

File No. 151150

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date November 30, 2015

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Alisa Somera Date November 25, 2015

Completed by: _____ Date _____

1 [Amended and Restated Ground Lease - Improved Real Property located at 477
2 O'Farrell Street - O'Farrell Towers Associates, L.P.]

3 **Resolution authorizing the execution and performance of an Amended and**
4 **Restated Ground Lease, with a term of 99 years, between the City and**
5 **County of San Francisco and O'Farrell Towers Associates, L.P., a California**
6 **limited partnership, of real property located at 477 O'Farrell Street, for the**
7 **rehabilitation of 101 units of affordable housing for low and very low**
8 **income seniors.**

9
10 WHEREAS, The former San Francisco Redevelopment Agency (the "Agency")
11 leased the land for the property located at 477 O'Farrell Street (Assessor's Block No.
12 0324, Lot No. 024) (the "Property") to Citizen Housing Corporation ("Citizen") pursuant
13 to that certain ground lease dated August 4, 2000 (the "Original Ground Lease"); and

14 WHEREAS, Citizen assigned its interest in the Original Ground Lease to O'Farrell
15 Senior Housing, Inc. ("OSHI") on April 19, 2005, an affiliate of Citizen; and

16 WHEREAS, OSHI has operated the building located on the Property (the
17 "Improvements") as affordable housing for low and very low income seniors with ground floor
18 commercial use; and

19 WHEREAS, Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes
20 of 2011-12, first Extraordinary Session) ("AB 26"), the Agency dissolved as a matter of
21 law on February 1, 2012, and pursuant to AB 26, as amended by California State
22 Assembly Bill No. 1484 ("AB 1484"), and Resolution No. 11-12, adopted by the City's
23 Board of Supervisors and Mayor on January 26, 2012, Ordinance No. 215-12, adopted
24 by the City's Board of Supervisors and Mayor on October 12, 2012, and the approved
25 housing asset list submitted by City to, and approved by, the State of California

1 Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code, Section
2 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all
3 of the Agency's rights and obligations with respect to the Site; and

4 WHEREAS, MOHCD wishes to consent to the assignment by OSHI to
5 O'Farrell Towers Associates, L.P. (the "Partnership"), the general partner of which is
6 managed by an affiliate of OSHI, of OSHI's leasehold interest in the Property and
7 concurrently enter into an amended and restated ground lease with the Partnership
8 in order to facilitate a tax credit rehabilitation of the Improvements to retain its current
9 use as 101 units of affordable housing for low and very low income seniors; now,
10 therefore, be it

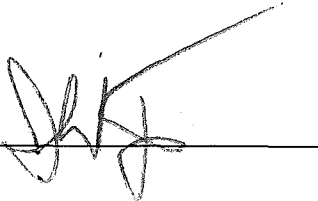
11 RESOLVED, That in accordance with the recommendations of the Director of
12 Property and the Director of MOHCD, the Board of Supervisors hereby approves and
13 authorizes the Director of Property, along with the Director of MOHCD, to finalize
14 negotiations for the amended and restated Ground Lease (the "Amended Ground
15 Lease") and following the negotiations for the Amended Ground Lease authorizes the
16 Director of MOHCD to execute and deliver the Amended Ground Lease; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 MOHCD, in consultation with the City Attorney, to enter into any additions,
19 amendments or other modifications to the Amended Ground Lease that the Director of
20 MOHCD determines are in the best interests of the City, do not decrease the revenues
21 of the City in connection with the Property, or otherwise materially increase the
22 obligations or liabilities of the City, and are in compliance with all applicable laws,
23 including the City's Charter.

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RECOMMENDED:

Director of Property



Director of the Mayor's Office of Housing and Community Development



Mayor's Office of Housing and Community Development
City and County of San Francisco



Edwin M. Lee
Mayor

Olson Lee
Director

November 2, 2015

Honorable Jane Kim
City and County of San Francisco
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Approval of an Amended and Restated Ground Lease for 99 years to provide rehabilitation funds for 101 units of affordable senior housing at 477 O'Farrell Street

Dear Supervisor Kim,

Thank you for agreeing to introduce this resolution authorizing the execution of an amended and restated ground lease agreement for the property, located at 477 O'Farrell Street, between the Mayor's Office of Housing and Community Development ("MOHCD"), and O'Farrell Towers Associates LP., an affiliate corporation of Tenderloin Neighborhood Development Corporation.

MOHCD respectfully requests your support in introducing and sponsoring this resolution (attached) at the Board of Supervisors on Tuesday November 3, 2015. Our hope is to have the resolution calendared for the Land Use Committee on Monday November 16, 2015, and then returned to the full BoS on December 1, 2015.

The project serves seniors earning up to 50% of AMI. This lease amendment will facilitate the construction rehabilitation of important affordable housing stock in the Tenderloin using **no new city capital**.

The attached resolution has been reviewed by Deputy City Attorney Beth Anderson and approved by myself as well as Director of Real Estate John Updike on behalf of Director of Real Estate John Updike. If you have any questions about the resolution or the project, please contact Kevin Kitchingham at 701-5523. Thank you.

Sincerely,


Olson Lee
Director

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AMENDED AND RESTATED GROUND LEASE

by and between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

O'FARRELL TOWERS ASSOCIATES, L.P.,
as Tenant

For the lease of

477 O'Farrell Street
San Francisco, California

Dated: _____

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Attachments to Ground Lease

1. Legal Description of Site
2. Schedule of Performance
3. City Consent of Leasehold Mortgage
4. Certificate of Preference Policy
5. Memorandum of Ground Lease
6. Form of Tenant Income Certification

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1 **AMENDED AND RESTATED GROUND LEASE**

2 This ground lease ("Ground Lease") is dated as of, _____ 2015, by and between
3 the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City" or
4 "Landlord"), represented by the Mayor, acting by and through the Mayor's Office of Housing and
5 Community Development ("MOHCD"), and O'FARRELL TOWERS ASSOCIATES, L.P., a
6 California limited partnership, as tenant (the "Tenant" or the "Partnership").

7 **RECITALS**

8 A. The City is the fee owner of the land described in Attachment 1 attached hereto
9 ("Site"). The former San Francisco Redevelopment Agency (the "Agency") leased the Site to
10 Citizens Housing Corporation ("Citizens") pursuant to that certain ground lease dated August 4,
11 2000 (the "Original Ground Lease")

12 B. Citizens assigned its interest in the Original Ground Lease to O'Farrell Senior
13 Housing, Inc. ("OSHI") on April 19, 2005, an affiliate of Citizens.

14 C. OSHI has operated the building located on the Property (the "Improvements")
15 as affordable housing for low and very low income seniors with ground floor commercial use.

16 D. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-
17 12, first Extraordinary Session) ("AB 26"), the Agency dissolved as a matter of law on February
18 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 ("AB
19 1484"), and Resolution No. 11-12, adopted by the City's Board of Supervisors and Mayor on
20 January 26, 2012, Ordinance No. 215-12, adopted by the City's Board of Supervisors and Mayor
21 on October 12, 2012, and the approved housing asset list submitted by City to, and approved by,
22 the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code
23 Section 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all of

1 the Agency's rights and obligations with respect to the Site.

2 E. MOHCD wishes to consent to the assignment by OSHI to the Partnership, the
3 general partner of which is managed by an affiliate of OSHI, of OSHI's leasehold interest in the
4 Site and concurrently enter into this amended and restated ground lease ("Ground Lease") with
5 the Partnership in order to facilitate a tax credit rehabilitation of the Improvements to retain its
6 current use as 101 unit senior rental housing development serving low-income households
7 (including one manager's unit), which is known as O'Farrell Towers (the "Project").
8 Concurrently with the execution of this Ground Lease, Tenant is purchasing a fee interest in the
9 improvements and desires to rehabilitate said improvements.

10 F. The City has established an affordable housing program to promote the
11 retention and development of housing which is affordable to low income households.

12 G. The City believes that the fulfillment of the terms and conditions of this Ground
13 Lease are in the vital and best interests of the City and the health, safety, morals and welfare of its
14 residents, and in full accord with the public purposes and provisions of applicable State and
15 Federal laws and requirements.

16
17 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
18 City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as
19 defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter
20 set forth, to each and all of which the City and Tenant hereby mutually agree.

21 **ARTICLE 1: DEFINITIONS**

22 Terms used herein have the meanings given them when first used or as set forth in this

1 Article 1, unless the context clearly requires otherwise.

2 **1.01 Agreement Date** means the date set forth on the cover page.

3 **1.02 Area Median Income** (or “AMI”) means area median income as determined by
4 the United States Department of Housing and Urban Development for the San Francisco area,
5 adjusted solely for household size, but not high housing cost area.

6 **1.03 Effective Date** means the date the City records a Memorandum of Ground Lease
7 against the Site, but in no event shall the date be prior to the approval of the Ground Lease by the
8 City’s Board of Supervisors and Mayor.

9 **1.04 First Lease Payment Year** means the year in which rehabilitation activities are
10 completed on the Project, as evidenced by a NOC (as defined in Section 10.14 of this Ground
11 Lease).

12 **1.05 First Mortgage Lender** means any lender and its successors, assigns and
13 participants or other entity holding the first deed of trust on the Leasehold Estate.

14 **1.06 Ground Lease** means this Ground Lease of the Site to the Tenant from the City, as
15 amended from time to time.

16 **1.07 Improvements** means all physical construction, including all structures, fixtures
17 and other improvements to be rehabilitated on the Site.

18 **1.08 Law** means all statutes, laws, ordinances, regulations, orders, writs, judgments,
19 injunctions, decrees or awards of the United States or any state, county, municipality or
20 governmental agency.

21 **1.09 Lease Year** means each calendar year during the term hereof, beginning on
22 January 1 and ending on December 31, provided that the “First Lease Year” shall commence on

1 the Effective Date and continue through December 31st of that same calendar year. Furthermore,
2 the “Last Lease Year” shall end upon the expiration of the Term hereof.

3 **1.10 Leasehold Estate** means the estate held by the Tenant pursuant to and created by
4 this Ground Lease.

5 **1.11 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of
6 credit or other security instrument, and any assignment of the rents, issues and profits from the
7 Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this
8 Ground Lease and will be approved in writing by the City.

9 **1.12 Lender** means any entity holding a Leasehold Mortgage.

10 **1.13 Loan Documents** means those certain loan agreements, notes, deeds of trust and
11 declarations and any other documents executed and delivered in connection with the construction
12 and permanent financing for the Project.

13 **1.14 Low-Income Households** means households earning no more than sixty percent
14 (60%) of Area Median Income.

15 **1.15 MOHCD** means the Mayor’s Office of Housing and Community Development for
16 the City.

17 **1.16 Occupant** means any person or entity authorized by Tenant to occupy a residential
18 unit on the Site, or any portion thereof.

19 **1.17 Permitted Limited Partner** means Wincopin Circle LLP as investor limited
20 partner .

21 **1.18 Premises** means the Site together with any Improvements thereon. [NOTE: No
22 preapproved transfers so Prohibited Person concept not needed]

1 **1.19 Project** means the rehabilitation of the existing Improvements, consisting of 101
2 units of multifamily rental housing plus community space and common areas serving low and
3 very low income households. If indicated by context, Project means the leasehold interest in the
4 Site and the fee interest in the Improvements on the Site.

5 **1.20 Project Expenses** means all charges incurred by Tenant in the operation of the
6 Project including but not limited to: (a) lease payments, utilities, real estate and/or possessory
7 interest taxes, assessments, and liability, fire and other hazard insurance premiums; (b) salaries,
8 wages and other compensation due and payable to the employees or agents of Tenant who
9 maintain, administer, operate or provide services in connection with the Project, including all
10 withholding taxes, insurance premiums, Social Security payments and other payroll taxes or
11 payments required for such employees; (c) payments of required interest and principal, if any, on
12 any construction or permanent financing secured by the Project; (d) all other expenses incurred by
13 Tenant to cover routine operating and services provision costs of the Project, including
14 maintenance and repair and the reasonable fee of any managing agent; (e) any extraordinary
15 expenses as approved in advance by the City; (f) deposits to reserves accounts required to be
16 established under the Loan Documents or Partnership Agreement, and (g) an asset management
17 fee in the amount of \$18,420 per year (for 2015), which fee shall increase by 3.5% per year, (h)
18 deferred developer fee; and (i) approved expenses for social services.

19 **1.21 Project Income** means all revenue, income receipts, and other consideration
20 actually received from the operation of leasing the Improvements and Project, including non-
21 residential and/or commercial uses of the Site. Project Income shall include but not be limited to:
22 all rents, fees and charges paid by tenants or users of any portion of the Site; Section 8 or other

1 rental subsidy payments received for the dwelling units; supportive services funding, if
2 applicable; commercial lease income; deposits forfeited by tenants; all cancellation fees, price
3 index adjustments and any other rental adjustments to leases or rental agreements; proceeds from
4 vending and laundry room machines; and the proceeds of business interruption or similar
5 insurance. Project Income shall not include tenants' security deposits, loan proceeds, capital
6 contributions or similar advances.

7 **1.22 Seller Note** means the promissory note executed by Owner in favor of O'Farrell
8 Senior Housing, Inc. in the original principal amount of \$19,666,654.

9 **1.23 Site** means the real property as more particularly described in the Site Legal
10 Description, Attachment 1.

11 **1.24 Subsequent Owner** means any successor (including a Lender or an affiliate or
12 assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the
13 Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure,
14 or transfer from a Lender, its affiliate, and any successors to any such person or entity.

15 **1.25 Surplus Cash** means the excess of Project Income over Project Expenses. All
16 permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(g) of this
17 Ground Lease.

18 **1.26 Tenant** means O'Farrell Towers Associates, L.P., a California limited partnership
19 and its successors and assigns (or a Subsequent Owner, where appropriate).

20 **1.27 Very Low-Income Households** means households earning no more than fifty
21 percent (50%) of Area Median Income.

22 Whenever an Attachment is referenced under this Ground Lease, it means an attachment

1 to this Ground Lease unless otherwise specifically identified. Whenever a section, article or
2 paragraph is referenced, it is a reference to this Ground Lease unless otherwise specifically
3 referenced.

4 **ARTICLE 2: TERM**

5 (a) Initial Term. The term of this Ground Lease shall commence upon the Effective
6 Date and shall end sixty five (65) years from that date (“Term”), unless extended pursuant to
7 section (b) below or earlier terminated pursuant to the terms hereof.

8 (b) Option for Extension. Provided that the Tenant is not in default under the terms of
9 this Ground Lease and the Loan Documents, beyond any notice, grace or cure period, either at the
10 time of giving of an Extension Notice (as defined below), as described in subparagraph (c) below,
11 or on the last day of the Term (the “Termination Date”), the Term may be extended at the option
12 of the Tenant for one thirty four (34) year period as provided below. If the Term is extended
13 pursuant to this section, all references in this Ground Lease to the “Term” shall mean the Term as
14 extended by this extension period.

15 (c) Notice of Extension. Tenant shall have one (1) option to extend the term of this
16 Ground Lease for a period of thirty four (34) years from the Termination Date. Not later than one
17 hundred eighty (180) days prior to the Termination Date, the Tenant may notify the City in
18 writing that it wishes to exercise its option to extend the term of this Ground Lease (an “Extension
19 Notice”). In the event that Tenant fails to deliver timely the Exercise Notice, City shall deliver to
20 Tenant written notice of Tenant’s failure to deliver timely the Exercise Notice (the “Reminder
21 Extension Notice”) and Tenant shall have an additional one hundred eighty (180) days after
22 receipt of the Reminder Extension Notice to exercise the option to extend the term of this Ground

1 Lease. Upon Tenant's exercise of this option, the Initial Term shall be extended for thirty four
2 (34) years from the Termination Date for a total Ground Lease term of not to exceed ninety-nine
3 (99) years.

4 (d) Rent During Extended Term. Rent for any extended term will be as set forth in
5 Article 4.

6 (e) Right of First Refusal. If during the Term or extended term of this Ground Lease,
7 the City desires to sell its interest in the Site, the Tenant will have the right of first refusal to
8 negotiate for the purchase of the Site as set forth in Section 14.02 provided that the Tenant agrees
9 to maintain the Site as a low and very low income housing development for fifty-five (55) years
10 from the date of purchase.

11 (f) Holding Over. Any holding over after expiration of the Term or, if applicable,
12 extended term without the City's written consent will constitute a default by Tenant and entitle
13 the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City
14 elects to accept one or more payments of Annual Rent.

