

## SECOND AMENDMENT TO THE ORLANDO CEPEDA PLACE GROUND LEASE

This SECOND AMENDMENT TO THE ORLANDO CEPEDA PLACE GROUND LEASE (this “**Second Amendment**”) is entered into as of January \_\_, 2018 by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**” or “**Landlord**”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development, and **MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP**, a California limited partnership (“**Tenant**”).

### RECITALS:

A. Tenant and the Redevelopment Agency of the City and County of San Francisco (the “Agency”) entered into a certain Orlando Cepeda Place Ground Lease dated November 28, 2000, as amended by First Amendment to the Orlando Cepeda Place Ground Lease dated January 1, 2010 (as amended, the “**Ground Lease**”) with respect to land described on Exhibit A to the Lease (“**Land**”), upon which Land Tenant has constructed a 100-unit multifamily apartment project with ancillary ground floor commercial space known as the Rich Sorro Commons (“**Project**”; together with the Land herein referred to as the “**Premises**”); and

B. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) (“**AB 26**”), the Agency dissolved as a matter of law on February 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 (“**AB 1484**”), and Resolution No. 11-12, adopted by the City’s Board of Supervisors and Mayor on January 26, 2012, Ordinance No. 215-12, adopted by the City’s Board of Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted by City to, and approved by, the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code Section 34176(a)(2)), City is successor in interest to the Agency’s rights and obligations with respect to the Lease.

C. In order to refinance the existing debt on the Project, Tenant intends to obtain a permanent loan of \$8,235,000 (the “**Loan**”) from CITIBANK, N.A. (“**Citi**”); and

D. The Loan will be evidenced by that certain Multifamily Loan and Security Agreement and the Loan Documents (as defined therein, the “**Loan Documents**”);

E. As a condition of the Loan, Citi requires Tenant to grant a leasehold mortgage on the Premises, and further, requires that the Lease contain certain terms and provisions as regards leasehold mortgages; and

F. The parties now desire to modify the Ground Lease on the terms and conditions as set forth herein.

**NOW THEREFORE**, in consideration of the matters described in the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Tenant hereby agree to amend the Lease as follows:

**A. MODIFICATION OF LEASE.** The Lease is hereby amended and modified as follows:

1. The last sentence of Section 14.01 (Assignment, Sublease or Other Conveyance by Tenant) is hereby deleted in its entirety.

2. Section 26.06 (Lender's Rights to Record, Foreclose and Assign) is hereby amended to add paragraph (v) as follows:

(v) notwithstanding any term to the contrary contained herein, for so long as Citi or Freddie Mac or its successor and assign is the First Mortgage Lender with respect to the Leasehold Estate, the consent of Agency shall not be required in connection with commencement of a foreclosure or deed in lieu of foreclosure by the First Mortgage Lender or for the first assignment following the First Mortgage Lender's acquisition of Tenant's interest in the Site through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, provided, however, that any such assignment shall be to an entity (Subsequent Owner) controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available). Any subsequent assignment or transfer of this Lease shall require the reasonable consent of Agency.

3. Section 26.09 (Transfer of Loans) is hereby added to Article 26 of the Ground Lease as follows:

### **26.09 Transfer of Loans**

Notwithstanding any term to the contrary contained herein, for so long as Citi or Freddie Mac or its successor and assign is the First Mortgage Lender with respect to the Leasehold Estate, the following terms will govern and control hereunder:

(i) Lessor agrees that Lessee may pledge as collateral security, under its Leasehold Mortgage to Lender, any sublease of all or any portion of the Property, including any residential, retail or other commercial leases, subject to Section 25.01 of this Ground Lease.

(ii) A Lender may terminate, sell, transfer or assign its rights and obligations under the Loan Documents (as defined in First Mortgage Lender's Leasehold Mortgage), or modify or amend any of the terms of the Loan Documents at any time without the consent of Landlord, in its capacity only as the lessor under the Ground Lease. Failure to give notice of such termination, sale, transfer, assignment, modification or amendment shall not affect the validity of such action, Lender's rights to exercise remedies under Lender's Leasehold Mortgage or any of the other Loan Documents, nor Lender's rights hereunder.

4. Section 26.10 (No Merger) is hereby added to Article 26 of the Ground Lease as follows:

**26.10 No Merger.**

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

5. Section 26.11 (Insurance or Condemnation Proceedings) is hereby added to Article 26 of the Ground Lease as follows:

**26.11 Insurance or Condemnation Proceedings.**

Landlord agrees that in the event of a taking of the Site, the Improvements or any portion thereof as set forth in Article 27 (Condemnation and Takings) or adjustment of losses as to any casualty or hazard insurance proceeds as set forth in Article 20 (Damage and Destruction), a Lender shall have the right to participate in any proceedings with respect to the determination of value related to condemnation or takings and the adjustment of losses as to any casualty or hazard insurance proceeds, as provided for under its Leasehold Mortgage and the other loan documents.

