent of each Lender and Lessor shall account to each Lender for all rent collected from subtenants during such period. Any New Lease shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by Lessor before or after the date of such New Lease and shall have the benefit of and vest in such Lender all right, title, interest, power and privileges of Lessor hereunder in and to the

Project, including specifically, without limitation, the assignment of Lessee's interest in and to all then existing subleases and sublease rentals and, the automatic vesting of title to all buildings, Improvements, and appurtenances, as well as to all equipment, fixtures and machinery therein until the expiration or termination of the Term of this Lease. The holder of such New lease shall have the rights provided to a foreclosure transferee, including any subsequent transfer, subject to the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If there are multiple Lenders, then, upon execution of the New Lease, the lien priority of each of them, shall be maintained in accordance with all terms and conditions of such encumbrances.

- g. Consent of Lender. Without the prior consent of each Lender entitled to notice pursuant to this Section, neither this Lease nor the leasehold estate created by this Lease shall be surrendered, canceled, terminated or amended and no agreement purporting to surrender, cancel, terminate, or amend this Lease without the consent of each Lender entitled to receive notice of default under applicable provisions of this Lease shall be valid or effective, except Lessor may terminate this Lease in accordance with the terms hereof after providing notice of default to Lessee and Lenders entitled to notice as set forth in this Section and expiration of any applicable cure periods if such default is not cured. In order to facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's leasehold estate and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any and all instruments which legal counsel for any lender which is or may become a Lender, may reasonably require in order to grant to the Lender, or prospective Lender, the right to act for Lessee in enforcing or exercising any of Lessee's rights, options, or remedies under this Lease.
- h. Non-Encumbrance; Subordination. Lessor shall not encumber Lessor's fee interest in the Property by a deed of trust and/or mortgage ("**Lessor Encumbrance**") without the prior written consent of the Lenders and Lessee, and provided such Lessor Encumbrance must be subordinated to the Permitted Encumbrance of any Lender that requires such subordination.
- i. Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than 30 days prior written notice from the other, execute, acknowledge and deliver to such other Party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other Party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other Party may reasonably request, it being intended that

any such statement delivered by the Lessee may be relied upon by the Lessor or any successor in interest to the Lessor, and it being further intended that any such statement delivered by the Lessor may be relied upon by any prospective assignee of the Lessee's interest in this Lease or any prospective Lender or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

- j. Damage, Destruction or Condemnation. Notwithstanding any other provision of the Lease to the contrary, in the event of destruction of any of the Improvements constituting the Project, or any partial or total condemnation of the Project, neither Lessee nor Lessor shall terminate the Lease, and any proceeds of insurance or any condemnation award shall be applied in accordance with the Lender's loan documents, provided, that Lessor will be entitled to any casualty or condemnation proceeds equal to the remainder interest in the Project considered as unimproved.
- k. Lender Non-Responsibility for Performance. Notwithstanding any other provision of the Lease to the contrary, a Lender shall not have any responsibility, liability or obligation to perform any obligation of Lessee under the Lease on behalf of Lessee unless and until Lender has acquired Lessee's leasehold interest thereunder by or through the exercise of Lender's rights under its Permitted Encumbrance. Should it acquire Lessee's leasehold interest, Lender shall be liable to perform the obligations imposed on Lessee by the Lease incurred or accrued only during the period that Lender has ownership of such leasehold interest. The provisions of the Lease enforceable against the Lessee shall likewise be enforceable against Lender only when, and then only for so long as, Lender owns or has title to Lessee's leasehold interest, and then only in compliance with the applicable terms of the Lease and the Affordable Housing Agreement. Lender shall not be liable for the performance of any Lease obligations accruing prior to its ownership of Lessee's leasehold interest or for any such obligations accruing at any point following Lender's assignment, sale or transfer of Lender's leasehold interest thereunder to any third person or entity. In any event, Lender's personal liability shall be limited to its interest in the leasehold interest.
- l. Notice of Proceedings and Right to Participate. If either Lessor or Lessee shall initiate any proceedings affecting the Lease, Lessor and Lessee agree to notify Lender of such proceedings, and Lessor acknowledges and agrees that Lender shall have the right to participate in such proceedings on Lessee's behalf, and to the exclusion of Lessee.

2. Section 2.2 of the Lease is deleted in its entirety and replaced with the following:

“**2.2 Term.** The term of this Lease shall commence on the date of this Lease as set forth above and shall continue from such date until the expiration of ninety-nine (99) years.”

3. Section 2.4 of the Lease is deleted in its entirety and replaced with the following:
2.4 Use of Project and Assurances of the Lessee. The Lessee shall operate the Project in compliance with the Affordable Housing Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein, including making forty-nine of the Dwelling Units in the Project available to Tenants whose incomes do not exceed Low Income at rents that do not exceed the Affordable Rents as set forth in the Affordable Housing Agreement.
4. Except as amended herein, the Lease and Memorandum shall otherwise remain in full force and effect. The parties hereby agree that this Amendment shall not constitute a novation of the Lease.
5. This Amendment may be executed in one or more counterparts and as so executed shall constitute a single instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their lawfully authorized officers.

Dated: _____

LESSOR:
CITY OF EMERYVILLE,
a municipal corporation
By: _____
Name: _____
Its: _____

[notary acknowledgment required]

APPROVED AS TO FORM:

John Kennedy

City Attorney

Dated: 10/16/2024

[Signature Pages continue on Next Page]

TENANT:

EMERYVILLA APARTMENTS LP,
a California limited partnership

By: Emeryvilla Apartments LLC,
a California limited liability company
its general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit corporation
its sole member and manager

By: Natalia Williams
Name: Natalia Williams
Title: Vice President

[notary acknowledgment required]

[End of Signature Pages]