15 **ARTICLE 3: FINANCING**

16 Tenant shall submit to the City in accordance with the dates specified in the Schedule of
17 Performance, Attachment 2, for approval by the City, evidence satisfactory to the City that Tenant
18 has sufficient equity capital and commitments for construction and permanent financing, and/or
19 such other evidence of capacity to proceed with the rehabilitation of the Improvements in
20 accordance with this Ground Lease, as is acceptable to the City. City hereby acknowledges that
21 as of the Effective Date, Tenant has satisfied this requirement.

22 **ARTICLE 4: RENT**

1 **4.01 Annual Rent**

2 (a) Tenant shall pay to the City Two Hundred Ten Thousand (\$210,000) (the “Annual
3 Rent”) per year for each year of the Term of this Ground Lease. Annual Rent consists of Base
4 Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as
5 otherwise permitted by this Lease) and without necessity of demand, notice or invoice. Annual
6 Rent shall be re-determined on the fifteenth (15th) anniversary of the date of the First Lease
7 Payment Year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of
8 the appraised value of the Site as determined by an MAI appraiser selected by and at the sole cost
9 of the City.

10 (b) If the Tenant elects to extend the term of this Ground Lease pursuant to Article 2
11 above, Annual Rent (along with any potential future adjustments) during any such extended term
12 shall be set by mutual agreement of the parties, taking into account the affordable housing
13 restrictions contained in Section 9.02, project debt (including any surplus cash debt obligations)
14 and the annual income expected to be generated by the Project; provided however that Annual
15 Rent during the extended term shall in no event be less than the Annual Rent set forth in 4.01(a)
16 above. If the parties cannot agree on Annual Rent during any extended term, either party may
17 invoke a neutral third-party process and shall agree on a neutral third-party appraiser to set the
18 Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving
19 similar rent determination disputes in San Francisco taking into account the affordable housing
20 restrictions contained in Section 9.02 Project debt (including any surplus cash debt obligations)
21 and the annual income expected to be generated by the Project or, in the event that there is no
22 then-prevailing practice, in accordance with the rules of the American Arbitration Association.

1 Provided, however, that after the neutral third party process, Tenant, in its sole discretion may
2 rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease. The
3 costs associated with such third-party process shall be shared equally by the parties.

4 **4.02 Base Rent**

5 (a) "Base Rent", means, in any given Lease Year, FIFTEEN THOUSAND DOLLARS
6 (\$15,000) per annum. Base Rent shall be due and payable in arrears on January 31st of each
7 Lease Year, however no Base Rent shall be due until after completion of the Project. The first
8 Base Rent payment shall be due on the January 31st of the calendar year following the First Lease
9 Payment Year, and shall be equal to \$15,000 times the number of days in the year following
10 receipt of the initial certificate of occupancy for the Improvements, divided by 365; and provided,
11 further, that in the event that the Tenant or any Subsequent Owner fails, after notice and
12 opportunity to cure, to comply with the provisions of Section 9.02, Base Rent shall be increased
13 to the full amount of Annual Rent. Additionally, in the event that a Subsequent Owner elects
14 pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or any
15 Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without compliance
16 with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

17 (b) If the Project does not have sufficient Project Income to pay Base Rent and the
18 City has received written notice from Tenant regarding its inability to pay Base Rent from Project
19 Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue with
20 compound annual [AFR] until paid ("**Base Rent Accrual**"). The Base Rent Accrual shall be due
21 and payable each year from and to the extent Surplus Cash is available to make such payments
22 and, in any event, upon the earlier of (i) sale of the Project, (ii) or termination of this Ground

1 Lease or (iii) 57 years from the date of this Lease. All Base Rent payable after year 57 shall be
2 due and payable annually in arrears on January 31 regardless of the (AVAILABILITY) of
3 Surplus Cash.

4 (c) If Tenant has not provided City with written notice that it cannot pay Base Rent
5 due to insufficient Project Income, the City shall assess a late payment penalty of two percent
6 (2%) for each month or any part thereof that any Base Rent payment is delinquent. The Tenant
7 may request in writing that the City waive such penalties by describing the reasons for Tenant's
8 failure to pay Base Rent and Tenant's proposed actions to insure that Base Rent will be paid in
9 the future. The City may, in its sole discretion, waive in writing all or a portion of such penalties
10 if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is
11 diligently pursuing reasonable solutions to such failure to pay.

12 **4.03 Residual Rent**

13 "Residual Rent" means, in any given Lease Year, ONE HUNDRED NINETY
14 FIVE THOUSAND DOLLARS (\$195,000), subject to any periodic adjustments pursuant to
15 Section 4.01(a). Residual Rent shall be due in arrears on April 15th following each Lease Year.
16 Except as otherwise provided in Section 26.07(a), Residual Rent shall be payable only to the
17 extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent shall
18 accrue at a compound annual interest rate equal to [AFR]% and shall be paid in a later year from
19 available Surplus Cash, but in all events all Residual Rent accrued during the first fifty-five years
20 of the Term shall be paid no later than December 31, 2070. In the event that in any year Surplus
21 Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to the City in
22 writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant

1 shall provide to City any supporting documentation reasonably requested by City to allow City to
2 verify the insufficiency. Any accrued but unpaid Residual Rent shall be due and payable upon the
3 earlier of (i) sale of the Project; (ii) termination of this Ground Lease or (iii) 57 years from the
4 date of this Lease. All Residual Rent payable after year 57 shall be due and payable annually in
5 arrears on January 31 regardless of the (AVAILABILITY) of Surplus Cash.

6 7 **4.04 Triple Net Lease**

8 This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs,
9 charges, taxes, impositions and other obligations related thereto accruing after the Agreement
10 Date. If the City pays any such amounts, whether to cure a default or otherwise protect its
11 interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such
12 payments as additional rent within thirty (30) days of written demand by City. Failure to timely
13 pay the additional rent shall be an event of default.

14 **ARTICLE 5: CITY COVENANTS**

15 The City is duly created, validly existing and in good standing under the Law, and has full
16 right, power and authority to enter into and perform its obligations under this Ground Lease. City
17 covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the lease
18 term, peaceful, quiet and undisputed possession of the Site leased without hindrance or
19 molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

20 **ARTICLE 6: TENANT COVENANTS**

21 Tenant covenants and agrees for itself, and its successors and assigns to or of the Site, or
22 any part thereof, that:

1 **6.01 Limited Partnership Authority**

2 Tenant is a California limited partnership and has full rights, power and authority to enter
3 into and perform its obligations under this Ground Lease.

4 **6.02 Use of Site and Rents**

5 During the Term of this Ground Lease, Tenant and such successors and assigns shall
6 comply with the following requirements:

7 **6.02(a) Permitted Uses**

8 Except as otherwise provided in Section 26.06 and 26.07 of this Ground Lease,
9 Tenant shall devote the Site to, exclusively and in accordance with, the uses specified in this
10 Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground
11 Lease.

12 **6.02(b) Non-Discrimination**

13 Tenant shall not discriminate against or segregate any person or group of persons
14 on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or
15 domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the
16 sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the
17 Improvements, or any part thereof, nor shall Tenant itself or any person claiming under or through
18 it establish or permit any such practice or practices of discrimination or segregation with
19 reference to the selection, location, number, use or occupancy, of Occupants, subtenants or
20 vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or
21 required by funding source. Tenant shall not discriminate against tenants with certificates or
22 vouchers under the Section 8 program or any successor rent subsidy program.

1 **6.02(c) Non-Discriminatory Advertising**

2 All advertising (including signs) for sublease of the whole or any part of the Site
3 shall include the legend “Equal Housing Opportunity” in type or lettering of easily legible size
4 and design, or as required by applicable law.

5 **6.02(d) Access for Disabled Persons**

6 Comply with all applicable laws providing for access for persons with disabilities,
7 including, but not limited to, the Americans with Disabilities Act and Section 504 of the
8 Rehabilitation Act of 1973.

9 **6.02(e) Equal Opportunity Marketing Plan**

10 Tenant shall submit a Fair Housing Marketing Plan to be approved by the City
11 which approval shall not be unreasonably withheld, conditioned or delayed. Any Fair Housing
12 Marketing Plan must follow the City’s marketing requirements for such plans.

13 **6.02(f) Lead Based Paint**

14 Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all
15 applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain
16 residential structures undergoing federally assisted construction and require the elimination of
17 lead-based paint hazards.

18 **6.02(g) Permitted Uses of Surplus Cash**

19 All annual Project Income, prior to the calculation of Surplus Cash, shall be used
20 to pay Project Expenses. If the Tenant is in compliance with all applicable requirements and
21 agreements under this Ground Lease, Tenant shall then use any Surplus Cash to make the

1 following payments:

- 2 i. First to Base Rent Accrual payments, if any;
- 3 ii. Second, to replenish the operating reserve account, if necessary, up to the
4 amount required by Lenders;
- 5 iii. Third, to an asset management fee to the limited partner of Tenant in the
6 annual amount of \$5,000, increasing by 3% per year;
- 7 iv. Then, sixty six and sixty six hundredths percent (66.66%) of remaining
8 Surplus Cash to the City as payment of the Residual Rent and thirty percent
9 (30.00%) as payment on the Seller Note;
- 10 v. Then, any remaining Surplus Cash may be used by Tenant for any purposes
11 permitted under the amended and restated limited partnership agreement of
12 Tenant, as it may be amended from time to time.

13 **6.03 City Deemed Beneficiary of Covenants**

14 In amplification, and not in restriction, of the provisions of the preceding subsections, it is
15 intended and agreed that the City shall be deemed beneficiary of the agreements and covenants
16 provided in this Article 6 for and in its own right and also for the purposes of protecting the
17 interests of the community and other parties, public or private, in whose favor or for whose
18 benefit such agreements and covenants have been provided. Such agreements and covenants shall
19 run in favor of the City for the entire period during which such agreements and covenants shall be
20 in force and effect, without regard to whether the City has at any time been, remains, or is an
21 owner of any land or interest therein to, or in favor of, which such agreements and covenants
22 relate. The City shall have the right, in the event of any breach of any such agreements or

1 covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights
2 and remedies and to maintain any actions at law or suits in equity or other proper proceedings to
3 enforce the curing of such breach of covenants, to which it or any other beneficiaries of such
4 agreements or covenants may be entitled.

5 **ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION**

6 Forty-five (45) days after recordation of a NOC (as defined in Section 10.14) by the
7 Tenant for the Improvements, and not later than December 31st of each year thereafter, Tenant
8 will furnish to the City a list of the persons who are Occupants of the Improvements, the specific
9 unit which each person occupies, the household income of the Occupants of each unit, the
10 household size and the rent being charged to the Occupants of each unit along with an income
11 certification, in the form set forth in Attachment 6, for each Occupant. In addition, each
12 Occupant must be required to provide any other information, documents or certifications deemed
13 necessary by the City to substantiate the Occupant's income. If any state or federal agency
14 requires an income certification for Occupants of the Improvements containing the above-
15 referenced information, the City agrees to accept such certification in lieu of Attachment 6 as
16 meeting the requirements of this Ground Lease. In addition to such initial and annual list and
17 certification, Tenant agrees to provide the same information and certification to the City regarding
18 each Occupant of the Improvements not later than twenty (20) business days after such Occupant
19 commences occupancy.

20 **ARTICLE 8: CONDITION OF SITE - "AS IS"**

21 Neither the City, nor any employee, agent or representative of the City has made any
22 representation, warranty or covenant, expressed or implied, with respect to the Site, its physical

1 condition, the condition of any improvements, any environmental laws or regulations, or any
2 other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth
3 explicitly in this Ground Lease, and the Tenant understands and agrees that the City is making no
4 such representation, warranty or covenant, expressed or implied; it being expressly understood
5 that the Site is being leased in an "AS IS" condition with respect to all matters.

6 **ARTICLE 9: IMPROVEMENTS AND PERMITTED USES**

7 **9.01 Schedule of Performance**

8 Tenant agrees to undertake and complete all physical construction on the Site, if any, as
9 approved by the City, in accordance with the Schedule of Performance, Attachment 2

10 **9.02 Permitted Uses and Occupancy Restrictions**

11 The permitted uses of the Project are limited to 100 units of affordable rental housing plus
12 one manager's unit (collectively, the "Residential Units") and common areas. At all times during
13 the Term, 100 units in the Project shall be occupied or held vacant and available for rental by Low
14 Income Households. Residential Units shall be occupied and rented in accordance with all
15 applicable restrictions imposed on the Project by Lenders for so long as such restrictions are
16 required by the applicable Lender.

17 **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

18 **10.01 General Requirements and Rights of City**

19 All construction documents, including but not limited to preliminary and final plans and
20 specifications for the rehabilitation of the Improvements by Tenant (collectively the
21 "Construction Documents") shall be prepared by a person registered in and by the State of
22 California to practice architecture and shall be in conformity with this Ground Lease, including

1 any limitations established in the City's reasonable approval of the schematic drawings, if any,
2 preliminary construction documents, and final construction documents for the Premises, and all
3 applicable Federal, State and local laws and regulations. The architect shall use, as necessary,
4 members of associated design professions, including engineers and landscape architects.

5 **10.02 City Approvals and Limitation Thereof**

6 The Construction Documents must be approved by the City in the manner set forth
7 below:

8 **10.02(a) Compliance with Ground Lease**

9 The City's approval with respect to the Construction Documents is limited to
10 determination of their compliance with this Ground Lease, including, if applicable, the Scope of
11 Development. The Construction Documents shall be subject to general architectural review and
12 guidance by City as part of this review and approval process.

13 **10.02(b) MOHCD Does Not Approve Compliance with Construction**
14 **Requirements**

15 The City's approval is not directed to engineering or structural matters or
16 compliance with building codes and regulations, the Americans with Disabilities Act, or any other
17 applicable State or Federal law relating to construction standards or requirements.

18 **10.02(c) City Determination Final and Conclusive**

19 The City's determination respecting the compliance of the Construction
20 Documents with this Ground Lease shall be final and conclusive (except that it makes no
21 determination and has no responsibility for the matters set forth in Section 10.02(b), above).

1 **10.03 Construction to be in Compliance with Construction Documents and Law**

2 **10.03(a) Compliance with City Approved Documents**

3 The construction shall be in strict compliance with the City-approved Construction
4 Documents.

5 **10.03(b) Compliance with Local, State and Federal Law**

6 The construction shall be in strict compliance with all applicable local, State and
7 Federal laws and regulations.

8 **10.04 Approval of Construction Documents by City**

9 Tenant shall submit and City shall approve or disapprove the Construction Documents
10 referred to in this Ground Lease within the times established in the Schedule of Performance.

11 Failure by City either to approve or disapprove within the times established in the Schedule of
12 Performance shall entitle Tenant to a day for day extension of time for completion of any
13 activities delayed as a direct result of City's failure to timely approve or disapprove the
14 Construction Documents. City hereby acknowledges that as of the Effective Date, City has
15 approved the Construction Documents.

16 **10.05 Disapproval of Construction Documents by City**

17 If the City disapproves the Construction Documents in whole or in part as not being in
18 compliance with this Ground Lease, Tenant shall submit new or corrected plans which are in
19 compliance within thirty (30) days after written notification to it of disapproval, and the provision
20 of this section relating to approval, disapproval and re-submission of corrected Construction
21 Documents shall continue to apply until the Construction Documents have been approved by the
22 City; provided, however, that in any event Tenant must submit satisfactory Construction

1 Documents (i.e., approved by City) no later than the date specified therefor in the Schedule of
2 Performance.

3 **10.06 Intentionally Omitted**

4 **10.07 Issuance of Building Permits**

5 Tenant shall have the sole responsibility for obtaining all necessary building
6 permits and shall make application for such permits directly to the City's Department of Building
7 Inspection. The City understands and agrees that Tenant may use the Fast Track method of
8 permit approval for rehabilitation of the Improvements.

9 **10.08 Performance and Payment Bonds**

10 Prior to commencement of construction of the Improvements, Tenant shall deliver to City
11 performance and payment bonds, each for the full value of the cost of construction of the
12 Improvements, which bonds shall name the City as co-obligee, or such other completion security
13 which is acceptable to the City. The payment and performance bonds may be posted by Tenants'
14 general contractor and name Tenant and City as co-obligees.

15 **10.09 City Approval of Changes after Commencement of Construction**

16 Once construction has commenced, the only Construction Document matters subject to
17 further review by the City will be requests for any material changes in the Construction
18 Documents which affect matters previously approved by the City. Permission to make such
19 changes shall be requested by Tenant in writing directed to MOHCD, Attention: Senior Project
20 Manager/Construction Supervisor or his or her designee. MOHCD shall reply in writing giving
21 approval or disapproval of the changes within ten (10) business days after receiving such request.
22 If the request is disapproved, the reply must specify the reasons for the disapproval.