6. Section 26.12 (New Lease) is hereby add to Article 26 of the Ground Lease as follows:

**26.12 New Lease**

If the Ground Lease terminates because of a default by Tenant that is not curable by a Lender, a Lender shall have the right to request a new Lease on substantially the same terms and conditions as the Ground Lease and in accordance with Section 26.07, subject to all rights and benefits that Lender is entitled under the Ground Lease.

7. Section 26.13 (First Mortgage Lender Liability) is hereby added to Article 26 of the Ground Lease as follows:

**26.13 Limitation of Liability of the First Mortgage Lender**

First Mortgage Lender and any assigns shall be limited at all times to the value of their respective leasehold interests under the Ground Lease and to the Site. In the event of a foreclosure of the Leasehold Mortgage, First Mortgage Lender and its subsequent assignee (i) shall only be liable to Agency for acts and omissions during the period in which First Mortgage Lender or such assignee is the holder of title to the Leasehold Estate, and (ii) shall be automatically released by Agency from the acts and omissions of Tenant occurring prior to its acquisition of title of the Leasehold Estate.

8. Article 48 (City Provisions) is hereby added to the Lease as follows:

**ARTICLE 48: CITY PROVISIONS**

**48.01 Non-Discrimination**

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

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

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

#### **48.02 MacBride Principles – Northern Ireland**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

#### **48.03 Conflicts of Interest**

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

#### **48.04 Charter Provisions.**

This Ground Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Ground Lease unless and until a resolution of the City's Board of Supervisors has been duly enacted approving this Ground Lease.

Therefore, any obligations or liabilities of the City under this Ground Lease are contingent upon enactment of a resolution, and this Ground Lease will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws. Approval of this Ground Lease by any City department, commission or agency may not be deemed to imply that a resolution will be enacted or create any binding obligations on the City.

#### **48.05 Tropical Hardwood/Virgin Redwood Ban**

Pursuant to Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products.

#### **48.06 Tobacco Product Advertising Ban**

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

#### **48.07 Pesticide Ordinance.**

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Ground Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City,

from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

#### **48.08 Compliance with City's Sunshine Ordinance.**

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

#### **48.09 Notification of Limitations on Contributions.**

Through its execution of this Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

#### **48.10 Requiring Health Benefits for Covered Employees**

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

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

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

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

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

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

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

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

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

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

(j) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later



enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with the City to reach \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and MOHCD to be equal to or greater than \$75,000 in the fiscal year.

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

#### **48.11 Public Access to Meetings and Records**

If Tenant receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

#### **48.12 Resource-Efficient Building Ordinance.**

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

#### **48.13 Drug Free Work Place.**

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

#### **48.14 Preservative Treated Wood Containing Arsenic.**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Ground Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **48.15 Nondisclosure of Private Information.**

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

(a) Neither Tenant nor any of its subcontractors shall disclose Private Information, unless one of the following is true:

(i) The disclosure is authorized by this Ground Lease;

(ii) Tenant received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

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

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social

security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

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

#### **48.16 Graffiti**

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

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

#### **48.17 Incorporation**

Each and every provision of the San Francisco Administrative Code described or referenced in this Ground Lease is hereby incorporated by reference as though fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease relating to any such code provision shall be governed by Article 19 of this Ground Lease, unless (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is specifically addressed by the applicable code section.

#### **48.18 Food Service Waste Reduction.**

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

#### **48.19 Local Hire Requirements.**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations (as defined in Section 7.1) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code

Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

#### **48.20 Criminal History in Hiring and Employment Decisions**

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

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

(c) Tenant and subtenants (if any) shall not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

(e) Tenant and subtenants (if any) shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are

reasonably likely to seek employment with Tenant or subtenant at the Site, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

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

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

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of the City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

#### **48.21 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County

of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, contact the City's Office of Labor Standards Enforcement.

#### **48.22 Sugar-Sweetened Beverage Prohibition**

Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Ground Lease.

#### **48.23 Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Ground Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

#### **48.24 Vending Machines; Nutritional Standards**

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 48.24 shall be deemed a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

#### **48.25 All-Gender Toilet Facilities**

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

#### **B. MISCELLANEOUS.**

- 1. Governing Law.** This Second Amendment shall be governed by the laws of the laws of the State of California without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction.
- 2. Conflict.** If any provision of this Second Amendment conflicts with any provision in the Lease, the provision in this Second Amendment shall govern and control.
- 3. Severable Positions.** If any provision of this Second Amendment shall be invalid or unenforceable to any extent, then the other provisions of this Amendment, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- 4. Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.