1 **10.10 Times for Construction**

2 Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any
3 part thereof, that Tenant and such successors and assigns shall promptly begin and diligently
4 prosecute to completion the rehabilitation of the Improvements upon the Site, and that such
5 construction shall in any event commence and thereafter diligently continue and shall be
6 completed no later than the dates specified in the Schedule of Performance, subject to force
7 majeure, unless such dates are extended by the City.

8 **10.11 Force Majeure**

9 For the purposes of any of the provisions of this Ground Lease, and notwithstanding
10 anything to the contrary, neither the City nor Tenant, as the case may be, shall be considered in
11 breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions
12 with respect to the beginning and completion of construction of the Improvements, or progress in
13 respect thereto, in the event of enforced delay in the performance of such obligations or
14 satisfaction of such conditions, due to unforeseeable causes beyond its control and without its
15 fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the
16 Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes,
17 freight embargoes, general scarcity of materials and unusually severe weather or delays of
18 subcontractors due to such causes; it being the purposes and intent of this provision that in the
19 event of the occurrence of any such enforced delay, the time or times for the satisfaction of
20 conditions to this Ground Lease including those with respect to construction of the Improvements,
21 shall be extended for the period of the enforced delay; provided, however, that the party seeking
22 the benefit of the provisions of this paragraph shall have notified the other party thereof in writing

1 of the cause or causes thereof within thirty (30) days after the beginning of any such enforced
2 delay and requested an extension for the period of the enforced delay; and, provided further, that
3 this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be
4 construed to extend, the time of performance of any of Tenant's obligations to be performed prior
5 to the commencement of construction, nor shall the failure to timely perform pre-commencement
6 of construction obligations extend or be construed to extend Tenant's obligations to commence,
7 prosecute and complete rehabilitation of the Improvements in the manner and at the times
8 specified in this Ground Lease.

9 **10.12 Reports**

10 **10.12(a)** Commencing when rehabilitation of the Improvements commences
11 and continuing until completion of rehabilitation of the Improvements, Tenant shall make a report
12 in writing to the City every month, in such detail as may reasonably be required by the City, as to
13 the actual progress of the Tenant with respect to such construction. Commencing as of the
14 Effective Date and continuing until completion of the rehabilitation of the Improvements, Tenant
15 shall be subject to inspection by representatives of the City, at reasonable times and upon
16 reasonable advance notice.

17 **10.12(b)** Tenant will have the right to have an employee, agent, or other
18 representative of Tenant accompany the City representative at all times while the Landlord
19 representative is present on the Site. The City and its representatives will exercise due care in
20 entering upon and/or inspecting the Site, and will perform all entry and inspection in a
21 professional manner and so as to preclude any damage to the Site or Improvements, or any
22 disruption to the work of construction or operation of the Improvements. The City and its

1 representatives will abide by any reasonable safety and security measures Tenant imposes.

2 **10.13 Access to Site**

3 Commencing as of the Effective Date, Tenant shall permit access to the Site to the City
4 whenever and to the extent necessary to carry out the purposes of the provisions of this Ground
5 Lease, at reasonable times and upon reasonable advance notice. In accessing the Site, City shall
6 comply with Section 10.12(b).

7 **10.14 Notice of Completion**

8 Promptly upon completion of the rehabilitation of the Improvements in accordance with
9 the provisions of this Ground Lease, Tenant shall file a Notice of Completion (“NOC”), which
10 shall be recorded in the San Francisco Recorder’s Office.

11 **10.15 Completion of Improvements by New Developer**

12 In the event Lender or a successor thereto forecloses, obtains a deed in lieu of
13 foreclosure or otherwise realizes upon the Premises and undertakes rehabilitation of the
14 Improvements (“New Developer”) (A) such New Developer shall not be bound by the provisions
15 of the Schedule of Performance with respect to any deadlines for the completion of the
16 rehabilitation of the Improvements but shall only be required to complete the rehabilitation of the
17 Improvements with due diligence and in conformance with a new Schedule of Performance as
18 agreed upon by the New Developer and the City, (B) such New Developer shall only be required
19 to complete the rehabilitation of the Improvements in accordance with all applicable building
20 codes and ordinances, and the approved Construction Documents with such changes that are
21 mutually agreed upon by the City and the New Developer pursuant to Subsection (C) hereof; and
22 (C) City and New Developer shall negotiate in good faith such reasonable amendments and

1 reasonable modifications to Section 10 of this Lease as the parties mutually determine to be
2 reasonably necessary based upon the financial and construction conditions then existing.

3 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

4 **11.01 Certificate of Completion – Issuance**

5 Promptly after completion of the rehabilitation of the Improvements in accordance with
6 the provisions of this Ground Lease, and upon the request of Tenant, the City will furnish Tenant
7 with an appropriate instrument so certifying (the “Certificate of Completion”). Such certification
8 by the City shall be a conclusive determination of satisfaction and termination of the agreements
9 and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors
10 and assigns, to construct the Improvements in accordance with City approved Construction
11 Documents and the dates for the beginning and completion thereof; provided, however, that such
12 determination shall only be withheld because of failure to carry out specific requirements of this
13 Ground Lease; provided further, that such certification and such determination shall not constitute
14 evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any
15 insurer of a mortgage, securing money loaned to finance the construction or any part thereof;
16 provided further, that City issuance of any Certificate of Completion does not relieve Tenant or
17 any other person or entity from any and all City requirements or conditions to occupancy of the
18 Improvements, which requirements or conditions must be complied with separately.

19 City may elect to issue to Tenant a Certificate of Completion if no events of default by
20 Tenant are then existing under this Agreement and Tenant has completed the Improvements in
21 accordance with this Agreement, except for: (1) punch list items; (2) landscaping and other
22 outside areas of the Improvements; and (3) other items that do not adversely affect or impair

1 Tenant's use and occupancy of the Improvements for the purposes contemplated by this
2 Agreement and that do not preclude the City's issuance of a certificate of occupancy or other
3 certificate or authorization of Tenant's use and occupancy of the Improvements. However, City
4 will not be obligated to issue a Certificate of Completion in these circumstances unless and until
5 Tenant has provided to the City, at the City's request, a bond, letter of credit, certificate of
6 deposit, or other security reasonably acceptable to the City in an amount equal to 110% of the
7 estimated cost of completing the items described in clauses (1) through (3) above, as reasonably
8 determined by the City.

9 **11.02 Certifications to be Recordable**

10 All certifications provided for in this section shall be in such form as will enable them to
11 be recorded with the Recorder of the City.

12 **11.03 Certification of Completion - Non-Issuance Reasons**

13 If MOHCD shall refuse or fail to provide any certification in accordance with the
14 provisions of Section 11.01, the City shall provide Tenant with a written statement, within fifteen
15 (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant
16 has failed to complete the construction of the Improvements in accordance with the provisions of
17 this Ground Lease or is otherwise in default hereunder and what measures or acts will be
18 necessary, in the opinion of the City, for Tenant to take or perform in order to obtain such
19 certification. Failure by the City to either issue a Certificate of Completion or a written statement
20 within the times provided herein will entitle Tenant to a day for day extension of time for the
21 period of delay caused by City.

1 **ARTICLE 12: CHANGES TO THE IMPROVEMENTS**

2 **12.01 Post Completion Changes**

3 The City has a particular interest in the Project and in the nature and extent of the
4 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the
5 following particular controls on the Site and on the Improvements: during the term of this
6 Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or
7 permit any Change in the Improvements (as defined in Section 12.02), unless the express prior
8 written consent for any change shall have been requested in writing from the City and obtained,
9 and, if obtained, upon such terms and conditions as the City may require. The City agrees not to
10 withhold or delay its response to such a request unreasonably.

11 **12.02 Definition of Change**

12 'Change' as used in this Article means any alteration, modification, addition and/or
13 substitution of or to the Site, the Improvements, and/or the density of development which differs
14 materially from that which existed upon the completion of construction of the Improvements in
15 accordance with this Ground Lease, and shall include without limitation the exterior design and
16 exterior materials. For purposes of the foregoing, exterior shall mean and include the roof of the
17 Improvements. Changes shall not include repairs, maintenance and interior alterations in the
18 normal course of operation of the Project, tenant improvements made by tenants to the
19 commercial space pursuant to commercial leases, or as may be required in an emergency to
20 protect the safety and well-being of the Project's Occupants.

21 **12.03 Enforcement**

22 Subject to Article 19 hereof, City shall have any and all remedies in law or equity

1 (including without limitation restraining orders, injunctions and/or specific performance), judicial
2 or administrative, to enforce the provisions of this Article 12, including without limitation any
3 threatened breach thereof or any actual breach or violation thereof.

4 **ARTICLE 13: TITLE TO IMPROVEMENTS**

5 City acknowledges that fee title to the Improvements is vested in Tenant. City and Tenant
6 hereby agree that fee title to the Improvements shall remain vested in Tenant during the Term,
7 subject to Section 14.01 below; provided however that, subject to the rights of any Lenders and as
8 further consideration for the City entering into this Ground Lease, at the expiration or earlier
9 termination of this Ground Lease, Tenant shall convey fee title to all the Improvements to the City
10 without any obligation by the City to pay any compensation therefor to Tenant. Upon expiration
11 or sooner termination of this Ground Lease, Tenant shall execute, acknowledge, and deliver to the
12 City a good and sufficient grant deed with respect to Tenant's fee interest in the Improvements.
13 City acknowledges and agrees that any and all depreciation, amortization and tax credits for
14 federal or state tax purposes relating to the Improvements and any and all additions thereto,
15 substitutions therefor, fixtures therein and other property relating thereto shall be deducted or
16 credited exclusively to Tenant during the Term and for the tax years during which the Term
17 begins and ends.

18 **ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE**

19 **14.01 Assignment, Sublease or Other Conveyance by Tenant**

20 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or
21 any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other
22 than to Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other

1 than leases to residential tenants in the ordinary course of business nor may it contract or agree to
2 do any of the same, without the prior written approval of the City, which approval shall not be
3 unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary,
4 Tenant may sell, assign, convey, sublease or transfer any or all of its interests in and to this
5 Ground Lease to Tenderloin Neighborhood Development Corporation (“TNDC”), or to an
6 affiliate or successor of TNDC, and may change, assign, acquire, or liquidate partnership interests
7 in Tenant, as permitted under Article 47 of this Ground Lease. The City reserves the right to
8 review and approve any commercial leases for the Site, which approval shall not be unreasonably
9 withheld, conditioned or delayed.

10 **14.02 Assignment, Sublease or Other Conveyance by City**

11 The parties acknowledge that any sale, assignment, transfer or conveyance of all or any
12 part of the City's interest in the Site, the Improvements, or this Ground Lease, is subject to this
13 Ground Lease. The City will require that any purchaser, assignee or transferee expressly assume
14 all of the obligations of the City under this Ground Lease by a written instrument recordable in
15 the Official Records of the City. This Ground Lease shall not be affected by any such sale, and
16 Tenant shall attorn to any such purchaser or assignee. In the event that the City intends to sell all
17 or any part of the Site, the City shall notify Tenant of the proposed terms of such sale not later
18 than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days
19 from the giving of such notice to exercise a right of first refusal to purchase the Site on the same
20 terms and conditions of such proposed sale, provided that any sale of City's interest in the Site
21 shall be subject to the prior approval of the City's Board of Supervisors and Mayor.

22 **ARTICLE 15: TAXES**

1 Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all
2 valid taxes, assessments and similar charges on the Site which become effective after the
3 Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use
4 or occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such
5 taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements
6 thereon; provided, however, that in the event any such tax, assessment or similar charge is
7 payable in installments, Tenant may make, or cause to be made, payment in installments; and,
8 provided further, that Tenant may contest the legal validity or the amount of any tax, assessment
9 or similar charge, through such proceedings as Tenant considers necessary or appropriate, and
10 Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested
11 by Tenant in good faith and without expense to the City. In the event of any such contest, Tenant
12 shall protect, defend and indemnify the City against all loss, cost, expense or damage resulting
13 there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay,
14 discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The
15 City shall furnish such information as Tenant shall reasonably request in connection with any
16 such contest provided that such information is in the City's possession, control or is otherwise
17 available to the public. City hereby consents to and shall reasonably cooperate and assist with
18 Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on
19 the Site, the Improvements or on Tenant's interest thereon.

20 **ARTICLE 16: UTILITIES**

21 Tenant shall procure water and sewer service from the City and electricity, telephone,
22 natural gas and any other utility service from the City or utility companies providing such

1 services, and shall pay all connection and use charges imposed in connection with such services.
2 From and after the Effective Date, as between the City and Tenant, Tenant shall be responsible
3 for the installation and maintenance of all facilities required in connection with such utility
4 services to the extent not installed or maintained by the City or the utility providing such service.

5 **ARTICLE 17: MAINTENANCE**

6 Tenant, at all times during the term hereof, shall maintain or cause to be maintained the
7 Premises in good condition and repair to the reasonable satisfaction of the City, including the
8 exterior, interior, substructure and foundation of the Improvements and all fixtures, equipment
9 and landscaping from time to time located on the Site or any part thereof. The City shall not be
10 obligated to make any repairs, replacements or renewals of any kind, nature or description
11 whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

12 **ARTICLE 18: LIENS**

13 Tenant shall use its best efforts to keep the Site free from any liens arising out of any work
14 performed or materials furnished by itself or its subtenants. In the event that Tenant shall not
15 cause the same to be released of record or bonded around within twenty (20) days following
16 written notice from the City of the imposition of any such lien, the City shall have, in addition to
17 all other remedies provided herein and by law, the right but not the obligation to cause the same to
18 be released by such means as it shall deem proper, including payment of the claim giving rise to
19 such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it
20 in connection therewith, shall be payable to the City by Tenant on demand; provided, however,
21 Tenant shall have the right, upon posting of an adequate bond or other security, to contest any
22 such lien, and the City shall not seek to satisfy or discharge any such lien unless Tenant has failed

1 so to do within ten (10) days after the final determination of the validity thereof. In the event of
2 any such contest, Tenant shall protect, defend, and indemnify the City against all loss, cost,
3 expense or damage resulting therefrom.

4 **ARTICLE 19: GENERAL REMEDIES**

5 **19.01 Application of Remedies**

6 The provisions of this Article 19 shall govern the parties' remedies for breach of this
7 Ground Lease.

8 **19.02 Notice and Cure Rights for Tenant**

9 (a) The City may not exercise its remedies under this Ground Lease for a
10 default by the Tenant unless and until: (i) the City has given written notice of any such default, in
11 accordance with the notice provisions of Article 38, to Tenant and Permitted Limited Partners
12 who have requested notice as set forth below, and (ii) such default has not been cured within sixty
13 (60) days or such longer period as may be set forth herein, following the giving of such notice or,
14 if such default cannot be cured within such 60-day period, such longer period as is reasonably
15 necessary to cure such default, provided that such cure has been commenced within such 60-day
16 period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot
17 cure a default due to an automatic stay in Bankruptcy court because the general partner of the
18 Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic
19 stay.

20 (b) The City will not exercise its remedy to terminate this Ground Lease if a
21 Permitted Limited Partner is attempting to cure the default and such cure requires removal of the

1 General Partner, so long as the Permitted Limited Partner is proceeding diligently to remove the
2 General Partner in order to effect a cure of such default.

3 (c) Unless otherwise provided for herein, any limited partner wishing to become a
4 Permitted Limited Partner other than any Permitted Limited Partner identified in Section 38 must
5 provide five (5) days written notice to the City in accordance with the notice provisions of this
6 Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant
7 and all of the Tenant's partners. Such limited partner will become a Permitted Limited Partner
8 upon the expiration of the five-day period. A limited partner will not be afforded the protections
9 of this section with respect to any default occurring prior to the time such limited partner becomes
10 a Permitted Limited Partner.

11 **19.03 Breach by City**

12 If Tenant believes a material breach of this Ground Lease has occurred, Tenant shall first
13 notify the City in writing of the purported breach, giving the City sixty (60) days from receipt of
14 such notice to cure such breach. In the event City does not then cure or, if the breach is not
15 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)
16 days and thereafter diligently prosecute such cure to completion, then Tenant shall be afforded all
17 of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in
18 writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an
19 action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other
20 remedy available at law or equity.

21 **19.04 Breach by Tenant**

22 **19.04(a) Default by Tenant**

1 Subject to the notice and cure rights under Section 19.02, the following events
2 each constitute a default by Tenant and a basis for the City to take action against Tenant:

3 (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions
4 set forth in Section 9.02;

5 (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer
6 or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as
7 permitted by this Ground Lease or otherwise with the approval of the City;

8 (3) Tenant, or its successor in interest, shall fail to pay real estate taxes or
9 assessments on the Premises or any part thereof when due, or shall place thereon any
10 encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to
11 be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or
12 lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien
13 removed or discharged within the time period provided in Article 18; provided, however, that
14 Tenant shall have the right to contest any tax or assessment pursuant to Article 15 and Article 18
15 and, upon the posting of an adequate bond or other security, to contest any such lien or
16 encumbrance. In the event of any such contest, Tenant shall protect, indemnify and hold City
17 harmless against all losses and damages, including reasonable attorneys' fees and costs resulting
18 therefrom;

19 (4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer
20 in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have
21 brought against Tenant any action or proceeding of any kind under any provision of the Federal
22 Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event

1 such proceedings are involuntary, Tenant is not dismissed from the same within sixty (60) days
2 thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such
3 receiver is not discharged within sixty (60) days;

4 (5) Tenant breaches any other material provision of this Ground Lease;

5 (6) Tenant fails to pay any portion of Annual Rent when due in accordance
6 with the terms and provisions of this Ground Lease.

7 **19.04(b) Notification and City Remedies**

8 Upon the happening of any of the events described in Section 19.04(a) above, and
9 prior to exercising any remedies, the City shall notify Tenant, the Permitted Limited Partners, and
10 each Lender in writing of the Tenant's purported breach, failure or act in accordance with the
11 notice provisions of Article 38, giving Tenant sixty (60) days from receipt of such notice to cure
12 such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is not
13 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)
14 days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any
15 Lender and subject to Section 19.02 and Article 26, the City thereafter shall be afforded all of its
16 rights at law or in equity, including any or all of the following remedies: (1) terminating in
17 writing this Ground Lease; (2) prosecuting an action for damages; (3) seeking specific
18 performance of this Ground Lease; or (4) in the case of default under Section 19.04(a)(1),
19 increasing the Base Rent to the full amount of the Annual Rent.

20 Notwithstanding the foregoing, (i) during the 15-year tax credit compliance period,
21 City may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6)
22 above, and (ii) at all times during the term of the Lease, the ability of City to collect any unpaid

1 Residual Rent and the accrued interest on any unpaid Residual Rent shall be limited to the
2 exercise of its rights against the Property, and neither Tenant nor any of its partners shall have any
3 personal liability for repayment of any Residual Rent and/or accrued interest.

4 **ARTICLE 20: DAMAGE AND DESTRUCTION**

5 **20.01 Insured Casualty**

6 If the Improvements or any part thereof are damaged or destroyed by any cause covered
7 by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly
8 commence and diligently complete the restoration of the Improvements as nearly as possible to
9 the condition thereof prior to such damage or destruction; provided, however, that if more than
10 fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty
11 and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary
12 to accomplish the restoration, Tenant, with the written consent of Lender, may terminate this
13 Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction,
14 or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for
15 restoration. In the event Tenant is required or elects to restore the Improvements, all proceeds of
16 any policy of insurance required to be maintained by Tenant under this Ground Lease shall,
17 subject to any rights of Lenders, be used by Tenant for that purpose and Tenant shall make up
18 from its own funds or obtain additional financing as reasonably approved by the City any
19 deficiency between the amount of insurance proceeds available for the work of restoration and the
20 actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right
21 to do so under this Section 20.01, or elects not to restore the Improvements, the insurance
22 proceeds shall be divided in the order set forth in Section 20.03.

1 **20.02 Uninsured Casualty**

2 If (i) more than 50% of the Improvements are damaged or destroyed and ten percent
3 (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii)
4 in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be
5 completed or operated on an economically feasible basis; and (iii) there is not available to Tenant
6 any feasible source of third party financing for restoration reasonably acceptable to Tenant; then
7 Tenant may, with the written consent of each Lender, terminate this Ground Lease upon ninety
8 (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may
9 apply to a particular event of damage or destruction, Tenant shall notify the City promptly and not
10 consent to any settlement or adjustment of an insurance award without the City's written approval,
11 which approval shall not be unreasonably withheld or delayed. In the event that Tenant
12 terminates this Ground Lease pursuant to this Section 20.02, all insurance proceeds and damages
13 payable by reason of the casualty shall be divided among City, Tenant and Lenders in accordance
14 with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise
15 the right, to terminate this Ground Lease as a result of an uninsured casualty, Tenant shall
16 promptly commence and diligently complete the restoration of the Improvements as nearly as
17 possible to their condition prior to such damage or destruction in accordance with the provisions
18 of Section 20.01 and shall, subject to any applicable rights of Lenders, be entitled to all available
19 insurance proceeds.

20 **20.03 Distribution of the Insurance Proceeds**

21 In the event of an election by Tenant to terminate and surrender as provided in either
22 Sections 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance

1 policy required to be maintained by Tenant hereunder shall be as follows:

2 (a) First to the Lenders, in order of their priority, to control, disburse or apply to any
3 outstanding loan amounts in accordance with the terms of their respective Leasehold Mortgages;

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

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

12 (d) The remainder to Tenant.

13 **20.04 Clean Up of Housing Site**

14 In the event the Tenant terminates this Ground Lease pursuant to the provisions of
15 Sections 20.01 or 20.02 and the proceeds of any insurance policy are insufficient to pay the clean-
16 up and other costs described in Article 20.03(b), Tenant shall have the obligation to pay the
17 portion of such costs not covered by the insurance proceeds.

18 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;**
19 **INDEMNIFICATION**

20 **21.01 Damage to Person or Property - General Indemnification**

21 City shall not in any event whatsoever be liable for any injury or damage to any person
22 happening on or about the Site, for any injury or damage to the Premises, or to any property of

1 Tenant, or to any property of any other person, entity or association on or about the Site, unless
2 arising from any gross negligence or willful misconduct of the City or any of its commissioners,
3 officers, agents or employees. Tenant shall defend, hold harmless and indemnify the City and its
4 respective commissioners, officers, agents, and employees, of and from all claims, loss, damage,
5 injury, actions, causes of action and liability of every kind, nature and description directly or
6 indirectly arising from its tenancy, its use of the Site, including adjoining sidewalks and streets,
7 and any of its operations activities thereon or connected thereto; provided, however, that this
8 Article 21 shall not be deemed or construed to and shall not impose an obligation to indemnify
9 and save harmless the City or any of its commissioners, officers, agents or employees from any
10 claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way
11 related to or connected with any willful misconduct or gross negligence of the City, any of its
12 commissioners, officers, agents, employees or by the person or entity seeking such indemnity.

13 **21.02 Hazardous Materials – Indemnification**

14 (a) Tenant shall indemnify, defend, and hold the City, and its commissioners, officers,
15 agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified
16 Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and
17 causes of action of any nature whatsoever (including, without limitation, the reasonable fees and
18 disbursements of counsel and engineering consultants) incurred by or asserted against any
19 Indemnified Party in connection with, arising out of, in response to, or in any manner relating to
20 violation of any Environmental Law, or any Release threatened Release and any condition of
21 pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site.

22 (b) For purposes of this Section 21.02, the following definitions shall apply:

1 (i) "Hazardous Substance" shall have the meaning set forth in the
2 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended
3 as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without
4 limitation, petroleum (including crude oil or any fraction thereof) and petroleum products,
5 asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing
6 materials, all hazardous substances identified in the California Health & Safety Code 25316 and
7 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any
8 substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant
9 under Environmental Law. The foregoing definition shall not include substances which occur
10 naturally on the Site.

11 (ii) "Environmental Law" shall include all federal, state and local laws,
12 regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air
13 emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or
14 storage, and employee or community right-to-know requirements related to the work being
15 performed under this Agreement.

16 (iii) "Release" shall mean any spillage, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment,
18 including the abandonment or discharging of barrels, containers, and other closed receptacles
19 containing any Hazardous Substance.

20 **ARTICLE 22: INSURANCE**

21 **22.01 Insurance**

22 The Tenant shall maintain insurance meeting the requirements of this Article.

1 **22.01(a) Insurance Requirements for Tenant**

2 During the term of this Ground Lease, Tenant shall procure and maintain insurance
3 against claims for injuries to persons or damage to property which may arise from or in
4 connection with the performance of any work hereunder by the Tenant, its agents, representatives,
5 employees or subcontractors and the Tenant's use and occupancy of the Site and the
6 Improvements.

7 **22.01(b) Minimum Scope of Insurance**

8 Coverage shall be at least as broad as:

9 (1) Insurance Services Office Commercial General Liability coverage (form
10 CG 00 01 - "Occurrence") or other form approved by the City's Risk Manager.

11 (2) Insurance Services Office Automobile Liability coverage, code 1 (form CA
12 00 01 - "Any Auto") or other form approved by the City's Risk Manager.

13 (3) Workers' Compensation insurance as required by the State of California
14 and Employer's Liability insurance.

15 (4) Professional Liability Insurance: Tenant shall require that all architects,
16 engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors
17 and omissions. Tenant shall provide the City with copies of consultants' insurance certificates
18 showing such coverage.

19 (5) Insurance Services Office Property Insurance coverage (form CP 10 30 60
20 95 - "Causes of Loss - Special Form") or other form approved by the City's Risk Manager.

21 (6) Crime Policy or Fidelity Bond covering the Tenant's officers and
22 employees against dishonest with respect to the use of City funds.

23 **22.01(c) Minimum Limits of Insurance**

1 Tenant shall maintain limits no less than:

2 (1) General Liability: Commercial General Liability insurance with no less
3 than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million
4 Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including
5 coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability;
6 owners' and contractors' protective liability; products and completed operations; broad form
7 property damage; and explosion, collapse and underground (XCU) coverage during any period in
8 which Tenant is conducting any activity on, alteration or improvement to the Site with risk of
9 explosion, collapse, or underground hazards.

10 (2) Automobile Liability: Business Automobile Liability insurance with no
11 less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury
12 and property damage, including owned, hired and non-owned auto coverage, as applicable.

13 (3) Workers' Compensation and Employers Liability: Workers'
14 Compensation, in statutory amounts, with Employers' Liability limits not less than One Million
15 Dollars (\$1,000,000) each accident, injury, or illness.

16 (4) Professional Liability: Professional Liability insurance of no less than One
17 Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate
18 limit covering all negligent acts, errors and omissions of Tenant's architects, engineers and
19 surveyors. If the Professional Liability Insurance provided by the architects, engineers, or
20 surveyors is "claims made" coverage, Tenant shall assure that these minimum limits are
21 maintained for no less than three (3) years beyond completion of the construction or remodeling.

22 (5) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less

1 than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five
2 Thousand Dollars (\$5,000) each loss.

3 (6) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability
4 and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less
5 than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year,
6 this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may
7 be provided by the Tenant's contractor, provided that the policy must be "claims made" coverage
8 and Tenant must require Tenant's contractor to maintain these minimum limits for no less than
9 three (3) years beyond completion of the Project.

10 (7) Property Insurance:

11 (a) Prior to construction:

12 (i) Property insurance, excluding earthquake and flood, in the amount no
13 less than One Hundred Percent (100%) of the replacement value of all improvements prior to
14 commencement of construction and City property in the care, custody and control of the Tenant
15 or its contractor, including coverage in transit and storage off-site; the cost of debris removal and
16 demolition as may be made reasonably necessary by such perils, resulting damage and any
17 applicable law, ordinance or regulation; start up, testing and machinery breakdown including
18 electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss,
19 including the City and all subcontractors as loss payees.

20 (b) During the course of construction:

21 (i) Builder's risk insurance, special form coverage, excluding earthquake
22 and flood, for one hundred percent (100%) of the replacement value of all completed

1 improvements and City property in the care, custody and control of the Tenant or its contractor,
2 including coverage in transit and storage off-site; the cost of debris removal and demolition as
3 may be made reasonably necessary by such covered perils, resulting damage and any applicable
4 law, ordinance or regulation; start up, testing and machinery breakdown including electrical
5 arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk
6 policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand
7 Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

8 (ii) Performance and payment bonds of contractors, each in the amount of
9 One Hundred Percent (100%) of contract amounts, naming the City and Tenant as dual obligees
10 or other completion security approved by the City in its sole discretion.

11 (c) Upon completion of construction:

12 (i) Property insurance, excluding earthquake and flood, in the amount no
13 less than One Hundred Percent (100%) of the then-current replacement value of all improvements
14 and City property in the care, custody and control of the Tenant or its contractor. For
15 rehabilitation/construction projects that are unoccupied by residential or commercial tenants,
16 Tenant must obtain Property Insurance by the date that the project receives a Certificate of
17 Substantial Completion.

18 (ii) Boiler and machinery insurance, comprehensive form, covering damage
19 to, loss or destruction of machinery and equipment located on the Site that is used by Tenant for
20 heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not
21 less than one hundred percent (100%) of the actual replacement value of such machinery and
22 equipment.

1 **22.01(d) Deductibles and Self-Insured Retentions**

2 Any deductibles or self-insured retentions in excess of \$25,000 must be declared to
3 and approved by City’s Risk Manager. At the option of City’s Risk Manager, either: the insurer
4 shall reduce or eliminate such deductibles or self-insured retentions with respect to the City and
5 County of San Francisco, and their respective commissioners, members, officers, agents, and
6 employees; or the Tenant shall procure a financial guarantee satisfactory to the City’s Risk
7 Manager guaranteeing payment of losses and related investigations, claim administration and
8 defense expenses.

9 **22.01(e) Other Insurance Provisions**

10 The policies are to contain, or be endorsed to contain, the following provisions:

11 (1) General Liability and Automobile Liability Coverage: The “City and
12 County of San Francisco and their respective commissioners, members, officers, agents, and
13 employees” are to be covered as additional insured with respect to: liability arising out of
14 activities performed by or on behalf of the Tenant related to the Project; products and completed
15 operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project;
16 and automobiles owned, leased, hired or borrowed by the Tenant for the operations related to the
17 Project. The coverage shall contain no special limitations on the scope of protection afforded to
18 the City and its Commissioners, members, officers, agents or employees.

19 (2) Workers' Compensation and Property Insurance: The insured shall agree to
20 waive all rights of subrogation against the “City and County of San Francisco, and their respective
21 commissioners, members, officers, agents, and employees” for any losses in connection with this
22 Project.

1 (3) Claims-made Coverage: Should any of the required insurance be provided
2 under a claims-made form, Tenant shall maintain such coverage continuously throughout the term
3 of this Agreement and, without lapse, for a period of three years beyond the expiration of this
4 Agreement, to the effect that, should occurrences during the contract term give rise to claims made
5 after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6 (4) All Coverage: Each insurance policy required by this Article shall:

7 (a) Be endorsed to state that coverage shall not be suspended, voided, canceled
8 by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written
9 notice has been given to City, except in the event of suspension for nonpayment of premium, in
10 which case ten (10) days' notice shall be given.

11 (b) Contain a clause providing that the City and its officers, agents and
12 employees will not be liable for any required premium.

13 (c) For any claims related to this Ground Lease, the Tenant's insurance
14 coverage shall be primary insurance with respect to the City and its commissioners, members,
15 officers, agents, and employees. Any insurance or self-insurance maintained by the City or its
16 commissioners, members, officers, agents, or employees shall be in excess of the Tenant's
17 insurance and shall not contribute with it.

18 (d) The Tenant's insurance shall apply separately to each insured against whom
19 claim is made or suit is brought, except with respect to the limits of the insurer's liability.

20 (e) Any failure to comply with reporting provisions of the policies shall not
21 affect coverage provided to the City and its commissioners, members, officers, agents, or
22 employees.

1 (f) Approval of Tenant's insurance by the City will not relieve or decrease the
2 liability of Tenant under this Ground Lease.

3 (g) The City reserves the right to require an increase in insurance coverage in
4 the event the City determines that conditions show cause for an increase, unless Tenant
5 demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable
6 and unavailable to Tenant.

7 **22.01(f) Acceptability of Insurers**

8 Insurance is to be placed with insurers with a Best's rating of no less than A-VIII
9 or as otherwise approved by the City's Risk Manager.

10 **22.01(g) Verification of Coverage**

11 Tenant shall furnish City with certificates of insurance and with original
12 endorsements effecting coverage required by this clause at the commencement of this Ground
13 Lease and annually thereafter. The certificates and endorsements for each insurance policy are to
14 be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the
15 right to require complete, certified copies of all required insurance policies, including
16 endorsements demonstrating the coverage required by these specifications at any time.