5. **Estoppel.** Except as set forth herein, as of the date hereof, the Lease has not been amended or modified in any way, Tenant has not defaulted under the Lease, and the Lease remains in full force and effect.
6. **No Joint Venture.** This Second Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Second Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.
7. **Attorneys Fees.** In the event a dispute arises concerning this Second Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Second Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.
8. **Notices.** From and after the date of this Second Amendment for so long as Citi or Freddie Mac is the First Mortgage Lender, any notice to be delivered to First Mortgage Lender hereunder shall be delivered to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Deal Id. No. 24896  
Facsimile: (805) 557 0924

AND:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Rich Sorro Commons - Citi Deal ID No: 24896  
Facsimile: (212) 723-8209

AND:

Citibank, N.A.  
c/o Berkadia Commercial Servicing Department

323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Rich Sorro Commons - Citi Deal ID No: 24896  
Facsimile: (215) 441-7295

And a copy of any notices  
of default sent to:

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Rich Sorro Commons - Citi Deal ID No: 24896  
Facsimile: (646) 291-5754

9. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Second Amendment.
10. **Effective Date.** The date of which this Second Amendment shall become effective as of the date this Second Amendment is duly executed and exchanged by the parties hereto.
11. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Second Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Second Amendment.

[signature page follows immediately]

IN WITNESS WHEREOF, Landlord and Tenant have signed and delivered this Second Amendment as of the date first set forth above.

**LANDLORD:**  
**CITY AND COUNTY OF SAN FRANCISCO,**  
**CALIFORNIA**, a municipal corporation, successor in interest to the Redevelopment Agency of the City and County of San Francisco

By: \_\_\_\_\_  
Name: Kate Hartley  
Title: Director, Mayor's Office of Housing and Community Development

By: \_\_\_\_\_  
Name: John Updike  
Title: Director of Real Estate

**APPROVED AS TO FORM**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Keith Nagayama  
Deputy City Attorney

**TENANT:**  
**MISSION BAY AFFORDABLE HOUSING**  
**LIMITED PARTNERSHIP,**  
a California limited partnership

By: Mission Housing Development Corporation  
a California nonprofit public benefit corporation,  
Its:: General Partner

By: \_\_\_\_\_  
Name: Sam Moss  
Title: Executive Director

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

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

**Parcel One:**

All physical construction, including all structures, fixtures and other improvements (collectively "Improvements") situated on the following described real property, as vested in Mission Bay Affordable Housing Limited Partnership, a California limited Partnership, pursuant to Article 13 of that certain "Ground Lease" as disclosed by that certain "Memorandum of Ground Lease" by and between the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic, as landlord, and Mission Affordable Housing Limited Partnership, a California limited partnership as tenant, recorded November 30, 2000, at Reel H774, Image 0427, Series No. 2000-G870255 and as thereafter amended by "First Amendment to Memorandum of Ground Lease" recorded January 29, 2003, in Reel I313, Image 0312, Series No. 2003-H346963, City and County Records of San Francisco.

Lot 3, as shown on the Map entitled "Parcel Map, Mission Bay, being a Subdivision of Lot 1 of Assessor's Block 8706 as shown on that certain Map entitled "Map of Mission Bay" recorded on July 19, 1999 in Book Z of Maps, Page 97-119 in the Office of the Recorder of the City and County of San Francisco", recorded August 31, 2000, in Book 44 of Parcel Maps, Pages 131 to 141, inclusive, City and County of San Francisco Records.

As Excepted and Reserved forever by the State of California in that certain Patent and Quitclaim Deed dated June 14, 1999, to the City and County of San Francisco, a Charter City and County, recorded July 19, 1999, in Reel H429, Image 507, Series No. 99-G622155, Official Records of the City and County of San Francisco, State of California, from that portion of the above described real property (hereafter called the "former Burton Act Portion") described in Parcel 2 of Exhibit A to that certain Quitclaim Deed dated June 30, 1999, from the City and County of San Francisco, a Charter City and County, to Catellus Development Corporation, a Delaware corporation, recorded July 19, 1999, in Reel H429, Image 510, Series No. G622158, Official Records of the City and County of San Francisco, the following:

All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered in such former Burton Act portion, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its Successors and Assigns, but without entering upon or using the surface of such former Burton Act Portion, and in such manner as not to damage the surface of that portion of the above described real property within the boundaries of such former Burton Act Portion or to interfere with the use thereof by the City and County of San Francisco, its Successors and Assignees; provided, however, that the State of California, its Successors and Assignees, without the prior written permission of the City and County of San Francisco, its Successors and Assignees, shall not conduct any mining activities of any nature whatsoever above a plane located five hundred

feet (500') below the surface of that portion of the above described real property within the boundaries of such former Burton Act Portion.

Parcel Two:

A Leasehold estate as created pursuant to that certain "Ground Lease" dated November 28, 2000, by and between the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic, as lessor and Mission Bay Affordable Housing Limited Partnership, a California limited partnership, as lessee, for the term of seventy five (75) years, and upon the terms and conditions in said lease and subject to provisions contained in the lease which limit the right of possession a Memorandum of Ground Lease thereof recorded November 30, 2000, in Instrument No. 2000-G870255-00, Official Records, and as amended by First Amendment to Memorandum of Ground Lease dated January 13, 2003, recorded January 29, 2003, as Instrument No. 2003-346963-00, Official Records, in and to the following:

Lot 3, as shown on the Map entitled "Parcel Map, Mission Bay, being a Subdivision of Lot 1 of Assessor's Block 8706 as shown on that certain Map entitled "Map of Mission Bay" recorded on July 19, 1999, in Book Z of Maps, Pages 97 to 119 in the Office of the Recorder of the City and County of San Francisco, recorded August 31, 2000, in Book 44 of Parcel Maps, Pages 131 to 134, inclusive, City and County of San Francisco Records.

As Excepted and Reserved forever by the State of California in that certain Patent and Quitclaim Deed dated June 14, 1999, to the City and County of San Francisco, a Charter City and County, recorded July 19, 1999, in Reel H429, Image 507, Series No. 99-G622155, Official Records of the City and County of San Francisco, State of California, from that portion of the above described real property (hereafter called the "former Burton Act Portion") described in Parcel 2 of Exhibit A to that certain Quitclaim Deed dated June 30, 1999, from the City and County of San Francisco, a Charter City and County, to Catellus Development Corporation, a Delaware corporation, recorded July 19, 1999, in Reel H429, Image 510, Series No. G622158, Official Records of the City and County of San Francisco, the following:

All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered in such former Burton Act portion, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its Successors and Assigns, but without entering upon or using the surface of such former Burton Act Portion, and in such manner as not to damage the surface of that portion of the above described real property within the boundaries of such former Burton Act Portion or to interfere with the use thereof by the City and County of San Francisco, its Successors and Assignees; provided, however, that the State of California, its Successors and Assignees, without the prior written permission of the City and County of San Francisco, its Successors and Assignees, shall not conduct any mining activities of any nature whatsoever above a plane located five hundred feet (500') below the surface of that portion of the above described real property within the boundaries of such former Burton Act Portion.

Further Excepting Therefrom all improvements situated on the above described real property vested in Mission Bay Affordable Housing Limited Partnership, a California limited partnership, pursuant to Article 13; of that certain "Ground Lease" by and between the Redevelopment

Agency of the City and County of San Francisco, a public body corporate and politic, as landlord, and Mission Bay Affordable Housing Limited Partnership, a California limited partnership, as tenant, a Memorandum of which recorded November 30, 2000, Series No. 2000-G870255-00, Official Records of the City and County of San Francisco, State of California.

Parcel Three:

A nonexclusive easement for encroachment of improvements, as such improvements are defined in paragraph 5 of the Easement Agreement referred to hereafter, appurtenant to Parcels One and Two hereinabove described, as Granted to the San Francisco Redevelopment Agency, a public body corporate and politic, pursuant to that certain "Easement Agreement" dated October 24, 2001, recorded July 23, 2002, in the Reel I185, Image 280, Series No. 2002-H028072-00, Official Records of the City and County of San Francisco, as amended by First Amendment thereto recorded December 19, 2002, in Reel I287, Page 269, Document Number 2002-H316095-00, Official Records of the City and County of San Francisco, through, upon and within the following described strip of land:

The Northeasterly 4 feet of Lot 2, as shown on the Map ("Parcel Map") entitled "Parcel Map, Mission Bay, Being a Subdivision of Lot 1 of Assessor's Block 8706 as shown on that certain Map entitled "Map of Mission Bay" recorded on July 19, 1999, in Book Z of Maps, Pages 97-119, in the Office of the Recorder of the City and County of San Francisco", recorded August 31, 2000, in Book 44 of Parcel Maps, Pages 131 to 134, inclusive, City and County of San Francisco Records Limited Vertically as follows:

The Vertical Limits of such strip shall extend from twelve (12) feet above ground level (finished surface) of such Lot 2 to the maximum height of the "Project", as "Project" is such defined in such Easement Agreement, within Lot 3 as shown on such Parcel Map.

Assessor's Lot 003; Block 8706