17 **22.01(h) Contractor, Subcontractors and Consultants Insurance**

18 Tenant shall include all subcontractors and consultants as additional insureds under
19 its policies or shall furnish separate certificates and endorsements for each. Tenant shall require
20 the subcontractor(s) to provide all necessary insurance and to name the City and County of San
21 Francisco, its officers, agents and employees and the Tenant as additional insureds. All coverage

1 for subcontractors and consultants shall be subject to all of the requirements stated herein unless
2 otherwise approved by the City's Risk Manager.

3 **ARTICLE 23: COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS**

4 **23.01 Compliance with Legal Requirements**

5 Tenant shall at its cost and expense, promptly comply with all Laws, statutes, ordinances
6 and governmental rules, regulations or requirements now in force or which may hereafter be in
7 force, with the requirements of the fire department or other similar body now or hereafter
8 constituted, with any direction or occupancy certificate issued pursuant to any law by any public
9 officer or officers, insofar as any thereof relates to or affects the condition, use or occupancy of
10 the Site. In the event Tenant contests any of the foregoing, Tenant shall not be obligated to
11 comply therewith to the extent that the application of the contested law, statute, ordinance, rule,
12 regulation or requirement is stayed by the operation of law or administrative or judicial order and
13 Tenant indemnifies the City against all loss, cost, expense or damage resulting from
14 noncompliance.

15 **23.02 Regulatory Approvals**

16 Tenant understands and agrees that the City is entering into this Ground Lease in its
17 capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency
18 with certain police powers. Tenant understands and agrees that neither entry by the City into this
19 Ground Lease nor any approvals given by the City under this Ground Lease will be deemed to
20 imply that Tenant will obtain any required approvals from City departments, boards or
21 commissions that have jurisdiction over the Premises. By entering into this Ground Lease, the

1 City is in no way modifying or limiting the obligations of Tenant to develop the Project in
2 accordance with all Laws, as provided in this Ground Lease.

3 Tenant understands that its rehabilitation of the Improvements on the Premises and
4 development of the Project will require approval, authorization or permit by governmental
5 agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning
6 Administrator and the Department of Building Inspection. Tenant must use good faith efforts to
7 obtain and will be solely responsible for obtaining any such approvals required for the Project in
8 the manner set forth in this Section. Tenant will not seek any regulatory approval without first
9 obtaining MOHCD's approval, which approval shall not be unreasonably withheld or delayed.
10 Throughout the permit process for any regulatory approval, Tenant will consult and coordinate
11 with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with
12 Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition
13 of conditions or restrictions in connection with its efforts to obtain a permit from any other
14 regulatory agency if the City is required to be a co-permittee under the permit or the conditions or
15 restrictions could create any financial or other material obligations on the part of the City whether
16 on or off of the Premises, unless in each instance MOHCD has approved the conditions
17 previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will
18 limit Tenant's obligation to pay all the costs of complying with conditions under this Section.
19 Tenant must bear all costs associated with applying for and obtaining any necessary regulatory
20 approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's
21 failure to comply with the terms and conditions of any regulatory approval.

1 With MOHCD's prior written consent, Tenant will have the right to appeal or contest any
2 condition in any manner permitted by law imposed upon any regulatory approval. In addition to
3 any other indemnification provisions of this Ground Lease, Tenant must indemnify the City and
4 its commissioners, officers, agents or employees from and against any and all losses that may
5 arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any
6 regulatory approval or with the appeal or contest of any conditions of any regulatory approval,
7 except to the extent damage arises out of the gross negligence or willful misconduct of the City or
8 its agents.

9 **ARTICLE 24: ENTRY**

10 (a) The City reserves for itself and its authorized representatives the right to enter the
11 Property at all reasonable times during normal business hours upon not less than forty-eight (48)
12 hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the
13 occupants, tenants and others lawfully permitted on the Property, for any of the following
14 purposes:

15 (i) to inspect the work being performed by Tenant in developing the Project.

16 (ii) to determine whether the Premises is in good condition and to inspect the
17 Premises (including soil borings or other Hazardous Material Investigations);

18 (iii) to determine whether Tenant is in compliance with its Ground Lease obligations
19 and to cure or attempt to cure any Tenant default;

20 (iv) to serve, post or keep posted any notices required or allowed under any of the
21 provisions of this Ground Lease;

1 (v) to do any maintenance or repairs to the Premises that the City has the right or the
2 obligation, if any, to perform hereunder; and

3 (vi) to show the Premises to any prospective purchasers, brokers, Lenders or public
4 officials, or, during the last year of the Term of this Lease if notice of extension has not been
5 delivered during the initial Term, exhibit the Premises to prospective tenants or other occupants,
6 and to post any reasonable "for sale" or "for lease" signs in connection therewith.

7 (b) In the event of any emergency, as reasonably determined by the City, at its sole option
8 and without notice, the City may enter the Premises and alter or remove any Improvements or
9 Tenant's personal property on or about the Premises as reasonably necessary, given the nature of
10 the emergency. The City will have the right to use any and all means the City considers
11 appropriate to gain access to any portion of the Premises in an emergency, in which case, the City
12 will not be responsible for any damage or injury to any property, nor for the replacement of any
13 property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a
14 detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or
15 any portion thereof.

16 (c) The City will not be liable in any manner for any inconvenience, disturbance, loss of
17 business, nuisance or other damage arising out of the City's entry onto the Premises, except to the
18 extent damage arises out of the gross negligence or willful misconduct of the City or its agents.
19 The City will be responsible for any losses resulting from its gross negligence or willful
20 misconduct and will repair any resulting damage promptly.

21 (d) Tenant will not be entitled to any abatement in Annual Rent if the City exercises any
22 rights reserved in this Section, subject to subsection (c) above.

1 (e) The City will use its reasonable good faith efforts to conduct any activities on the
2 Premises allowed under this Section in a manner that, to the extent practicable, will minimize any
3 disruption to Tenant's use hereunder.

4 **ARTICLE 25: MORTGAGE FINANCING**

5 **25.01 No Encumbrances Except for Development Purposes**

6 Notwithstanding any other provision of this Ground Lease and subject to the prior written
7 consent of the City in the form attached hereto as Attachment 3, which consent shall not be
8 unreasonably withheld, conditioned or delayed, Leasehold Mortgages are permitted to be placed
9 upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing
10 the acquisition, design, construction, renovation or reconstruction of the Improvements and any
11 other expenditures reasonably necessary and appropriate to acquire, own, develop, construct,
12 renovate, or reconstruct the Improvements under this Ground Lease and in connection with the
13 operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in
14 furtherance of the purposes of this Ground Lease.

15 **25.02 Holder Not Obligated to Construct**

16 The holder of any mortgage, deed of trust or other security interest authorized by Section
17 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated
18 to complete any construction of the Improvements or to guarantee such completion; nor shall any
19 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.
20 However, in the event the Holder does undertake to complete or guarantee the completion of the
21 construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease shall
22 be deemed or construed to permit or authorize any such Holder or its successors or assigns to

1 devote the Site or any portion thereof to any uses, or to construct any Improvements thereon,
2 other than those uses or Improvements authorized under Section 9.02 subject to any reasonable
3 modifications in plans proposed by any Holder or its successors in interest proposed for the
4 viability of the Project, subject to the approval of City which approval shall not be unreasonably
5 withheld. To the extent any Holder or its successors in interest wish to change such uses or
6 construct different improvements, subject to Section 26.06(ii), that Holder or its successors in
7 interest must obtain the written consent of the City; provided, however, in such event Holder or
8 any Subsequent Owner shall negotiate in good faith revisions to the approved plans,
9 specifications and Schedule of Performance to the extent necessary or desirable to preserve the
10 economic and practical feasibility of the Project.

11 **25.03 Failure of Holder to Complete Construction**

12 In any case where six months after assumption of obligations pursuant to Section 25.02
13 above, a Holder, having first exercised its option to complete the construction, has not proceeded
14 diligently with completion of the construction, the City shall be afforded the rights against such
15 Holder it would otherwise have against Tenant under this Ground Lease for events or failures
16 occurring after such assumption; provided, however, if Lender has proceeded diligently with
17 construction, the Schedule of Performance shall not apply to Lender if such Schedule of
18 Performance has been replaced by the new Schedule of Performance pursuant to Section 10.15 of
19 this Agreement, which new Schedule of Performance will apply to Lender.

20 **25.04 Default by Tenant and City's Rights**

21 **25.04(a) Right of City to Cure a Default or Breach by Tenant under a**
22 **Leasehold Mortgage**

1 In the event of a default or breach by Tenant in or of its obligations under any
2 Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of
3 such default or breach, the City may, at its option, cure such breach or default at any time prior to
4 one hundred ten (110) days after the date on which the Lender files a notice of default. In such
5 event, the City shall be entitled to reimbursement from Tenant of all costs and expenses
6 reasonably incurred by the City in curing the default or breach. The City shall also be entitled to
7 a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and
8 disbursements that are not reimbursed by Tenant. Any such lien shall be subject to the lien of any
9 then existing Leasehold Mortgage authorized by this Ground Lease, including any lien
10 contemplated because of advances yet to be made. After ninety (90) days following the date of
11 Lender filing a notice of default, the City shall also have the right to assign Tenant's interest in
12 the Ground Lease to another entity, subject to such Lender's and Permitted Limited Partner's
13 written consent, but which may be conditioned, among other things, upon the assumption by such
14 other entity of all obligations of the Tenant under the Leasehold Mortgage.

15 **25.04(b) Notice of Default to City**

16 Tenant shall use its best efforts to require Lender to give the City prompt written
17 notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also
18 contain the City's right to cure as above set forth.

19 **25.05 Cost of Mortgage Loans to be Paid by Tenant**

20 Tenant covenants and affirms that it shall bear all of the costs and expenses in connection
21 with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any

1 instruments and documents and their filing and recording, if required, and (iii) all taxes and
2 charges payable in connection with any Leasehold Mortgage.

3 **ARTICLE 26: PROTECTION OF LENDER**

4 **26.01 Notification to City**

5 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the
6 existence of any of the rights set forth in this Article 26, each Lender shall give written notice to
7 the City of the Lender's address and of the existence and nature of its Leasehold Mortgage.

8 Execution of Attachment 3 shall constitute City's acknowledgement of Lender's having given
9 such notice as is required to obtain the rights and protections of a Lender under this Ground
10 Lease. The City hereby acknowledges that Wells Fargo, National Association has given such
11 notice as First Mortgage Lender.

12 **26.02 Lender's Rights to Prevent Termination**

13 Subject to Section 26.03, each Lender shall have the right, but not the obligation, at any
14 time prior to termination of this Ground Lease and without payment of any penalty other than the
15 interest on unpaid rent, to pay all of the rents due hereunder, to effect any insurance, to pay any
16 taxes and assessments, to make any repairs and improvements, to do any other act or thing
17 required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be
18 done in the performance and observance of the agreements, covenants and conditions hereof to
19 prevent a termination of this Ground Lease to the same effect as if the same had been made, done
20 and performed by Tenant instead of by Lender.

21 **26.03 Lender's Rights When Tenant Defaults**

1 Should any event of default under this Ground Lease occur and is continuing, and not be
2 cured within the applicable cure period, the City shall not terminate this Ground Lease nor
3 exercise any other remedy hereunder unless it first gives written notice of such event of default to
4 Lender and

5 (i) If such event of default is a failure to pay a monetary obligation of Tenant, Lender
6 shall have failed to cure such default within sixty (60) days from the date of written notice from
7 the City to Lender; or

8 (ii) If such event of default is not a failure to pay a monetary obligation of Tenant,
9 Lender shall have failed, within one hundred twenty (120) days of receipt of said written notice,
10 either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of
11 foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof
12 (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to
13 completion, in which case such event of default shall be remedied or deemed remedied in
14 accordance with Article 26.04 below.

15 All rights of the City to terminate this Ground Lease as the result of the occurrence of any
16 such event of default shall be subject to, and conditioned upon, the City having first given Lender
17 written notice of such event of default and Lender having failed to remedy such default or acquire
18 Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate
19 proceedings in the nature thereof as set forth in and within the time specified by this Section
20 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under
21 Sections 19.02(b) or 26.06(iv).

22 **26.04 Default Which Cannot be Remedied by Lender**

1 Any event of default under this Ground Lease which in the nature thereof cannot be
2 remedied by Lender shall be deemed to be remedied as it pertains to Lender or any Subsequent
3 Owner if (i) within one hundred twenty (120) days after receiving notice from the City setting
4 forth the nature of such event of default, or prior thereto, Lender shall have acquired Tenant's
5 Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate
6 proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to
7 completion, (iii) Lender shall have fully cured any event of default arising from failure to pay or
8 perform any monetary obligation in accordance with the terms of this Ground Lease, and (iv)
9 from and after gaining possession of the Improvements, Lender shall diligently proceed to
10 perform all other obligations of Tenant as and when the same are due in accordance with the
11 terms of this Ground Lease.

12 **26.05 Court Action Preventing Lender's Action**

13 If Lender is prohibited by any process or injunction issued by any court or by reason of
14 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving
15 Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the
16 nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or
17 prosecuting such foreclosure or other proceedings shall be extended for the period of such
18 prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the City
19 agrees to enter into a new ground lease with the Lender on the same terms set forth in this Ground
20 Lease.

21 **26.06 Lender's Rights to Record, Foreclose and Assign**

22 The City hereby agrees with respect to any Leasehold Mortgage, that:

1 (i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell
2 and assign the Leasehold Estate created hereby to an assignee from whom it may accept a
3 purchase price; subject, however, to Lender's first securing written approval from City, which
4 approval shall not be unreasonably withheld, and if the Subsequent Owner has elected to maintain
5 the use restrictions of Article 9, said Subsequent Owner shall be controlled by a California
6 nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal
7 Revenue Code such that the Premises receive an exemption from state property taxes as provided
8 under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may
9 acquire title to the Leasehold Estate in any lawful way, and if the Lender shall become the
10 assignee, may sell and assign said Leasehold Estate subject to City approval, which shall not be
11 unreasonably withheld, and to the City's rights under Article 25.04; and [NOTE: City will not
12 preapprove transfers; concept of Approved Assignee not acceptable]

13 (ii) each Subsequent Owner shall take said Leasehold Estate subject to all of the
14 provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of
15 such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of
16 Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section
17 26.07 below, the Subsequent Owner may operate and maintain the one hundred one (101)
18 Residential Units without any limitations on the rents charged or the income of the occupants
19 thereof.

20 (iii) the City shall mail or deliver to any Lender which has an outstanding Leasehold
21 Mortgage a duplicate copy of all notices which the City may from time to time give to Tenant
22 pursuant to this Ground Lease.

1 (iv) any Permitted Limited Partners of Tenant shall have the same rights as any Lender
2 under Sections 26.02, 26.03, and 26.06 (iii), and any reference to a Lender in said section shall be
3 deemed to include such limited partners; provided, however, that the rights of such limited
4 partners shall be subordinate to the rights of any Lender.

5 **26.07 Ground Lease Rent after Lender Foreclosure or Assignment**

6 From and after the time that the Subsequent Owner acquires title to the Leasehold Estate,
7 Annual Rent shall be set as follows:

8 (a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the City,
9 and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner.

10 Subsequent to foreclosure or assignment of the Leasehold Estate to the Lender in lieu of
11 foreclosure, if the Lender continues to operate the Project subject to the use and occupancy
12 restrictions of Section 9.02, then Annual Rent otherwise due may, at the option of the Lender, be
13 deferred until the date of the Lender's sale or assignment of the Project to a Subsequent Owner
14 that does not agree to operate the Project subject to such restrictions or the date that is sixty (60)
15 days after Lender ceases to operate the Project in accordance with such restrictions. All deferred
16 Annual Rent shall accrue, with simple interest at six percent (6%) per annum until paid.

17 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the
18 Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market
19 rental value taking into account any affordability restrictions agreed to by the Subsequent Owner,
20 if any, and the Base Rent shall be increased to the new fair market rent pursuant to Section
21 26.07(b) and the provisions of Section 6.02(g) shall be suspended; provided, however, that the
22 City shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole

1 discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to
2 tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low
3 Income Households as the City and the Subsequent Owner shall agree. The fair market rental
4 value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by
5 the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that
6 will include a market land valuation, as well as a market land lease rent level. Absent a market
7 land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%)
8 of the then appraised market land value. If the parties cannot agree on the joint appraisal
9 instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair
10 market rent in accordance with the then-prevailing practice for resolving similar rent
11 determination disputes in San Francisco or, in the event that there is no then-prevailing practice,
12 in accordance with the rules of the American Arbitration Association. Provided, however, that
13 after the neutral third party process, the Lender, in its sole discretion may rescind its written
14 notification of intent to not comply with Section 9.02 of this Ground Lease.

15 **26.08 Permitted Uses After Lender Foreclosure**

16 Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent
17 Owner, the Premises shall be operated in accordance with the uses specified in the building
18 permit with all addenda, as approved by the City's Department of Building Inspection.

19 **26.09 Preservation of Leasehold Benefits**

20 Until such time as a Lender notifies the City in writing that the obligations of the Tenant
21 under its loan documents have been satisfied, the City agrees:

1 (a) Except for termination as a result of a default, subject to the notice and cure
2 provisions contained in this Article 26, the City shall not voluntarily cancel or surrender this
3 Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or
4 materially amend this Ground Lease to increase the obligations of the Tenant or the rights of the
5 City thereunder, without the prior written consent of the Lender (which will not be unreasonably
6 withheld or delayed);

7 (b) That the City shall not enforce against a Lender any waiver or election made by the
8 Tenant under this Ground Lease which has a material adverse effect on the value of the Leasehold
9 Estate under this Ground Lease without the prior written consent of the Lender (which will not be
10 unreasonably withheld or delayed);

11 (c) That, if a Lender makes written request for the same within 15 days after Lender
12 receives written notice of termination of this Ground Lease, the City will enter a new lease with
13 such Lender commencing on the date of termination of the Ground Lease and ending on the
14 normal expiration date of the Ground Lease, on substantially the same terms and conditions as the
15 Ground Lease and subject to the rent provisions set forth in Section 26.07, and with the same
16 priority as against any subleases or other interests in the Premises; provided that such Lender
17 cures all unpaid monetary defaults under the Ground Lease through the date of such termination;

18 (d) That the City shall provide reasonable prior notice to each Lender of any
19 proceedings for adjustment or adjudication of any insurance or condemnation claim involving the
20 Premises and will permit each Lender to participate therein as an interested party.

21 **26.10 No Merger**

1 The Leasehold Estate in the Premises pursuant to this Ground Lease shall not merge with
2 the fee interest in the Premises, notwithstanding ownership of the leasehold and the fee by the
3 same person, without the prior written consent of each Lender.

4 **26.11 City Bankruptcy**

5 (a) If a bankruptcy proceeding is filed by or against the City, the City shall immediately
6 notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and
7 similar materials regarding the bankruptcy proceedings to each Lender.

8 (b) The City acknowledges that (i) the Tenant seeks to construct improvements on the
9 Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both
10 the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the
11 City waives its right to sell the City's fee interest in the Premises pursuant to section 363(f) of the
12 Bankruptcy Code, free and clear of the leasehold interest under this Ground Lease.

13 (c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as
14 follows: (i) the Tenant shall be presumed to have objected to any attempt by the City to sell the
15 fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so
16 object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant;
17 and (iii) in connection with any such sale, the Tenant shall not be deemed to have received
18 adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received
19 and paid over to each Lender outstanding balance of the obligations under its respective loan.

20 (d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote,
21 participate in or consent to any bankruptcy, insolvency, receivership or court proceeding
22 concerning the leasehold interest under this Ground Lease.

1 **ARTICLE 27: CONDEMNATION AND TAKINGS**

2 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

3 If, during the term of this Ground Lease, there is any condemnation of all or any part of
4 the Site or any interest in the Leasehold Estate is taken by condemnation, the rights and
5 obligations of the parties shall be determined pursuant to this Article 27, subject to the rights of
6 any Lender.

7 **27.02 Total Taking**

8 If the Site is totally taken by condemnation, this Ground Lease shall terminate on the date
9 the condemnor has the right to possession of the Site.

10 **27.03 Partial Taking**

11 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in
12 effect, except that Tenant may, with Lender's written consent, which consent shall not be
13 unreasonably withheld, conditioned or delayed, elect to terminate this Ground Lease if, in
14 Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable
15 for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant
16 must exercise its right to terminate pursuant to this paragraph by giving notice to the City within
17 thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. If Tenant
18 elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify
19 the City of the date of termination, which date shall not be earlier than thirty (30) days nor later
20 than six (6) months after Tenant has notified the City of its election to terminate; except that this
21 Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if
22 such date falls on a date before the date of termination as designated by Tenant. If Tenant does

1 not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall
2 continue in full force and effect.

3 **27.04 Effect on Rent**

4 If any portion of the Improvements is taken by condemnation and this Ground Lease
5 remains in full force and effect, then on the date of taking the rent shall be reduced by an amount
6 that is in the same ratio to the rent as the value of the area of the portion of the Improvements
7 taken bears to the total value of the Improvements immediately before the date of the taking.

8 **27.05 Restoration of Improvements**

9 If there is a partial taking of the Improvements and this Ground Lease remains in full force
10 and effect pursuant to Section 27.03, Tenant may, subject to the terms of the Leasehold Mortgage,
11 use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

12 **27.06 Award and Distribution**

13 Any compensation awarded, paid or received on a total or partial condemnation of the Site
14 or threat of condemnation of the Site shall belong to and be distributed in the following order:

15 (a) First, to pay the balance due on any outstanding Leasehold Mortgages and other
16 outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts,
17 taxes, payroll accruals and lease residuals, to the extent provided therein; and

18 (b) Second, to the Tenant in an amount equal to the actual equity invested by the
19 Tenant.

20 **27.07 Payment to Lenders**

21 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
22 when any compensation resulting from a condemnation or threatened condemnation is to be paid

1 to Tenant, such award shall be disposed of as provided in the Leasehold Mortgage.

2 **ARTICLE 28: ESTOPPEL CERTIFICATE**

3 The City or Tenant, as the case may be, shall execute, acknowledge and deliver to the
4 other and/or any Lender or a Permitted Limited Partner, promptly upon request, its certificate
5 certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have
6 been modifications, that this Ground Lease is in full force and effect, as modified, and stating the
7 modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then
8 existing any charges, offsets or defenses against the enforcement by the City or Tenant to be
9 performed or observed and, if so, specifying the same, and (d) whether there are then existing any
10 defaults by Tenant or the City in the performance or observance by Tenant or the City of any
11 agreement, covenant or condition hereof on the part of Tenant or the City to be performed or
12 observed and whether any notice has been given to Tenant or the City of any default which has
13 not been cured and, if so, specifying the same.

14 **ARTICLE 29: QUITCLAIM**

15 Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the
16 Site to the City and, at the City's request, shall execute, acknowledge, and deliver to the City a
17 good and sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the
18 Improvements shall be conveyed to the City as provided in Article 13 herein.

19 **ARTICLE 30: EQUAL OPPORTUNITY**

20 In the selection of all contractors and professional consultants for the Project, Tenant must
21 comply with the City's procurement requirements and procedures as described in the MOHCD
22 Contracting Manual and with the requirements of Chapter 14B of the San Francisco

1 Administrative Code (“LBE Ordinance”) according to the procedures established by the City's
2 Human Rights Commission. The Project is subject to the requirements of Section 3 of the Housing
3 and Community Development Act of 1968 and of the San Francisco Section 3 program. Federal
4 Section 3 requirements state that contracts and opportunities for job training and employment be
5 given, to the greatest extent feasible, to local low-income residents. Local residents for this project
6 are San Francisco residents. In addition, this project will be required to comply with hiring
7 requirements as incorporated into the local Section 3 program and in conjunction with the City’s
8 low-income hiring requirements pursuant to San Francisco’s First Source Hiring Ordinance (San
9 Francisco Administrative Code Chapter 83). The goals for hiring of Section 3-eligible workers on the
10 project will be 20% of new hires, moving towards a goal of 20% of total work hours. The Contractor
11 shall also make a best faith effort to meet these goals.

12 **ARTICLE 31: CERTIFICATE OF PREFERENCE PROGRAM**

13 Tenant agrees to comply with the requirements of the Certificate of Preference Program,
14 as it may be amended from time to time, and as set forth on Attachment 4.

15 **ARTICLE 32: LABOR STANDARDS PROVISIONS**

16 Although the Parties acknowledge that the development of the Project is a private work of
17 improvement, Tenant agrees that any person performing labor in the construction of the Project
18 and any Change to the Premises, which Tenant provides under this Ground Lease, shall be paid
19 not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San
20 Francisco Administrative Code, shall be subject to the same hours and working conditions, and
21 shall receive the same benefits as in each case are provided for similar work performed in San
22 Francisco, California. Tenant shall include in any contract for construction or rehabilitation of the

1 Project a requirement that all persons performing labor under such contract shall be paid not less
2 than the highest prevailing rate of wages for the labor so performed. Tenant shall require any
3 contractor to provide, and shall deliver to City upon request, certified payroll reports with respect
4 to all persons performing labor in the construction of the Project or any Change to the Premises.

5 **ARTICLE 33: CONFLICT OF INTEREST**

6 No commissioner, official, or employee of the City shall have any personal or financial interest,
7 direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or employee
8 participate in any decision relating to this Ground Lease which affects his or her personal interests
9 or the interests of any corporation, partnership, or association in which he or she is directly or
10 indirectly interested.

11 **ARTICLE 34: NO PERSONAL LIABILITY**

12 No commissioner, official, or employee of the City shall be personally liable to Tenant or
13 any successor in interest in the event of any default or breach by the City or for any amount which
14 may become due to Tenant or its successors or on any obligations under the terms of this Ground
15 Lease.

16 **ARTICLE 35: ENERGY CONSERVATION**

17 Tenant agrees that it will use its best efforts to maximize provision of, and incorporation
18 of, both energy conservation techniques and systems and improved waste-handling methodology
19 in the construction of the Improvements.

20 **ARTICLE 36: WAIVER**

21 The waiver by the City or Tenant of any term, covenant, agreement or condition herein
22 contained shall not be deemed to be a waiver of any subsequent breach of the same or any other

1 term, covenant, agreement or condition herein contained, nor shall any custom or practice which
2 may grow up between the parties in the administration of the terms hereof be construed to waive
3 or to lessen the right of the City or Tenant to insist upon the performance by the other in strict
4 accordance with the said terms. The subsequent acceptance of rent or any other sum of money
5 hereunder by the City shall not be deemed to be a waiver of any preceding breach by Tenant of
6 any term, covenant, agreement or condition of this Ground Lease, other than the failure of Tenant
7 to pay the particular rent or other sum so accepted, regardless of the City's knowledge of such
8 preceding breach at the time of acceptance of such rent or other sum.

9 **ARTICLE 37: TENANT RECORDS**

10 Upon reasonable notice during normal business hours, and as often as the City may deem
11 necessary, there shall be made available to the City and its authorized representatives for
12 examination all records, reports, data and information made or kept by Tenant regarding its
13 activities or operations on the Site. Nothing contained herein shall entitle the City to inspect
14 personal histories of residents or lists of donors or supporters. To the extent that it is permitted by
15 law to do so, the City will respect the confidentiality requirements of Tenant in regard to the lists
16 furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the residential
17 portion of the Site.

18 **ARTICLE 38: NOTICES AND CONSENTS**

19 All notices, demands, consents or approvals which may be or are required to be given by
20 either party to the other hereunder shall be in writing and shall be deemed to have been fully
21 given when delivered in person to such representatives of Tenant and the City as shall from time
22 to time be designated by the parties for the receipt of notices, or when deposited in the United

1 States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and
2 addressed

3 if to Tenant at: O'Farrell Towers Associates, L.P.
4 201 Eddy Street
5 San Francisco, CA 94102
6 Attn: Executive Director
7

8 With a copy to the Permitted Limited Partner:
9

10
11
12 Wincopin Circle LLLP
13 c/o Enterprise Community
14 Asset Management, Inc.
15 70 Corporate Center
16 11000 Broken Land Parkway, Suite 700
17 Columbia, Maryland 21044
18 Telephone: (410) 964-0552
19 Facsimile: (410) 772-2630
20 Email: brothschild@enterprisecommunity.com
21 Attn: General Counsel
22

23
24 if to the City at: San Francisco Mayor's Office of Housing and Community
25 Development
26 One South Van Ness Avenue, 5th Floor
27 San Francisco, California 94103
28 Attn.: Director

29 or to such other address with respect to either party as that party may from time to time
30 designate by notice to the other given pursuant to the provisions of this Article 38. Any notice
31 given pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is
32 refused as shown on the delivery receipt.

33 **ARTICLE 39: HEADINGS**

34 Any titles of the several parts and sections of this Ground Lease are inserted for

1 convenience of reference only and shall be disregarded in construing or interpreting any of its
2 provisions. "Paragraph" and "section" may be used interchangeably.

3 **ARTICLE 40: SUCCESSORS AND ASSIGNS**

4 This Ground Lease shall be binding upon and inure to the benefit of the successors and
5 assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground
6 Lease, it shall mean and include their respective successors and assigns; provided, however, that
7 the City shall have no obligation under this Ground Lease to, nor shall any benefit of this Ground
8 Lease accrue to, any unapproved successor or assign of Tenant where City approval of a
9 successor or assign is required by this Ground Lease. At such time as City sells the Site to any
10 third party, City shall require such third party to assume all of the City's obligations hereunder
11 arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

12 **ARTICLE 41: TIME**

13 Time is of the essence in the enforcement of the terms and conditions of this Ground
14 Lease.

15 **ARTICLE 42: PARTIAL INVALIDITY**

16 If any provisions of this Ground Lease shall be determined to be illegal or unenforceable,
17 such determination shall not affect any other provision of this Ground Lease and all such other
18 provisions shall remain in full force and effect.

19 **ARTICLE 43: APPLICABLE LAW**

20 This Ground Lease shall be governed by and construed pursuant to the laws of the State of
21 California.

1 **ARTICLE 44: ATTORNEYS' FEES**

2 If either of the parties hereto commences a lawsuit to enforce any of the terms of this
3 Ground Lease, the prevailing party will have the right to recover its reasonable attorneys' fees and
4 costs of suit, including fees and costs on appeal, from the other party.

5 **ARTICLE 45: EXECUTION IN COUNTERPARTS**

6 This Ground Lease and any memorandum hereof may be executed in counterparts, each of
7 which shall be considered an original, and all of which shall constitute one and the same
8 instrument.

9 **ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE**

10 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall
11 be recorded in the form attached hereto as Attachment 5. The parties shall execute the
12 memorandum in form and substance as required by a title insurance company insuring Tenant's
13 leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive
14 notice of the Ground Lease to subsequent purchasers and mortgagees.

15 **ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT**

16 Neither the transfer of any limited partner of Tenant interests in the Tenant or the admission of a
17 successor limited partner or partners pursuant to the terms of the Tenant's partnership agreement
18 shall constitute an event of default under the Ground Lease nor require the City's consent. The
19 withdrawal or removal of a general partner of the Tenant pursuant to the terms of the Tenant's
20 partnership agreement shall not require City consent, and shall not constitute a default under the
21 Lease provided that any replacement general partner shall require the prior written consent of the
22 City which consent shall not be unreasonably withheld, conditioned or delayed.

1 **ARTICLE 48: CITY PROVISIONS**

2 **48.1 Non-Discrimination**

3 (a) Covenant Not to Discriminate. In the performance of this Ground Lease,
4 Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a
5 person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender
6 identity, domestic partner status, marital status, disability, weight, height or Acquired Immune
7 Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City
8 employee working with, or applicant for employment with Tenant, in any of Tenant's operations
9 within the United States, or against any person seeking accommodations, advantages, facilities,
10 privileges, services, or membership in all business, social, or other establishments or
11 organizations operated by Tenant.

12 (b) Subleases and Other Subcontracts. Tenant shall include in all Subleases
13 and other subcontracts relating to the Premises a non-discrimination clause applicable to such
14 subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition,
15 Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of
16 Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall
17 require all subtenants and other subcontractors to comply with such provisions. Tenant's failure
18 to comply with the obligations in this subsection shall constitute a material breach of this Ground
19 Lease.

20 (c) Non-Discrimination in Benefits. Tenant does not as of the date of this
21 Ground Lease and will not during the Term, in any of its operations in San Francisco or with
22 respect to its operations under this Ground Lease elsewhere within the United States, discriminate

1 in the provision of bereavement leave, family medical leave, health benefits, membership or
2 membership discounts, moving expenses, pension and retirement benefits or travel benefits
3 (collectively “Core Benefits”), as well as any benefits other than Core Benefits, between
4 employees with domestic partners and employees with spouses, and/or between the domestic
5 partners and spouses of such employees, where the domestic partnership has been registered with
6 a governmental entity pursuant to state or local law authorizing such registration, subject to the
7 conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

8 (d) Condition to Lease. As a condition to this Ground Lease, Tenant shall
9 execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” (Form
10 CMD-12B-101) with supporting documentation and secure the approval of the form by the San
11 Francisco Contract Monitoring Division.

12 (e) Incorporation of Administrative Code Provisions by Reference. The
13 provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-
14 discrimination by Parties contracting for the lease of City property are incorporated in this Section
15 by reference and made a part of this Ground Lease as though fully set forth herein. Tenant shall
16 comply fully with and be bound by all of the provisions that apply to this Ground Lease under
17 such Chapters of the Administrative Code, including but not limited to the remedies provided in
18 such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Sections
19 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each
20 person for each calendar day during which such person was discriminated against in violation of
21 the provisions of this Lease may be assessed against Tenant and/or deducted from any payments
22 due Tenant.

1 **48.2 Reserved.**

2 **48.3 Conflicts of Interest.** Tenant states that it is familiar with the provisions of
3 Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and
4 Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the
5 Government Code of the State of California, certifies that it knows of no facts which would
6 constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact
7 during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies
8 that it has made a complete disclosure to the City of all facts bearing on any possible interests,
9 direct or indirect, which Tenant believes any officer or employee of the City presently has or will
10 have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful
11 failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination
12 and cancellation of this Ground Lease.

13 **48.4 Charter Provisions.** This Ground Lease is governed by and subject to the
14 provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant
15 acknowledges and agrees that no officer or employee of the City has authority to commit the City
16 to this Ground Lease unless and until an resolution of the City's Board of Supervisors has been
17 duly enacted approving this Ground Lease. Therefore, any obligations or liabilities of the City
18 under this Ground Lease are contingent upon enactment of an resolution, and this Ground Lease
19 will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground
20 Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws.
21 Approval of this Ground Lease by any City department, commission or agency may not be
22 deemed to imply that an resolution will be enacted or create any binding obligations on the City.

1 **48.5 Tropical Hardwood/Virgin Redwood Ban.** Pursuant to Section 804(b) of the
2 San Francisco Environment Code, the City and County of San Francisco urges companies not to
3 import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood
4 product, virgin redwood or virgin redwood wood product. Except as permitted by the application
5 of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any
6 items in the rehabilitation, development or operation of the Premises or otherwise in the
7 performance of this Lease which are tropical hardwoods, tropical hardwood wood products,
8 virgin redwood or virgin redwood wood products.

9 **48.6 Tobacco Product Advertising Ban.** Tenant acknowledges and agrees that no
10 advertising of cigarettes or tobacco products may be allowed on the Premises. The foregoing
11 prohibition will include the placement of the name of a company producing, selling or distributing
12 cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion
13 of any event or product, or on any sign. The foregoing prohibition will not apply to any
14 advertisement sponsored by a state, local or nonprofit entity designed to communicate the health
15 hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop
16 smoking.

17 **48.7 Pesticide Ordinance.**
18 Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program
19 Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be
20 implemented by all City departments. Tenant shall not use or apply or allow the use or
21 application of any pesticides on the Premises or contract with any party to provide pest abatement
22 or control services to the Premises without first receiving City's written approval of an IPM plan

1 that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that
2 Tenant may need to apply to the Premises during the term of this Ground Lease, (ii) describes the
3 steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM
4 Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act
5 as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require
6 all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply
7 with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM
8 Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM
9 Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or
10 application of pesticides on property owned by the City, except for pesticides granted an
11 exemption under Section 303 of the IPM Ordinance (including pesticides included on the most
12 current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c)
13 impose certain notice requirements, and (d) require Tenant to keep certain records and to report to
14 City all pesticide use at the Premises by Tenant's staff or contractors.

15 If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises,
16 Tenant must first obtain a written recommendation from a person holding a valid Agricultural
17 Pest Control Advisor license issued by the California Department of Pesticide Regulation
18 ("CDPR") and any such pesticide application shall be made only by or under the supervision of a
19 person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator
20 license. City's current Reduced Risk Pesticide List and additional details about pest management
21 on City property can be found at the San Francisco Department of the Environment website,
22 <http://sfenvironment.org/ipm>.

1 **48.8 Compliance with City's Sunshine Ordinance.** Tenant understands and agrees
2 that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public
3 Records Law (Cal. Gov. Code §§ 6250 et seq.), this Agreement and any and all records,
4 information and materials submitted to the City hereunder are public records subject to public
5 disclosure. Tenant hereby authorizes the City to disclose any records, information and materials
6 submitted to the City in connection with this Ground Lease as required by Law. Further, Tenant
7 specifically agrees to conduct any meeting of its governing board that addresses any matter
8 relating to the Project or to Tenant's performance under this Ground Lease as a passive meeting.

9 **48.9 Notification of Limitations on Contributions.** Through its execution of this
10 Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco
11 Campaign and Governmental Conduct Code, which prohibits any person who contracts with the
12 City for the selling or leasing of any land or building to or from the City whenever such
13 transaction would require approval by a City elective officer, the board on which that City
14 elective officer serves, or a board on which an appointee of that individual serves, from making
15 any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by
16 such individual, or (c) a committee controlled by such individual or candidate, at any time from
17 the commencement of negotiations for the contract until the later of either the termination of
18 negotiations for such contract or six months after the date the contract is approved. Tenant
19 acknowledges that the foregoing restriction applies only if the contract or a combination or series
20 of contracts approved by the same individual or board in a fiscal year have a total anticipated or
21 actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on
22 contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's

1 chief executive officer, chief financial officer and chief operating officer; any person with an
2 ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and
3 any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that
4 Tenant must inform each of the persons described in the preceding sentence of the prohibitions
5 contained in Section 1.126. Tenant further agrees to provide to City the name of each person,
6 entity or committee described above.

7 **48.10 Requiring Health Benefits for Covered Employees.** Unless exempt, Tenant
8 agrees to comply fully with and be bound by all of the provisions of the Health Care
9 Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code
10 Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be
11 amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground
12 Lease by reference and made a part of this Ground Lease as though fully set forth. The text of
13 the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this
14 Section and not defined in this Lease have the meanings assigned to them in Chapter 12Q.
15 Notwithstanding this requirement, City recognizes that the residential housing component of the
16 Improvements is not subject to the HCAO.

17 (a) For each Covered Employee, Tenant must provide the appropriate health
18 benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option,
19 the health plan must meet the minimum standards set forth by the San Francisco Health
20 Commission.

21 (b) If Tenant is a small business as defined in Section 12Q.3(d) of the HCAO,
22 Tenant will have no obligation to comply with Subsection (a) above.

1 (c) Tenant's failure to comply with the HCAO will constitute a material breach
2 of this Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the City's
3 written notice of a breach of this Lease for violating the HCAO or, if the breach cannot
4 reasonably be cured within the 30-day period, Tenant fails to commence efforts to cure within the
5 30-day period, or thereafter fails diligently to pursue the cure to completion, the City will have the
6 right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be
7 exercisable individually or in combination with any other rights or remedies available to the City.

8 (d) Any sublease entered into by Tenant for commercial space in the Project
9 must require the subtenant to comply with the requirements of the HCAO and must contain
10 contractual obligations substantially the same as those set forth in this Section. Tenant must
11 notify the City's Purchasing Department when Tenant enters into a sublease and must certify to
12 the Purchasing Department that Tenant has notified the subtenant of the obligations under the
13 HCAO and has imposed the requirements of the HCAO on subtenant through the sublease.
14 Tenant will be responsible for its subtenants' compliance with this Chapter. If a subtenant fails to
15 comply, the City may pursue the remedies set forth in this Section against Tenant based on the
16 subtenant's failure to comply, provided that City has first provided Tenant with notice and an
17 opportunity to obtain a cure of the violation.

18 (e) Tenant may not discharge, reduce in compensation, or otherwise
19 discriminate against any employee for notifying the City with regard to Tenant's compliance or
20 anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed
21 by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or
22 enforce any rights under the HCAO by any lawful means.

1 (f) Tenant represents and warrants that it is not an entity that was set up, or is
2 being used, for the purpose of evading the intent of the HCAO.

3 (g) Tenant must keep itself informed of the current requirements of the HCAO.

4 (h) Tenant must provide reports to the City in accordance with any reporting
5 standards promulgated by the City under the HCAO, including reports on subtenants, as
6 applicable.

7 (i) Tenant must provide City with access to records pertaining to compliance
8 with HCAO after receiving a written request from the City to do so and being provided at least
9 five (5) business days to respond.

10 (j) The City may conduct random audits of Tenant to ascertain its compliance
11 with HCAO. Tenant agrees to cooperate with the City when it conducts audits.

12 (k) If Tenant is exempt from the HCAO when this Lease is executed because
13 its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement
14 or agreements that cause Tenant's aggregate amount of all agreements with the City to reach
15 \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the
16 effective date of the agreement that causes the cumulative amount of agreements between Tenant
17 and MOHCD to be equal to or greater than \$75,000 in the fiscal year.

18 **48.11 Public Access to Meetings and Records.** If Tenant receives a cumulative total
19 per year of at least \$250,000 in City funds or City-administered funds and is a non-profit
20 organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall
21 comply with and be bound by all the applicable provisions of that Chapter. By executing this
22 Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set

1 forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make
2 good-faith efforts to promote community membership on its Board of Directors in the manner set
3 forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure
4 to comply with any of the provisions of this paragraph shall constitute a material breach of this
5 Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be
6 grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

7 **48.12 Resource-Efficient Building Ordinance.** Tenant acknowledges that the City and
8 County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to
9 resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees it
10 shall comply with the applicable provisions of such code sections as such sections may apply to
11 the Premises.

12 **48.13 Drug Free Work Place.** Tenant acknowledges that pursuant to the Federal Drug-
13 Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a
14 controlled substance is prohibited on City premises. Tenant agrees that any violation of this
15 prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Ground
16 Lease.

17 **48.14 Preservative Treated Wood Containing Arsenic.** Tenant may not purchase
18 preservative-treated wood products containing arsenic in the performance of this Ground Lease
19 unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code
20 is obtained from the Department of the Environment under Section 1304 of the Code. The term
21 "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that
22 contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

1 to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or
2 ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood
3 products on the list of environmentally preferable alternatives prepared and adopted by the
4 Department of the Environment. This provision does not preclude Tenant from purchasing
5 preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater
6 immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities
7 that are partially or totally immersed in saltwater.

8 **48.15 Nondisclosure of Private Information.** Tenant agrees to comply fully with and
9 be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the
10 "Nondisclosure of Private Information Ordinance"), including the remedies provided. The
11 provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by
12 reference and made a part of this Agreement as though fully set forth. Capitalized terms used in
13 this section and not defined in this Agreement shall have the meanings assigned to such terms in
14 the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the
15 Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- 16 (a) Neither Tenant nor any of its subcontractors shall disclose Private
17 Information, unless one of the following is true:
 - 18 (i) The disclosure is authorized by this Ground Lease;
 - 19 (ii) Tenant received advance written approval from the Contracting
20 Department to disclose the information; or
 - 21 (iii) The disclosure is required by law or judicial order.

1 (b) Any disclosure or use of Private Information authorized by this Ground
2 Lease shall be in accordance with any conditions or restrictions stated in this Ground Lease. Any
3 disclosure or use of Private Information authorized by a Contracting Department shall be in
4 accordance with any conditions or restrictions stated in the approval.

5 (c) Private Information shall mean any information that: (1) could be used to
6 identify an individual, including without limitation, name, address, social security number,
7 medical information, financial information, date and location of birth, and names of relatives; or
8 (2) the law forbids any person from disclosing.

9 (d) Any failure of Tenant to comply with the Nondisclosure of Private
10 Information Ordinance shall be a material breach of this Ground Lease. In such an event, in
11 addition to any other remedies available to it under equity or law, City may terminate this Ground
12 Lease, debar Tenant, or bring a false claim action against Tenant.

13 **48.16 Graffiti.** Graffiti is detrimental to the health, safety and welfare of the community
14 in that it promotes a perception in the community that the laws protecting public and private
15 property can be disregarded with impunity. This perception fosters a sense of disrespect of the
16 law that results in an increase in crime; degrades the community and leads to urban blight; is
17 detrimental to property values, business opportunities and the enjoyment of life; is inconsistent
18 with City's property maintenance goals and aesthetic standards; and results in additional graffiti
19 and in other properties becoming the target of graffiti unless it is quickly removed from public
20 and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be
21 abated as quickly as possible to avoid detrimental impacts on the City and County and its
22 residents, and to prevent the further spread of graffiti.

1 Tenant shall remove all graffiti from the Premises and any real property owned or
2 leased by Tenant in the City and County of San Francisco within forty eight (48) hours of the
3 earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the
4 graffiti from the Department of Public Works. This section is not intended to require Tenant to
5 breach any lease or other agreement that it may have concerning its use of the real property. The
6 term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked,
7 etched, scratched, drawn or painted on any building, structure, fixture or other improvement,
8 whether permanent or temporary, including by way of example only and without limitation, signs,
9 banners, billboards and fencing surrounding construction Premises, whether public or private,
10 without the consent of the owner of the property or the owner's authorized agent, and which is
11 visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is
12 authorized by, and in compliance with, the applicable requirements of the San Francisco Public
13 Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any
14 mural or other painting or marking on the property that is protected as a work of fine art under the
15 California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual
16 art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of
17 Tenant to comply with this section of this Ground Lease shall constitute an event of default of this
18 Ground Lease.

19 **48.17 Incorporation.** Each and every provision of the San Francisco Administrative
20 Code described or referenced in this Ground Lease is hereby incorporated by reference as though
21 fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease
22 relating to any such code provision shall be governed by Article 19 of this Ground Lease, unless

1 (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is
2 specifically addressed by the applicable code section.

3 **48.18 Food Service Waste Reduction.** Tenant agrees to comply fully with and be
4 bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the
5 San Francisco Environment Code, Chapter 16, including the remedies provided therein, and
6 implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by
7 reference and made a part of this Ground Lease as though fully set forth herein. This provision is
8 a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it
9 breaches this provision, City will suffer actual damages that will be impractical or extremely
10 difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the
11 sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred
12 Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred
13 Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable
14 estimate of the damage that City will incur based on the violation, established in light of the
15 circumstances existing at the time this Ground Lease was made. Such amounts shall not be
16 considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's
17 failure to comply with this provision.

18 **48.19 Bottled Drinking Water.** Unless exempt, Tenant agrees to comply fully with and
19 be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in
20 San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and
21 implementing regulations provided therein, as the same may be amended from time to time. The

1 provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as
2 though fully set forth.

3 **48.20 Criminal History in Hiring and Employment Decisions.**

4 (a) Unless exempt, Tenant agrees to comply with and be bound by all of the
5 provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and
6 Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended
7 from time to time, with respect to applicants and employees of Tenant who would be or are
8 performing work at the Premises.

9 (b) Tenant shall incorporate by reference the provisions of Chapter 12T in all
10 subleases of some or all of the Premises, and shall require all subtenants to comply with such
11 provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a
12 material breach of this Lease.

13 (c) Tenant and subtenants shall not inquire about, require disclosure of, or if such
14 information is received base an Adverse Action on an applicant's or potential applicant for
15 employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is
16 undergoing an active pending criminal investigation or trial that has not yet been resolved; (2)
17 participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction
18 that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered
19 inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a
20 Conviction that is more than seven years old, from the date of sentencing; or (6) information
21 pertaining to an offense other than a felony or misdemeanor, such as an infraction.

1 (d) Tenant and subtenants shall not inquire about or require applicants, potential
2 applicants for employment, or employees to disclose on any employment application the facts or
3 details of any conviction history, unresolved arrest, or any matter identified in subsection (c)
4 above. Tenant and subtenants shall not require such disclosure or make such inquiry until either
5 after the first live interview with the person, or after a conditional offer of employment.

6 (e) Tenant and subtenants shall state in all solicitations or advertisements for
7 employees that are reasonably likely to reach persons who are reasonably likely to seek
8 employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider
9 for employment qualified applicants with criminal histories in a manner consistent with the
10 requirements of Chapter 12T.

11 (f) Tenant and subtenants shall post the notice prepared by the Office of Labor
12 Standards Enforcement (“OLSE”), available on OLSE’s website, in a conspicuous place at the
13 Premises and at other workplaces within San Francisco where interviews for job opportunities at
14 the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language
15 spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

16 (g) Tenant and subtenants understand and agree that upon any failure to comply with
17 the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies
18 available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a
19 second violation and \$100 for a subsequent violation for each employee, applicant or other person
20 as to whom a violation occurred or continued, termination or suspension in whole or in part of
21 this Lease.

1 (h) If Tenant has any questions about the applicability of Chapter 12T, it may contact
2 the City's Real Estate Division for additional information. City's Real Estate Division may
3 consult with the Director of the City's Office of Contract Administration who may also grant a
4 waiver, as set forth in Section 12T.8. **48.21 Public Transit Information.** Tenant shall establish
5 and carry on during the Term a program to encourage maximum use of public transportation by
6 personnel of Tenant employed on the Premises, including, without limitation, the distribution to
7 such employees of written materials explaining the convenience and availability of public
8 transportation facilities adjacent or proximate to the Commercial Parcels and encouraging use of
9 such facilities, all at Tenant's sole expense.

10 **48.22 Local Hiring Policy.**

11 Any undefined, initially-capitalized term used in this Section shall have the meaning given
12 to such term in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy").
13 The Improvements and any rehabilitation and alterations are subject to the Local Hiring Policy
14 unless the cost for such rehabilitation or alteration is (i) estimated to be less than \$750,000 per
15 building permit or (ii) meets any of the other exemptions in the Local Hiring Policy.
16 Accordingly, as a condition of this Lease, Tenant agrees that it shall comply with the
17 requirements of the Local Hiring Policy applicable to the Improvements or any rehabilitation or
18 alteration and shall require its subtenants to comply with those requirements to the extent
19 applicable. Before starting any rehabilitation or alteration, Tenant shall contact City's Office of
20 Economic Workforce and Development ("OEWD") to verify if any Local Hiring Ordinance
21 requirements apply to such rehabilitation or alteration. Tenant shall comply with all such
22 applicable requirements. Tenant's failure to comply with its obligations under this Section shall

1 constitute a material breach of this Lease and may subject Tenant and its subtenants to the
2 consequences of noncompliance specified in the Local Hiring Policy, including but not limited to
3 penalties. Without limiting the foregoing:

4 (a) For a Covered Project estimated to cost more than \$750,000, Tenant and its
5 subtenants shall comply with the applicable mandatory participation levels for Project Work
6 Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in San
7 Francisco Administrative Code Section 6.22(G)(4).

8 (b) For a Covered Project estimated to cost more than \$1,000,000, Tenant and its
9 subtenants shall prepare and submit a local hiring plan to OEWD for approval as set forth in San
10 Francisco Administrative Code Section 6.22(G)(6) prior to commencing any of the work subject
11 to the Local Hiring Policy.

12 (c) Tenant and its subtenants shall comply with the applicable record keeping and
13 reporting requirements and shall cooperate in City inspections and audits for compliance with the
14 Local Hiring Policy, including access to employees of its contractors and subcontractors and other
15 witnesses at the Premises.

16 (d) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the
17 Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable
18 by Tenant and its subtenants; and (iii) Tenant has had, and its subtenants will have prior to
19 signing their subleases for the Premises, a full and fair opportunity to review and understand the
20 terms of the Local Hiring Policy.

21 **ARTICLE 49: COMPLETE AGREEMENT**

22 There are no oral agreements between Tenant and the City affecting this Ground Lease,

1 and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,
2 agreements and understandings between Tenant and the City with respect to the lease of the Site.

3 **ARTICLE 50: ATTACHMENTS**

4 The following are attached to this Ground Lease and by this reference made a part hereof:

5

6

1. Legal Description of Site

7

2. Schedule of Performance

8

3. City Consent of Leasehold Mortgage

9

4. Operational Rules for Certificate Holders' Priority

10

5. Memorandum of Ground Lease

11

6. Income Certification Form

12

13

1 IN WITNESS WHEREOF, the Tenant and the City have executed this Ground Lease as of
2 the day and year first above written.

3 TENANT:

4 O'FARRELL TOWERS ASSOCIATES, L.P.
5 a California limited partnership

6
7 By: O'Farrell Towers GP, LLC
8 Its: General Partner

9
10 By: Turk Street, Inc.
11 Its: Sole Member and Manager

12
13 By: _____
14 Name: Donald S. Falk
15 Title: Executive Director
16

17 CITY AS LANDLORD:

18 CITY
19 AND COUNTY OF SAN FRANCISCO,
20 a municipal corporation
21

22 By: _____
23 Olson Lee
24 Director, Mayor's Office of Housing and Community Development
25
26

27 APPROVED AS TO FORM:

28 DENNIS J. HERRERA
29 City Attorney

30
31 By: _____
32 Beth Anderson
33 Deputy City Attorney
34

35 Authorized by Board of Supervisors Resolution No. _____, adopted, _____, 2015

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ATTACHMENT 1

Legal Description of the Site

The Property referred to in this Agreement is the property situated in the City and County of San Francisco, State of California, described as follows:

ATTACHMENT 2

SCHEDULE OF PERFORMANCE

1
2
3
4
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6

ATTACHMENT 3
City Consent of Leasehold Mortgage

Date:

Mayor's Office of Housing and Community Development
City and County of San Francisco
Attn: Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: 477 O'Farrell Street, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 25.01 of the 477 O'Farrell Street Ground Lease, dated _____, 2015, between the City and County of San Francisco ("City") and O'Farrell Towers Associates, L.P., a California limited partnership, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender: _____
Principal Amount: _____
Interest: _____
Term: _____

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to the review and approval by the City. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which the City deems necessary.

Sincerely,

Printed Name and Title
enc.

By signing this letter, the City consents to the leasehold mortgage, pursuant to the terms and conditions of Section 25.01 of the 477 O'Farrell Street Ground Lease, dated _____, 2015.

Mayor's Office of Housing and Community Development

Printed Name and Title

ATTACHMENT 4
OPERATIONAL RULES FOR
CERTIFICATE HOLDERS' PRIORITY

The Owner hereby agrees that priority for units designated for Low Income Households will be given to persons displaced or to be displaced from their homes by the former Redevelopment Agency of the City and County of San Francisco's redevelopment activities and who have been issued a form described as the "Certificate of Preference" ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order of priority in paragraph D of this Attachment 4. Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the City and applicant in writing of the reason for rejection. In order to implement this Attachment 4:

A. The City agrees to furnish the following:

1. Written and/or printed notices to Certificate Holders advising them that such units will soon be available;
2. Assistance to Certificate Holders in filing applications; and
3. Verification to the Owner that applicant has been displaced.

B. The Owner agrees to the following:

1. To supply the City ninety (90) days prior to accepting lease applications with the information listed below. This information shall not be changed without providing the Agency with ten (10) days written notice.
 - a. A master unit list with the following information:
 - (1) Apartment number;
 - (2) Number of bedrooms and baths;
 - (3) Square footage; and
 - (4) Initial rent to be charged.
 - b. Estimated itemized cost of utilities and services to be paid by tenant by unit size.
 - c. Detailed description of Owner's rules for tenants, which must include:
 - (1) Minimum and maximum income
 - (2) Pet policy
 - (3) Selection process: To insure no discrimination against Low Income Households and Certificate Holders all criteria and the relative weight to be given to each criterion indicated. The City shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the City.
 - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.

- 1 (5) Occupancy requirements must be described in full and found
2 reasonable by the City
3 (6) Duration of rental agreement or lease.
4 (7) Copy of rental agreement or lease.
5 (8) The Owner's rules for tenants shall be acceptable for purposes of
6 this sub-paragraph.
7 d. Amount of charge for processing applications, if any.
8 e. Description of application process and length of time needed by Owner.
9 f. Copy of rental application and copy of all forms to be used for income
10 verification.
11 g. Periodic notification to the City of the Owner's office hours for accepting
12 applications and showing model unit(s).

- 13
14 2. The Owner further agrees that some applicants who apply directly to the Owner
15 may be entitled to priority because of previous displacement. The Owner will,
16 therefore, ask the following questions on all applications for occupancy:

17
18 "Have you been displaced or do you expect to be displaced by the San
19 Francisco Redevelopment Agency?"
20

21 If the applicant answers affirmatively, the address from which displacement occurred is
22 required. Copies of all applications indicating that such displacement either has taken place or
23 will take place must be forwarded to the City within five (5) working days of receipt of such
24 application by the Owner. It is agreed that information received on the application will be
25 considered confidential. The City will, in turn, determine within ten (10) working days which
26 such applicants are then qualified or will qualify as Certificate Holders, and will establish current
27 Certificate of Preference priority.
28

29 During initial lease-up of Low Income Units, the City may supply the Owner with a "status
30 report" listing names, addresses and certificate numbers of Certificate Holders for all open
31 applications. The Owner will return the same form within five (5) working days, indicating:
32

- 33 (1) status of each application as of that date, and
34 (2) in case of rejection for any cause, the exact reason thereof.
35

- 36 2 If material supplied in any application by a Certificate Holder indicates
37 ineligibility on its face because of the Owner's rules and regulations, such
38 applicant will be notified within one week, with a copy of the Agency. Any fee
39 charged for processing such application will be refunded in full, notwithstanding,
40 however, that such applicant shall be listed on status report showing application is
41 closed and fee has been returned. If ineligibility can be determined only after a
42 follow-up investigation, the applicant will be notified within one week after such

1 determination is made, with a copy to the City. Any fee charged for processing
2 such applications may be retained by the Owner. These applications will also
3 appear on the status report.
4

5 3. Within ten (10) working days after execution of a lease, the Owner will supply the
6 City with a signed copy of the following for all Certificate Holder tenants:
7

- 8 (1) signed copy of lease;
- 9 (2) copy of complete application; and
- 10 (3) copies of all verification forms used to ascertain income eligibility.

11
12 D. In order to expedite occupancy of housing units nearing completion, the Owner further
13 agrees:
14

15 1. To select as prospective tenants eligible Certificate Holders who meet the
16 occupancy requirements of the Owner. Selection will be based on the following
17 descending order of priorities:
18

- 19 a. Families or individuals who reside on City property in redevelopment
20 areas.
- 21 b. Families or individuals who were relocated from City property and still
22 have a valid Certificate of Preference.
- 23 c. Families or individuals displaced by the Department of Health, Public
24 Works, etc. and referred by the City.

25
26 2. Applicants who are Certificate Holders who have been accepted and notified by
27 the Owner will have five (5) working days thereafter to accept or reject a unit. If
28 the Certificate Holder fails to affirmatively respond, the application may be closed.
29 Rejection of the unit by a Certificate holder must be shown on current status
30 report.
31

32 3. All Certificate Holders found acceptable by the Owner shall have the opportunity
33 to inspect a model or other available completed unit, and be assigned an
34 appropriate unit for future occupancy. Units may be offered to non-Certificate
35 Holders at any time as long as the current status report shows that there are
36 sufficient units available to satisfy applications from Certificate Holders for units
37 of appropriate size in any stage of processing. ALL OBLIGATIONS TO SHOW
38 MODELS OR OTHER AVAILABLE COMPLETED UNITS SHALL REMAIN
39 IN EFFECT DURING INITIAL OCCUPANCY PERIOD. Initial Occupancy is
40 defined for all purposes of this Attachment 4 as the earlier of ninety (90) calendar
41 days following the City's receipt of a certified copy of a Certificate (or
42 Certificates) of Occupancy issued by the City and County of San Francisco for the

1 respective unit (or units) to be so approved for occupancy, or the date when all
2 units have been rented to the first occupants thereof. Upon Initial Occupancy the
3 City will certify compliance with this Attachment 4 with a written notice provided
4 ten (10) days after Initial Occupancy. Such certification in no way negates the
5 Owner's continued obligations to provide housing to persons displaced or to be
6 displaced by the Agency's redevelopment activities as vacancies occur amount the
7 units designated for Low Income Households.
8

9 E. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if
10 available to the Owner from its leasing agent, a rent-up report for all Development units
11 listing the following:
12

- 13 1. Unit number rented;
 - 14 2. Tenant name;
 - 15 3. Date of move-in; and
 - 16 4. Rent rate.
- 17

18 F. The Owner agrees that any contract entered into for the management of the residential
19 portions of the Development, both before and after Initial Occupancy, shall be furnished to
20 the City, shall incorporate the provisions of this Attachment 4, and shall bind the
21 management agent to comply with its requirements.
22

23 G. After Initial Occupancy (without regard to whether the City has certified compliance with
24 the obligation of the Owner respecting the period prior to Initial Occupancy), the Owner
25 agrees to notify the City as far as practicable in advance of vacancies, which may occur in
26 Low Income Housing units. The City and the Owner agree to follow the steps set forth in
27 paragraph (D) above with respect to such units. In the event no appropriate Certificate
28 Holder can be found within five (5) working days after receipt of notification by the
29 Owner to the City of availability of a unit, the City agrees that the Owner may lease the
30 unit to Low Income Households, as appropriate, which do not hold a Certificate of
31 Preference.
32

33 H. The City reserves the right to waive any of the foregoing conditions, provided however
34 that any such waiver shall not be deemed to have waived any other conditions, nor the
35 same condition subsequently.
36
37

ATTACHMENT 5

Form of Memorandum of Lease

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
Mayor's Office of Housing of the
City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attn: Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of _____, 2015, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and FRANCISCAN TOWERS ASSOCIATES, L.P., a California limited partnership ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated _____, 2015, between City and Tenant.

Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease shall commence on the date set forth above and shall end on the date which is 65 years from the date set forth above, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease shall create a constructive notice of severance of the Improvements (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements are and shall remain real property.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

1
2 This Memorandum may be signed by the parties hereto in counterparts with the same effect as if
3 the signatures to each counterpart were upon a single instrument. All counterparts shall be
4 deemed an original of this Memorandum.

5
6 Executed as of _____, 2015 in San Francisco, California.
7

8
9 TENANT:

10
11 O'FARRELL TOWERS ASSOCIATES, L.P.,
12 a California limited partnership

13
14 By: O'Farrell Towers GP, LLC
15 Its: General Partner

16
17 By: Turk Street, Inc.
18 Its: Sole Member and Manager

19
20 By: _____
21 Name: Donald S. Falk
22 Title: Executive Director

23
24 CITY:
25 CITY AND COUNTY OF SAN FRANCISCO,
26 a municipal corporation

27
28 By: _____
29 Olson Lee
30 Director, Mayor's Office of Housing and Community Development

31
32 By: _____
33 John Updike
34 Director of Property

35
36 APPROVED AS TO FORM:

37
38 DENNIS J. HERRERA, City Attorney

39
40
41 By: 
42 Beth Anderson, Deputy City Attorney

1
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4
5

ATTACHMENT 6
FORM OF TENANT INCOME CERTIFICATION

BN 14942119v1


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Updike, Director, Real Estate Division
Olson Lee, Director, Mayor's Office of Housing and Community
Development

FROM:  Alisa Somera, Assistant Clerk
Land Use and Transportation Committee

DATE: November 10, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Kim on November 3, 2015:

File No. 151150

Resolution authorizing the execution and performance of an Amended and Restated Ground Lease, with a term of 99 years, between the City and County of San Francisco and O'Farrell Towers Associates, L.P., a California limited partnership, of real property located at 477 O'Farrell Street, for the rehabilitation of 101 units of affordable housing for low and very low income seniors.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Sophie Hayward, Mayor's Office of Housing and Community Development

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: O'Farrell Towers Associates LP.	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>1. Board of Directors: Noreen Beiro; Margaret Schrand; Elizabeth Tracey; Patrick Murcia; Dave Kroot; Lisa Blakely; Nelson Bostrom; Curtis Bradford; Sally Carlson; Dr. Saul Fedlman; Chris Gouig; Lisa Le; Dick McNeil Jr.; Dr. Erica Mohan; Josh Mukhopadhyay; Jan Peters; Ascanio Piomelli; Samia Rashed; Nicole Rivera; Loren Sanborn; Candy Smallwood; Gabriel Speyer; Amy Tharpe; Pedro Torres; Kristy Wang</p> <p>2. CEO: Donald S. Falk; CFO: Paul Sussman; COO: Liz Orlin</p> <p>3., 4., 5. N/A</p>	
Contractor address: 201 Eddy Street, San Francisco, CA 94102	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contracts: \$ 975,000 (\$15k for 65 yrs.)
Describe the nature of the contract that was approved: Amendment to existing ground lease at 477 O'Farrell Street, San Francisco.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

 Signature of City Elective Officer (if submitted by City elective officer)

 Date Signed

 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

 Date Signed

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2015 NOV 11 11:33
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Jane Kim

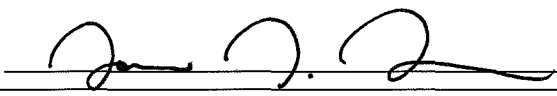
Subject:

Resolution for Ground Lease at 477 O'Farrell Street

The text is listed below or attached:

Please see attached

Signature of Sponsoring Supervisor: _____



For Clerk's Use Only: