

1 FREE RECORDING REQUESTED PURSUANT TO
2 GOVERNMENT CODE SECTION 27383

3
4 When Recorded Please Return to:

5
6 SAN FRANCISCO REDEVELOPMENT AGENCY
7 770 Golden Gate Avenue
8 San Francisco, CA 94102
9 Attn: Development Services

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16
17 **GOLDEN GATE APARTMENTS GROUND LEASE**

18
19
20 by and between the

21
22
23 REDEVELOPMENT AGENCY OF THE
24 CITY AND COUNTY OF SAN FRANCISCO
25 as Landlord

26
27 and

28
29 GGA 1820 Post, L.P.,
30 a California limited partnership
31 as Tenant
32

33
34
35
36
37 Dated as of June 2, 1999
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39
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ORIGINAL

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26 3. (not used)
27 4. Schedule of Performance
28 5. (not used)
29 6. Operational Rules for Certificate Holder's Priority
30 7. Equal Opportunity Program (same as Loan Agreement)
31 8. Prevailing Wage Provisions (same as Loan Agreement)
32 9. Income Computation and Certification

1 E. Developer is a limited partnership established solely to acquire and own housing
2 units for low-income residents (the "Project") on the real property located at 1820 Post Street,
3 San Francisco, California (the "Site").

4 F. The Project is currently financed with a U.S. Department of Housing and Urban
5 Development ("HUD") Section 236 mortgage which is subject to prepayment by the current
6 private owner ("Seller"), with the potential effect of terminating the existing federal low income
7 rent restrictions placed on the Project.

8 G. The Agency has entered into a purchase and sale agreement to purchase the Site,
9 including the improvements on the Site (the "Improvements") and an agreement to assign the
10 rights to purchase the Improvements to the Developer. Through escrow the Agency intends to
11 acquire fee title to the Site and the Developer will acquire fee title to the Improvements.

12 Developer intends to finance the acquisition and rehabilitation of the Improvements using
13 multifamily mortgage revenue bonds to be issued by the Agency, low-income housing tax
14 credits, and other Agency provided funding, including, but not limited to, a San Francisco
15 Redevelopment Agency Tax Increment Housing Program Loan, which will be used to acquire
16 and rehabilitate the Improvements, pursuant to a loan agreement between the Agency and the
17 Developer (the "Loan Agreement"). The Agency will use additional funds to pay the purchase
18 price for the Site, not including the Improvements.

19 H. The Agency wishes to lease the Site to the Developer pursuant to this Ground
20 Lease.

21
22 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
23 Agency hereby leases to Developer and Developer hereby leases from the Agency the Site for the

1 term and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each
2 and all of which the Agency and Developer hereby mutually agree.

3
4 **ARTICLE 1: DEFINITIONS**

5 Terms used herein have the meanings given them when first used or as set forth in this
6 Article 1, or in the Loan Agreement, unless the context clearly requires otherwise.

7 **1.01 Agency** means the Redevelopment Agency of the City and County of San
8 Francisco, a public body, corporate and politic, exercising its functions and powers and
9 organized and existing under the Community Redevelopment Law of the State of California and
10 includes any successor public Agency designated by or pursuant to law. The Agency is the
11 owner of the Site.

12 **1.02 Agreement Date** means the date that this Ground Lease is deemed to be entered
13 into and effective, as set forth on the cover page.

14 **1.03 Developer** means GGA 1820 Post, L.P., a California limited partnership.

15 **1.04 Development Standards** means Section IIC of the Western Addition A-2
16 Redevelopment Plan, Land Use Provisions and Development Standards, originally adopted by
17 the Board of Supervisors on October 13, 1964, as amended from time to time, which contains the
18 development standards and urban design guidelines which apply to the Project Area.

19 **1.05 General Partner** means Chinatown Community Development Center, Inc., or
20 G.G.A. Corporation, Inc., the single purpose California corporation created to act as Developer's
21 general partner.

22 **1.06 Ground Lease** means this Ground Lease of the Site to the Developer from the
23 Agency, as amended from time to time.

1 **1.07 Improvements** means all physical construction, including all structures, fixtures
2 and other improvements on the Site.

3 **1.08 Leasehold Estate** means the estate held by the Developer pursuant to and created
4 by this Ground Lease.

5 **1.09 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture or other
6 security instrument, including, the deed of trust securing a loan from Bank of America, FSB the
7 lien of any Indenture of Trust with respect to mortgage revenue bonds issued by the Agency, and
8 any assignment of the rents, issues and profits from the Site, or any portion thereof, which
9 constitute a lien on the Leasehold Estate created by this Ground Lease.

10 **1.10 Lease Year** means each calendar year during the term hereof, beginning on
11 January 1 and ending on December 31, provided that the first Lease Year shall commence upon
12 the Agreement Date and shall end on the next succeeding December 31, and the last Lease Year
13 shall end upon the expiration of the term hereof.

14 **1.11 Lender** means the holder of any Leasehold Mortgage consented to by the Agency
15 as required by Article 25.01.

16 **1.12 Area Median Income** means the median household or family income for San
17 Francisco as determined pursuant to Section 50093 of the California Health and Safety Code.

18 **1.13** [intentionally omitted]

19 **1.14 Premises** means the Site together with any Improvements thereon.

20 **1.15 Site** means the real property in the Project Area shown on the Site Plan,
21 Attachment 1, and described in the Site Legal Description, Attachment 2.

22 **1.16 Redevelopment Plan** means the Western Addition A-2 Redevelopment Plan, as
23 amended.

1 **1.17 Occupant** means any person or entity authorized by Developer to occupy the Site,
2 or any portion thereof.

3 Whenever an 'Attachment' is referenced, it means an attachment to this Ground Lease
4 unless otherwise specifically identified. Whenever a section, article or paragraph is referenced, it
5 is a reference to this Ground Lease unless otherwise specifically referenced.

6
7 **ARTICLE 2: TERM**

8 (a) The term of this Ground Lease shall commence upon the Agreement Date and
9 shall end fifty (50) years from that date, unless extended pursuant to section (b) below.

10 (b) Provided that the Developer is not in default of the terms of its obligations to the
11 Agency either at the time of giving of an Extension Notice, as described in subparagraph (c)
12 below, or on the last day of the term (the "Termination Date"), the term of this Lease may be
13 extended at the option of the Developer for one forty-nine (49) year period as provided below.

14 (c) Notice of Extension Not later than one hundred and eighty (180) days prior to
15 the Termination Date, the Developer shall notify the Agency in writing that it wishes to exercise
16 its option to extend the term of this Lease (an "Extension Notice"). The extended term shall be
17 for forty-nine (49) years from the Termination Date, which option the Developer may exercise
18 only once, for a total Lease term of not to exceed ninety-nine (99) years.

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

21
22 **ARTICLE 3: FINANCING**

23 (a) Developer shall submit to the Agency in accordance with the dates specified in

1 the Schedule of Performance, Attachment 4, for approval by the Agency, evidence satisfactory to
2 the Agency that Developer has sufficient equity capital and commitments for construction
3 mortgage financing and permanent financing, and/or such other evidence of capacity to proceed
4 with the acquisition and development of the Premises, including the rehabilitation of the
5 Improvements, in accordance with this Ground Lease, as is acceptable to the Executive Director
6 of the Agency. Such satisfactory evidence of financing shall include permanent financing if
7 required as part of any construction financing.

8 (b) A default by Developer under the terms of any financing shall constitute a default
9 under this Ground Lease.

10

1 **ARTICLE 4: RENT**

2 **4.01 Annual Rent**

3 (a) Developer shall pay the Agency one hundred sixty-five thousand, three hundred
4 and seventeen dollars (\$165,317) per year for lease of the Site, consisting of Base Rent and
5 Residual Rent, as defined below, without offset of any kind and without necessity of demand,
6 notice or invoice from the Agency (together, "Annual Rent"). Base Rent shall be due and
7 payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the first
8 Lease Year shall be due on April 15, 2000, and shall be equal to \$128,400 times the number of
9 days in the first Lease Year, divided by 365. Residual Rent shall be due in arrears on April 1st of
10 each Lease Year, but shall be payable only from and to the extent that the Project has Surplus
11 Cash, as defined below, available in such Lease Year.

12 (b) If the Project does not have sufficient Surplus Cash to pay Residual Rent in any
13 given Lease Year, the amount not paid shall be deferred and all such deferred amounts shall
14 accrue interest at three percent (3%) simple interest per annum until paid (such amounts, together
15 with accrued and unpaid interest, "Residual Rent Accrual"). The Residual Rent Accrual shall be
16 due and payable each year from and to the extent Surplus Cash is available to make such
17 payments and, in any event, upon the earlier of sale or the Project or termination of this Ground
18 Lease.

19 (c) If the Tenant elects to extend the term of this Lease, Rent during any such
20 extended term shall be set by mutual agreement of the parties, taking into account the affordable
21 housing restrictions, project debt and the annual income expected to be generated by the Project.
22 If the parties cannot agree on Rent, either party may invoke a neutral third-party process to set
23 Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent

1 determination disputes in San Francisco.

2 **4.01.5 Rent Definitions**

3 (a) "Base Rent" means, in any given Lease Year, fifteen thousand dollars (\$15,000)
4 plus the difference between (i) the HUD 236 Basic Rents, on an annualized basis, for the units
5 which do not receive Section 8 rental assistance ("236 Units"), and (ii) the sum of (A) the utility
6 allowances, on an annualized basis, for the 236 Units and (B) the estimated tenant contributions
7 to monthly unit rents for the 236 Units in the current Lease Year.

8 (b) "Residual Rent" means the difference between the Annual Rent (\$165,317 during
9 the initial term) and the Base Rent in any given Lease Year.

10 (c) "Surplus Cash" means the net rental income remaining in any given Lease Year
11 after deduction of all operating expenses, debt service, reserve deposit, payment of Developer's
12 fees deferred from the original rehabilitation and payment of the Partnership Management Fee, as
13 defined in the Tenant's partnership agreement approved by the Agency.

14 **4.02 Net Lease**

15 This Ground Lease is a net lease and the Developer shall be responsible to pay all costs,
16 charges, taxes, impositions and other obligations related thereto. If the Agency pays any such
17 amounts, whether to cure a default or otherwise protect its interests hereunder, the Agency will
18 be entitled to be reimbursed by Developer the full amount of such payments as additional rent on
19 the next rent payment date.

20
21 **ARTICLE 5: AGENCY COVENANTS**

22 The Agency is a public body, corporate and politic, duly created and validly existing in
23 good standing under the Law, and has full right, power and authority to enter into and perform its

1 obligations under this Ground Lease. Agency covenants and warrants that the Developer and its
2 tenants shall have, hold and enjoy, during the lease term, peaceful, quiet and undisputed
3 possession of the Site leased without hindrance or molestation by or from anyone so long as the
4 Developer is not in default under this Ground Lease or the Loan Agreement with the Agency.

5
6 **ARTICLE 6: DEVELOPER COVENANTS**

7 Developer covenants and agrees for itself, and its successors and assigns to or of the Site,
8 or any part thereof, that:

9 **6.01 Limited Partnership/Authority**

10 Developer is a California limited partnership and has full rights, power and authority to
11 enter into and perform its obligations under this Ground Lease.

12 **6.02 Use of Site**

13 During the term of this Ground Lease, Developer and such successors and assigns shall
14 comply with the following requirements:

15 **6.02a. Compliance with Redevelopment Requirements**

16 Devote the Site to, and only to and in accordance with, the uses specified in the
17 Redevelopment Plan and this Ground Lease, as specified in Article 9 hereof, which are the only
18 uses permitted by this Ground Lease.

19 **6.02b. Non-Discrimination**

20 Not discriminate against or segregate any person or group of persons on account
21 of race, color, creed, religion, ancestry, national origin, age, sex, gender identity, marital or
22 domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the
23 sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the

1 Improvements, or any part thereof, nor shall Developer itself or any person claiming under or
2 through it establish or permit any such practice or practices of discrimination or segregation with
3 reference to the selection, location, number, use or occupancy, of Occupants, subtenants or
4 vendees on the Site or Improvements, or any part thereof.

5 **6.02c. Acceptance of Tenants with Section 8 Subsidy**

6 Not discriminate against tenants with certificates or vouchers under the Section 8
7 program or any successor rent subsidy program.

8 **6.02d. Non-Discriminatory Advertising**

9 All advertising (including signs) for sublease of the whole or any part of the Site
10 shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size
11 and design.

12 **6.02e. Access for Disabled Persons**

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

16 **6.02f. Equal Opportunity Marketing Plan**

17 Submit a Fair Housing Marketing Plan to be approved by the Agency. The Fair
18 Housing Marketing Plan must follow U.S. Department of Housing and Urban Development
19 Guidelines for such plans.

20 **6.02g. Lead Based Paint**

21 Comply with the regulations issued by the Secretary of Housing and Urban
22 Development set forth in 37 F.R. 22732-3 and all applicable rules and orders issued thereunder
23 which prohibit the use of lead-based paint in residential structures undergoing federally assisted

1 construction or rehabilitation and require the elimination of lead-based paint hazards.

2 **6.02h. Renewal of Section 8 Contracts**

3 Apply for, accept and renew the Section 8 contracts with the San Francisco
4 Housing Authority, the U.S. Department of Housing and Urban Development and any other
5 administrator or provider of such contracts for so long as such renewals are offered, in each case
6 at the maximum number of units and rents permitted by the terms of such contracts and offers.

7 **6.03 Agency and City Deemed Beneficiaries of Covenants**

8 In amplification, and not in restriction, of the provisions of the preceding subsections, it is
9 intended and agreed that the Agency and the City shall be deemed beneficiaries of the
10 agreements and covenants provided in this Article 6 for and in their own right and also for the
11 purposes of protecting the interests of the community and other parties, public or private, in
12 whose favor or for whose benefit such agreements and covenants have been provided. Such
13 agreements and covenants shall run in favor of the Agency and the City for the entire period
14 during which such agreements and covenants shall be in force and effect, without regard to
15 whether the Agency or the City has any time been, remains, or is an owner of any land or interest
16 therein to, or in favor of, which such agreements and covenants relate. The Agency and the City
17 shall have the right, in the event of any breach of any such agreements or covenants, in each case,
18 after notice and the expiration of cure periods, to exercise all the rights and remedies and to
19 maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of
20 such breach of covenants, to which it or any other beneficiaries of such agreements or covenants
21 may be entitled.

22
23 **ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION**

1 Forty-five days after the Agreement Date, and on January 15th of each year thereafter,
2 Developer will furnish to the Agency a list of all of the names of the persons who are Occupants
3 of the Improvements on the Site, the specific unit which each person occupies, the household
4 income of the Occupants of each unit, the household size and the rent being charged to the
5 Occupants of each unit. Developer will provide the Agency with an Income Computation and
6 Certification for each household (i) in the form required by that certain Regulatory Agreement
7 and Declaration of Restrictive Covenants with respect to the Project, by and among the Agency,
8 the Developer and Dai-ichi Kangyo Bank of California, as Trustee (the "Bond Regulatory
9 Agreement"), for so long as such agreement is in effect; or (ii) from and after the date on which
10 the Bond Regulatory Agreement is terminated, in the form attached hereto as Attachment 9;
11 executed under penalty of perjury by the Occupant. If any state or federal agency requires an
12 income certification for Occupants of the Site containing the above-referenced information, the
13 Agency agrees to accept such certification in lieu of Attachment 9 as meeting the requirements of
14 this Ground Lease. In addition to such initial and annual list and certification, Developer agrees
15 to provide the same information and certification to the Agency regarding each Occupant of the
16 Improvements not later than ten (10) business days after such Occupant commences occupancy.
17

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

19 Neither the Agency, nor any employee, agent or representative of the Agency has made
20 any representation, warranty or covenant, expressed or implied, with respect to the Site, its
21 physical condition, the condition of any improvements, any environmental laws or regulations, or
22 any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set
23 forth explicitly in this Ground Lease, and the Developer understands and agrees that the Agency

1 is making no such representation, warranty or covenant, expressed or implied; it being expressly
2 understood that the Site is being leased in an "AS IS" condition with respect to all matters.

3
4 **ARTICLE 9: IMPROVEMENTS AND PERMITTED USES**

5 **9.01 Scope of Development and Schedule of Performance**

6 Developer agrees to undertake and complete all physical construction on the Site
7 described in the Loan Agreement, (the "Scope of Development"), as approved by the Agency, in
8 accordance with the Schedule of Performance, Attachment 4.

9 **9.02 Permitted Uses and Occupancy Restrictions**

10 (a) The permitted uses of the Project are limited to 72 dwelling units, including 1
11 manager's unit and 71 residential units, a community room, a laundry room, and related parking.
12 Following the execution date of this Agreement, at least 51 of the 72 units in the Project shall be
13 occupied or held vacant and available for rental by households of Low Income. One of the 72
14 units in the Project shall be occupied by the on-site property manager. No more than 20 of the 72
15 units in the Project shall be occupied or held vacant and available for rental by households of
16 Moderate Income.

17 (b) For purposes of this Agreement, "§236 Approved Rents" shall mean the rent
18 levels, adjusted for unit size, whether at the §236 Basic Rent level or the §236 Market level,
19 adjusted for unit size, as determined annually by the Agency and the U. S. Department of
20 Housing and Urban Development (HUD) using the guidelines and regulations established under
21 §236 of the Housing Act of 1937. With the exception of the manager's unit, all units at the
22 Property shall have their rents set at the §236 Approved Rent levels for the remaining term of the
23 Agreement for Interest Reduction Payments dated as of June 1, 1999 (the "IRP Agreement").

1 (c) All Low Income Units shall be occupied and rented through either the HUD
2 Project-Based Section 8 Rental Assistance Program or the San Francisco Housing Authority
3 (“SFHA”) Project-Based Section 8 Rental Assistance Program, or their successor programs, for
4 as long as the Project receives Project-Based Section 8 assistance, in accordance with HUD and
5 SFHA requirements. Developer shall accept Project-Based Section 8 assistance from HUD and
6 SFHA for as long as it is offered by HUD and SFHA. All Moderate Income Units occupied by
7 households that were in residence as of June 2, 1999, will be rented with rental assistance from
8 the §236 Level Rent Account, or its successor program, for as long as that household’s §236
9 Tenant Contribution is less than the §236 Approved Rent for that unit, in accordance with
10 Agency requirements. The §236 Tenant Contribution shall be that portion of the monthly rental
11 payment (the current §236 Approved Rent for that unit) which equals that household’s scheduled
12 monthly rental payment as of June 2, 1999. The §236 Tenant Contribution shall be subject to a
13 minimum 5.1% increase annually, but in no event shall the §236 Tenant Contribution exceed the
14 applicable §236 Approved Rent. The difference, if any, between the §236 Approved Rent and
15 the §236 Tenant Contribution shall be the §236 Level Rent Payment for the unit in question. The
16 eligible household shall pay the annually adjusted §236 Tenant Contribution monthly, and the
17 applicable §236 Level Rent Payment shall be paid from the §236 Level Rent Account,
18 administered by the Agency. All Moderate Income Units occupied by households that were not
19 in residence as of June 2, 1999 will not be eligible for rental assistance from the §236 Level Rent
20 Account.

21 (d) Upon vacancy of any of the Low Income Units, that vacant unit shall be rented to
22 a Low Income Qualifying Tenant. In the event HUD and/or SFHA no longer provide Section 8
23 assistance, rent for that Low Income Unit, including utility allowance, shall not exceed 30% of

1 60% of AMI, as determined by the California Tax Credit Allocation Committee for the unit size
2 in question. Upon vacancy of any of the Moderate Income Units, that vacant unit shall be
3 occupied by a Moderate Income Qualifying Tenant. The re-occupied Moderate Income Units
4 shall have a rent, including utility allowance, set at the §236 Approved Rent level (as determined
5 by the Agency and HUD, respectively). In the event that the Property is no longer subject to the
6 requirements of the §236 Regulations, rent for that Moderate Income Unit, including utility
7 allowance, shall not exceed 30% of 80% of AMI, as determined by the California Tax Credit
8 Allocation Committee for the unit size in question.

9 **9.03 Lender Not Obligated to Comply with Income Restrictions**

10 Notwithstanding the foregoing Article 9.02, in the event that title to Developer's interest in the
11 Improvements is acquired by a Lender by foreclosure, deed in lieu of foreclosure or as the result
12 of any other action or remedy provided for by any Leasehold Mortgage, or should Lender sell or
13 assign the same to an Agency approved purchaser or assignee (subject to the Agency's rights
14 under Article 25), the Lender or its purchaser or assignee may operate and maintain the 72
15 residential dwelling units without any limitations on the rents charged or the income of the
16 Occupants thereof.

17
18 **ARTICLE 10: REHABILITATION OF IMPROVEMENTS**

19 **10.01 General Requirements and Rights of Agency**

20 Construction documents for the rehabilitation of the Improvements by Developer (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 the Redevelopment Plan and
23 this Ground Lease, including any limitations established in the Scope of Development, and all

1 applicable Federal, State and local laws and regulations. The architect shall use, as necessary,
2 members of associated design professions, including engineers and landscape architects. The
3 selection of the architect shall be subject to the approval of the Agency.

4 **10.02 Agency Approvals and Limitation Thereof**

5 The Construction Documents must be approved by the Agency in the manner set forth
6 below:

7 **10.02a. Compliance with Redevelopment Plan and**
8 **Ground Lease**

9 The Agency's approval with respect to the Construction Documents is limited to
10 determination of their compliance with the Redevelopment Plan and this Ground Lease,
11 including the Scope of Development (these enumerated documents are for convenience
12 sometimes called "Redevelopment Requirements"). The Construction Documents shall be
13 subject to general architectural review and guidance by the Agency as part of this review and
14 approval process.

15 **10.02b. Agency Does Not Approve Compliance with Construction**
16 **Requirements**

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

20 **10.02c. Agency Determination Final and Conclusive**

21 The Agency's determination respecting the compliance of the Construction
22 Documents with Redevelopment Requirements shall be final and conclusive (except that it
23 makes no determination and has no responsibility for the matters set forth in Article 10.02b,

1 above).

2 **10.03 Rehabilitation to be in Compliance with Construction Documents and Law**

3 The Improvements to be constructed shall be constructed in strict compliance with the
4 Agency-approved and City-approved Construction Documents and also in strict compliance with
5 all applicable local, State and Federal laws and regulations.

6 **10.04 Approval of Construction Documents by Agency**

7 Developer shall submit and the Agency shall approve or disapprove the Construction
8 Documents referred to in this Ground Lease within the times established in the Schedule of
9 Performance. Failure by the Agency either to approve or disapprove within the times established
10 in the Schedule of Performance shall be deemed approval.

11 **10.05 Disapproval of Construction Documents by Agency**

12 If the Agency disapproves the Construction Documents in whole or in part as not being in
13 compliance with Redevelopment Requirements or this Ground Lease, Developer shall submit
14 new or corrected plans which are in compliance within thirty (30) days after written notification
15 to it of disapproval, and the provision of this section relating to approval, disapproval and
16 resubmission of corrected Construction Documents shall continue to apply until the Construction
17 Documents have been approved by the Agency; provided, however, that in any event Developer
18 must submit satisfactory Construction Documents (i.e., approved by the Agency) no later than
19 the date specified therefor in the Schedule of Performance.

20 **10.06 Final Construction Documents to be Approved by Agency**

21 The Final Construction Documents, including all drawings, specifications and other
22 related documents necessary for the rehabilitation of the Improvements in accordance with the
23 requirements of this Ground Lease, must be approved by the Agency.

1 **10.07 Issuance of Building Permits**

2 (a) Developer shall have the sole responsibility for obtaining all necessary building
3 permits and shall make application for such permits directly to the City's Department of Building
4 Inspection. Developer shall report permit status in writing every thirty (30) days to the Agency.
5 Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Ground
6 Lease.

7 (b) The Developer is advised that the Central Permit Bureau forwards all building
8 permits to the Agency for Agency approval of compliance with Redevelopment Requirements.
9 Since the Agency's review of Construction Documents is limited (see Article 10.02a, above), its
10 approval of compliance with Redevelopment Requirements is similarly limited and does not
11 include Article 10.02b matters. Agency evidences such compliance by signing the permit and
12 returning the permit to the Central Permit Bureau for issuance directly to the Developer.
13 Approval of any intermediate permit, however, is not approval of compliance with all

14 Redevelopment Requirements necessary for a full and final building permit.

15 **10.08 Performance and Payment Bonds**

16 Prior to commencement of rehabilitation of the Improvements, Developer shall deliver to the
17 Agency performance and payment bonds, each for the full value of the cost of rehabilitation of
18 the Improvements, which bonds shall name the Agency as co-obligee, or such other completion
19 security which is acceptable to the Agency.

20 **10.09 Agency Approval of Changes after Commencement of Rehabilitation**

21 Once rehabilitation has commenced, the only Construction Document matters subject to further
22 review by the Agency will be requests for any changes in the Construction Documents which
23 affect matters previously approved by the Agency. Permission to make such changes shall be

1 requested by Developer in writing directed to the Agency, Attention: Housing Program Manager,
2 with a copy to the Architecture Division Manager. The Agency shall reply in writing giving
3 approval or disapproval of the changes within ten (10) business days after receiving such request.
4 If the request is disapproved, the reply must specify the reasons for the disapproval. If the
5 Agency does not respond within this ten-day period, the Agency will be deemed to have
6 approved the changes as submitted.

7 **10.10 Times for Rehabilitation**

8 Developer agrees for itself, and its successors and assigns to or of the Leasehold Estate or
9 any part thereof, that Developer and such successors and assigns shall promptly begin and
10 diligently prosecute to completion the redevelopment of the Site through the rehabilitation of the
11 Improvements thereon, and that such rehabilitation shall in any event commence and thereafter
12 diligently continue and shall be completed no later than the dates specified in the Schedule of
13 Performance, unless such dates are extended by the Agency.

14 **10.11 Force Majeure**

15 For the purposes of any of the provisions of this Ground Lease, neither the Agency nor
16 Developer, as the case may be, shall be considered in breach of or default in its obligations, nor
17 shall there be deemed a failure to satisfy any conditions with respect to the beginning and
18 completion of rehabilitation of the Improvements, or progress in respect thereto, in the event of
19 enforced delay in the performance of such obligations or satisfaction of such conditions, due to
20 unforeseeable causes beyond its control and without its fault or negligence, including, but not
21 restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party,
22 fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of
23 materials and unusually severe weather or delays of subcontractors due to such causes; it being

1 the purposes and intent of this provision that in the event of the occurrence of any such enforced
2 delay, the time or times for the satisfaction of conditions to this Ground Lease including those
3 with respect to rehabilitation of the Improvements, shall be extended for the period of the
4 enforced delay; provided, however, that the party seeking the benefit of the provisions of this
5 paragraph shall have notified the other party thereof in writing of the cause or causes thereof
6 within thirty (30) days after the beginning of any such enforced delay and requested an extension
7 for the period of the enforced delay; and, provided further, that this paragraph shall not apply to,
8 and nothing contained in this paragraph shall extend or shall be construed to extend, the time of
9 performance of any of Developer's obligations to be performed prior to the commencement of
10 rehabilitation, nor shall the failure to timely perform precommencement of rehabilitation
11 obligations extend or be construed to extend Developer's obligations to commence, prosecute and
12 complete rehabilitation of the Improvements in the manner and at the times specified in this
13 Ground Lease.

14 **10.12 Reports**

15 Subsequent to commencement of rehabilitation of the Improvements and until they have
16 been completed, Developer shall make a report in writing to the Agency every three (3) months,
17 in such detail as may reasonably be required by the Agency, as to the actual progress of the
18 Developer with respect to such rehabilitation. During such period the work of the Developer
19 shall be subject to inspection by representatives of the Agency, at reasonable times and upon
20 reasonable advance notice.

21 **10.13 Access to Site**

22 Developer shall permit access to the Site to the Agency and the City whenever and to the
23 extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable

1 times and upon reasonable advance notice.

2
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 Developer, the Agency will furnish
7 Developer with an appropriate instrument so certifying. Such certification by the Agency shall
8 be a conclusive determination of satisfaction and termination of the agreements and covenants of
9 this Ground Lease with respect to the obligation of Developer, and its successors and assigns, to
10 rehabilitate the Improvements in accordance with Agency approved Final 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 the
13 Redevelopment Requirements or this Ground Lease; provided further, that such certification and
14 such determination shall not constitute evidence of compliance with or satisfaction of any
15 obligation of Developer to any Lender, or any insurer of a mortgage, securing money loaned to
16 finance the Improvements, or any part thereof; provided further, that Agency issuance of any
17 Certificate of Completion does not relieve Developer or any other person or entity from any and
18 all City requirements or conditions to occupancy of the Improvements, which requirements or
19 conditions must be complied with separately.

20 **11.02** [intentionally omitted]

21 **11.03 Certifications to be Recordable**

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

1 **11.04 Certification of Completion - Non-Issuance Reasons**

2 If the Agency shall refuse or fail to provide any certification in accordance with the
3 provisions of subsection 11.01, the Agency shall provide Developer with a written statement,
4 within fifteen (15) days after written request by Developer, indicating in adequate detail in what
5 respects Developer has failed to complete the rehabilitation of the Improvements in accordance
6 with the provisions of this Ground Lease or is otherwise in default hereunder and what measures
7 or acts will be necessary, in the opinion of the Agency, for Developer to take or perform in order
8 to obtain such certification.
9

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

11 **12.01 Post Completion Changes**

12 The Redevelopment Plan, or the requirements of any successor zoning or land use
13 controls after termination of the Redevelopment Plan, controls changes to the Improvements
14 after the rehabilitation has been certified complete. However, because of the location of the Site,
15 the nature of the Improvements, the Permitted Uses and their relationship to surrounding
16 developments, the Agency has a particular interest in the Site and in the nature and extent of the
17 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the
18 following particular controls on the Site and on the Improvements: during the term of this
19 Ground Lease, neither Developer, nor any voluntary or involuntary successor or assign, shall
20 make or permit any change in the Improvements, as change is hereinafter defined, unless the
21 express prior written consent for any change shall have been requested in writing from the
22 Agency and obtained, and, if obtained, upon such terms and conditions as the Agency may
23 require. The Agency agrees not to withhold or delay its response to such a request unreasonably.

1 **12.02 Definition of Change**

2 ‘Change’ as used in this Article means any alteration, modification, addition and/or
3 substitution of or to the Site, the Improvements, the density of development and/or the extent and
4 nature of the Site open space, which differs materially from that which has been expressly
5 approved by the Agency pursuant to this Ground Lease and which has been certified by the
6 Agency as complete in accordance with this Ground Lease, and shall include without limitation
7 the exterior design, exterior materials and/or exterior color. For purposes of the foregoing,
8 exterior shall mean and include the roof of the Improvements.

9 **12.03 Enforcement**

10 The Agency shall have any and all remedies in law or equity (including without
11 limitation restraining orders, injunctions and/or specific performance), judicial or administrative,
12 to enforce the provisions of this Article 12, including without limitation any threatened breach
13 thereof or any actual breach or violation thereof.

14
15 **ARTICLE 13: TITLE TO IMPROVEMENTS**

16 Fee title to any Improvements, including those Improvements conveyed to Developer by
17 that certain Improvement Grant Deed of even date herewith, vested in Developer shall remain
18 vested in Developer during the term of this Ground Lease. Subject to the rights of any Lenders
19 and as further consideration for the Agency entering into this Ground Lease, at the expiration or
20 earlier termination of this Ground Lease, fee title to all the Improvements shall vest in the
21 Agency without further action of any party, without any obligation by the Agency to pay any
22 compensation therefor to Developer and without the necessity of a deed from Developer to the
23 Agency; provided, however, that the Agency agrees to review in good faith, and not

1 unreasonably disapprove, any proposal by Developer to transfer ownership of the Improvements
2 to residents of the Premises, subject to (i) the terms and conditions of this Ground Lease, and (ii)
3 the terms and conditions of any agreements entered into in connection with the Agency's
4 issuance of tax-exempt multifamily housing revenue bonds, any proceeds of which were used for
5 acquisition of the Premises, but only for so long as such agreements are in effect.

6
7 **ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE**

8 **14.01 Assignment, Sublease or Other Conveyance by Developer**

9 Developer may not sell, assign, convey, sublease, or transfer in any other mode or form
10 all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof,
11 other than to Lenders, or allow any person or entity to occupy or use all or any part of the Site
12 other than leases to tenants in the ordinary course of business, nor may it contract or agree to do
13 any of the same, without the prior written approval of the Agency, which approval shall not be
14 unreasonably withheld or delayed; provided, however, (i) Developer may sell, assign, convey,
15 sublease or transfer its interests to a limited partnership of which Developer or an entity
16 controlled by Developer is the managing general partner, without the consent of the Agency; and
17 (ii) the purchase of the Project by G.G.A. Corporation, Inc., as general partner of Developer,
18 pursuant to that certain Right of First Refusal and Purchase Option Agreement of even date
19 herewith is approved. The parties hereto acknowledge the Agency's particular interest and
20 concern regarding the nature and identity of the occupant of the Site, and therefore expressly
21 agree that the Agency's approval of any such sale, assignment, conveyance, sublease or other
22 transfer may be withheld in its good faith discretion.

23 **14.02 Assignment, Sublease or Other Conveyance by Agency**

1 The Agency acknowledges that any sale, assignment, transfer or conveyance of all or any
2 part of the Agency's interest in the Site, the Improvements, or this Ground Lease, are subject to
3 this Ground Lease. The Agency will require that any purchaser, assignee or transferee will
4 expressly assume all of the obligations of the Agency under this Ground Lease by a written
5 instrument recordable in the Official Records of the City. This Ground Lease shall not be
6 affected by any such sale, and Developer shall attorn to any such purchaser or assignee. In the
7 event that the Agency intends to sell all or any part of the Site, other than as provided in Section
8 2(b), the Agency shall notify Developer of the proposed terms of such sale not later than ninety
9 (90) days before the anticipated close of escrow. Developer shall have sixty (60) days from the
10 giving of such notice to exercise a right of first refusal to purchase the Site on the same terms and
11 conditions of such proposed sale.

12
13 **ARTICLE 15: TAXES**

14 Developer agrees to pay, or cause to be paid, when due to the proper authority, any and
15 all valid taxes, assessments and similar charges on the Site which become effective after the
16 execution of this Ground Lease, including all taxes levied or assessed on the possession, use or
17 occupancy, as distinguished from the ownership, of the Site. Developer shall not permit any
18 such taxes, charges or other assessments to become a defaulted lien on the Site or the
19 Improvements thereon; provided, however, that in the event any such tax, assessment or similar
20 charge is payable in installments, Developer may make, or cause to be made, payment in
21 installments; and, provided further, that Developer may contest the legal validity or the amount
22 of any tax, assessment or similar charge, through such proceedings as Developer considers
23 necessary or appropriate, and Developer may defer the payment thereof so long as the validity or

1 amount thereof shall be contested by Developer in good faith and without expense to the Agency.
2 In the event of any such contest, Developer shall protect, defend and indemnify the Agency
3 against all loss, cost, expense or damage resulting therefrom, and should Developer be
4 unsuccessful in any such contest, Developer shall forthwith pay, discharge, or cause to be paid or
5 discharged, such tax, assessment or other similar charge. The Agency shall furnish such
6 information as Developer shall reasonably request in connection with any such contest provided
7 that such information is otherwise available to the public.
8

9 **ARTICLE 16: UTILITIES**

10 Developer shall procure water and sewer service from the City and electricity, telephone,
11 natural gas and any other utility service from the City or utility companies providing such
12 services, and shall pay all connection and use charges imposed in connection with such services.

13 As between the Agency and Developer, Developer shall be responsible for the installation and
14 maintenance of all facilities required in connection with such utility services to the extent not
15 installed or maintained by the City or the utility providing such service.
16

17 **ARTICLE 17: MAINTENANCE**

18 Developer, at all times during the term hereof, shall maintain or cause to be maintained
19 the Premises in good condition and repair to the reasonable satisfaction of the Agency, taking
20 into account the age of the building, including the exterior, interior, substructure and foundation
21 of the Improvements and all fixtures, equipment and landscaping from time to time located on
22 the Site or any part thereof. The Agency shall not be obligated to make any repairs, replacements
23 or renewals of any kind, nature or description whatsoever to the Site or any buildings or

1 improvements now or hereafter located thereon.

2
3 **ARTICLE 18: LIENS**

4 Developer shall use its best efforts to keep the Site free from any liens arising out of any
5 work performed or materials furnished by itself or its subtenants. In the event that Developer
6 shall not cause the same to be released of record within twenty (20) days following written
7 notice from the Agency of the imposition of any such lien, the Agency shall have, in addition to
8 all other remedies provided herein and by law, the right but not the obligation to cause the same
9 to be released by such means as it shall deem proper, including payment of the claim giving rise
10 to such lien. All sums paid by the Agency for such purpose, and all reasonable expenses
11 incurred by it in connection therewith, shall be payable to the Agency by Developer on demand;
12 provided, however, Developer shall have the right, upon posting of an adequate bond or other
13 security, to contest any such lien, and the Agency shall not seek to satisfy or discharge any such
14 lien unless Developer has failed so to do within ten (10) days after the final determination of the
15 validity thereof. In the event of any such contest, Developer shall protect, defend, and indemnify
16 the Agency against all loss, cost, expense or damage resulting therefrom.

17
18 **ARTICLE 19: GENERAL REMEDIES**

19 **19.01 Application of Remedies**

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

21 **19.02 Notice and Cure Rights for Developer Limited Partner**

22 (a) The Agency may not exercise its remedies under this Ground Lease for a default
23 by the Developer unless and until (i) the Agency has given written notice of any such default, in

1 accordance with the notice provisions of Article 38, to the Developer's limited partners who have
2 requested notice as set forth below ("Permitted Limited Partners"), and (ii) such default has not
3 been cured within sixty (60) days following the giving of such notice or, if such default cannot be
4 cured within such 60-day period, such longer period as is reasonably necessary to cure such
5 default, provided that such has been commenced and is being prosecuted diligently to
6 completion. If a Permitted Limited Partner cannot cure a default because the general partner of
7 the Developer is in bankruptcy, any cure period will be tolled during the pendency of such
8 bankruptcy.

9 (b) The Agency will not exercise its remedy to terminate this Ground Lease if a
10 Permitted Limited Partner is attempting to cure the default and such cure requires removal of the
11 General Partner, so long as the Permitted Limited Partner is proceeding diligently to remove the
12 General Partner in order to effect a cure of such default.

13 (c) Any limited partner wishing to become a Permitted Limited Partner must provide
14 five (5) days' written notice to the Agency in accordance with the notice provisions of this
15 Ground Lease, setting forth a notice address and providing a copy of such notice to the
16 Developer and all of the Developer's general partners. Such limited partner will become a
17 Permitted Limited Partner upon the expiration of the five-day period. A limited partner will not
18 be afforded the protections of this section with respect to any default occurring prior to the time
19 such limited partner becomes a Permitted Limited Partner.

20 **19.03 Breach by Agency**

21 If Developer believes a material breach of this Ground Lease has occurred, Developer
22 shall first notify the Agency in writing of the purported breach, giving the Agency sixty (60)
23 days from receipt of such notice to cure such breach. In the event Agency does not then cure or,

1 if the breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure
2 within sixty (60) days and thereafter diligently prosecute such cure to completion, then
3 Developer shall be afforded all of its rights at law or in equity by taking any or all of the
4 following remedies: (i) terminating in writing this entire Ground Lease; (ii) prosecuting an action
5 for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy
6 available at law or equity.

7 **19.04 Breach by Developer**

8 **19.04a. Default by Developer**

9 The following events each constitute a basis for the Agency to take action against
10 Developer:

11 (1) Subject to delay for force majeure pursuant to Section 10.11, Developer
12 fails to commence rehabilitation of the Improvements or to complete same within the time limits
13 set forth in this Ground Lease;

14 (2) Developer fails to comply with the Permitted Uses and Occupancy
15 Restrictions set forth in Article 9.02;

16 (3) Developer abandons or suspends rehabilitation of the Improvements for a
17 period of sixty (60) days after written notice by the Agency of such abandonment or suspension,
18 except for a cessation of rehabilitation caused by Force Majeure as defined in Section 10.11.

19 (4) Developer voluntarily or involuntarily assigns, transfers or attempts to
20 transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements,
21 except as permitted by this Ground Lease;

22 (5) Developer, or its successor in interest, shall fail to pay real estate taxes or
23 assessments on the Premises or any part thereof when due, or shall place thereon any

1 encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to
2 be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or
3 lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien
4 removed or discharged; provided, however, that Developer shall have the right to contest any tax
5 or assessment pursuant to Article 15 and, upon the posting of an adequate bond or other security,
6 to contest any such lien or encumbrance. In the event of any such contest, Developer shall
7 protect, indemnify and hold Agency harmless against all losses, damages, including reasonable
8 attorneys' fees and costs resulting therefrom;

9 (6) Developer shall be adjudicated bankrupt or insolvent or shall make a
10 transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have
11 brought against Developer any action or proceeding of any kind under any provision of the
12 Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in
13 the event such proceedings are involuntary, Developer is not dismissed from the same within
14 sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of
15 Developer and such receiver is not discharged within sixty (60) days;

16 (7) Developer breaches any provision of any financing provided by the
17 Agency, including, but not limited to, the Loan Agreement, or by any other source for the
18 acquisition or rehabilitation of the Site or the Improvements, and fails to cure the breach
19 following any required written notice and within any applicable cure periods;

20 (8) Developer breaches any other material provision of this Ground Lease; or

21 (9) Developer fails to pay Rent when due.

22 **19.04b. Notification, Cure and Remedies**

23 Upon the happening of any of the events described in Article 19.04a above, the Agency

1 shall notify Developer in writing of its purported breach, failure or act, giving Developer sixty
2 (60) days from receipt of such notice to cure such breach, failure or act. In the event Developer
3 does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty
4 (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure
5 to completion, then, subject to the rights of any Lender and subject to Section 19.02, the Agency
6 thereafter shall be afforded all of its rights at law or in equity, including any or all of the
7 following remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for
8 damages; or (3) seeking specific performance of this Ground Lease.

9
10 **ARTICLE 20: DAMAGE AND DESTRUCTION**

11 **20.01 Insured Casualty.**

12 If the Improvements or any part thereof are damaged or destroyed by any cause covered
13 by any policy of insurance required to be maintained by Developer hereunder, Developer shall
14 promptly commence and diligently complete the restoration of the Improvements as nearly as
15 possible to the condition thereof prior to such damage or destruction; provided, however, that if
16 more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or
17 other casualty, or if the insurance proceeds do not provide at least ninety percent (90%) of the
18 funds necessary to accomplish the restoration, Developer may terminate this Ground Lease
19 within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date
20 on which Developer is notified of the amount of insurance proceeds available for restoration. In
21 the event Developer is required or elects to restore the Improvements, all proceeds of any policy
22 of insurance required to be maintained by Developer under this Ground Lease shall be used by
23 Developer for that purpose and Developer shall make up from its own funds any deficiency

1 between the amount of insurance proceeds available for the work of restoration and the actual
2 cost thereof. In the event Developer elects to terminate this Ground Lease pursuant to its right to
3 do so under this Article 20.01, or elects not to restore the Improvements, the insurance proceeds
4 shall be divided among the Agency, Developer and any Lender in accordance with the provisions
5 of Article 20.03.

6 **20.02 Uninsured Casualty.**

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

1 **20.03 Distribution of the Insurance Proceeds.**

2 In the event of an election by Developer to terminate and surrender as provided in either
3 Article 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance
4 policy required to be maintained by Developer hereunder shall be as follows:

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

11 (b) Second, to compensate Agency for any diminution in the value (as of the
12 date of the damage or destruction) of the Site as a raw development site caused by or arising
13 from the damage or destruction;

14 (c) The remainder to Developer.

15 (d) The provisions of this Article 20.03 shall be subject to the rights of any
16 Lender.

17 **20.04 Clean Up of Housing Site**

18 In the event the Developer terminates this Ground Lease pursuant to the provisions of
19 Article 20.01 or 20.02 and the proceeds of any insurance policy are insufficient to pay the clean-
20 up and other costs described in Article 20.03 subsection (a), Developer shall have the obligation
21 to pay the portion of such costs not covered by the insurance proceeds.

22
23 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; INDEMNIFICATION**

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

14
15 **ARTICLE 22: INSURANCE AND FIDELITY BOND**

16 **22.01 Insurance**

17 For so long as the Loan Agreement is in effect, the Developer shall maintain insurance in
18 accordance with the terms of the Loan Agreement, and failure to do so shall be a default under
19 the terms of this Ground Lease. From and after the termination of the Loan Agreement, the
20 Developer shall maintain insurance meeting the requirements of this Article.

21 **22.01a. Insurance Requirements for Developer**

22 During the term of this Ground Lease, Developer shall procure and maintain insurance
23 against claims for injuries to persons or damage to property which may arise from or in

1 connection with the performance of any work hereunder by the Developer, its agents,
2 representatives, employees or subcontractors and the Developer's use and occupancy of the Site
3 and the Improvements.

4 **22.01b. Minimum Scope of Insurance**

5 Coverage shall be at least as broad as:

6 (1) Insurance Services Office Commercial General Liability coverage
7 ("occurrence" form CG 00010196).

8 (2) Insurance Services Office form number CA 00011293 covering
9 Automobile Liability, code 1 "any auto."

10 (3) Workers' Compensation insurance as required by the Labor Code of the
11 State of California and Employer's Liability insurance.

12 (4) Whenever an architect or engineer is employed, professional Liability
13 Insurance covering all negligent acts, errors and omissions in Developer's Architectural and

14 Engineering Professional Design Services. As an alternative to Developer providing said
15 Professional liability insurance, Developer shall require that all architectural and engineering
16 professional consultants for the project have liability insurance covering negligent acts, errors
17 and omissions. Developer shall provide the Agency with copies of consultants' insurance
18 certificates showing such coverage.

19 (5) Property Liability Insurance against all risks of direct physical loss to the
20 Project during the course of construction and following completion of construction.

21 **22.01c. Minimum Limits of Insurance**

22 Coverage shall maintain limits no less than:

23 (1) General Liability: \$1,000,000 combined single limit per occurrence for

1 bodily injury, personal injury and property damage. If Commercial General Liability Insurance
2 or other form with a general aggregate limit shall apply separately to this project/location, the
3 general aggregate limit shall be twice the required occurrence limit.

4 (2) Automobile Liability: \$1,000,000 combined single limit per accident for
5 bodily injury and property damage.

6 (3) Workers' Compensation and Employers Liability: Workers'
7 Compensation limits as required by the Labor Code of the State of California and Employers
8 Liability limits of \$1,000,000 per accident.

9 (4) Professional Liability: \$1,000,000 per occurrence during the course of new
10 construction or remodeling in excess of \$100,000.

11 (5) Property Insurance:

12 (a) Prior to commencement of construction on the Site, the Developer
13 shall deliver to the Agency performance and payment bonds for such construction which bonds
14 shall name the Agency as co-obligee.

15 (b) During the course of construction, Full Completed Value of the
16 Project.

17 (c) Following completion of construction, Full replacement value of
18 the Project with no coinsurance penalty provision.

19 **22.01d. Deductibles and Self-Insured Retentions**

20 Any deductibles or self-insured retentions must be declared to and approved by Agency.
21 At the option of Agency, either: the insurer shall reduce or eliminate such deductibles or self-
22 insured retentions as respects the Agency, its officers, employees and volunteers; or the
23 Developer shall procure a bond guaranteeing payment of losses and related investigation, claim

1 administration and defense expenses.

2 **22.01e. Other Insurance Provisions**

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

4 (1) General Liability and Automobile Liability Coverage:

5 (a) The Agency, the City and County of San Francisco and their respective
6 officers, agents, employees and Commissioners, are to be covered as additional insured as
7 respects: liability arising out of activities performed by or on behalf of the Developer; products
8 and completed operations of the Developer, premises owned, occupied or used by the Developer;
9 or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain
10 no special limitations on the scope of protection afforded to the Agency, the City and County of
11 San Francisco and their respective officers, agents, employees or Commissioners.

12 (b) The Developer's insurance coverage shall be primary insurance as respects
13 the Agency, the City and County of San Francisco and their respective officers, agents,
14 employees and Commissioners. Any insurance or self-insurance maintained by the Agency, the
15 City and County of San Francisco and their respective officers, agents, employees or
16 Commissioners shall be excess of the Developer's insurance and shall not contribute with it.

17 (c) Any failure to comply with reporting provisions of the policies shall not
18 affect coverage provided to the Agency, the City and County of San Francisco and their
19 respective officers, agents, employees or Commissioners.

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

22 (2) Workers' Compensation and Employers Liability Coverage: The insurer shall
23 agree to waive all rights of subrogation against the Agency, the City and County of San

1 Francisco and their respective officers, agents, employees and Commissioners for losses arising
2 from work performed by the Developer for the Agency.

3 (3) All Coverage: Each insurance policy required by this clause shall be endorsed to
4 state that coverage shall not be suspended, voided, canceled by either party, or reduced in
5 coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return
6 receipt requested, has been given to Agency.

7 **22.01f. Acceptability of Insurers**

8 Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

9 **22.01g. Verification of Coverage**

10 Developer shall furnish Agency with certificates of insurance prior to disbursement of
11 funds and with original endorsements effecting coverage required by this clause. The certificates
12 and endorsements for each insurance policy are to be signed by a person authorized by that
13 insurer to bind coverage on its behalf. All certificates and endorsements are to be received and
14 approved by Agency before work commences. Agency reserves the right to require complete,
15 certified copies of all required insurance policies, at any time.

16 **22.01h. Subcontractors**

17 Developer shall include all subcontractors as additional insured under its policies or shall
18 furnish separate certificates and endorsements for each subcontractor. All coverage for
19 subcontractors shall be subject to all of the requirements stated herein.

20 **22.02 Fidelity Bond**

21 Developer shall obtain a blanket fidelity bond, or equivalent coverage, from a bonding
22 company, acceptable to Agency, covering all officers and employees of Developer for loss of
23 Loan funds caused by dishonesty in an amount not less than the Loan. Should such a loss of

1 Loan funds occur, Developer agrees to diligently pursue recovery under the bond and to assign or
2 remit to the Agency all funds recovered.

3
4 **ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS**

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

15
16 **ARTICLE 24: ENTRY**

17 The Agency and its authorized agents shall have the right at all reasonable times during
18 normal business hours and after forty-eight (48) hours written notice to Developer (except in the
19 event of an emergency when no written notice is required), to go on the Site for the purpose of
20 inspecting the same or for the purpose of posting notices of nonresponsibility, or for police or
21 fire protection.

22
23 **ARTICLE 25: MORTGAGE FINANCING**

1 **25.01 No Encumbrances Except for Development Purposes**

2 Notwithstanding any other provision of this Ground Lease and subject to the prior written
3 consent of the Agency, which consent shall not be unreasonably withheld or delayed, Leasehold
4 Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing
5 loans of funds to be used for financing the acquisition, design, rehabilitation or future renovation
6 or reconstruction of the Improvements and any other expenditures reasonably necessary and
7 appropriate to acquire, own, develop, rehabilitate, renovate, construct or reconstruct the
8 Improvements under this Ground Lease, operation of the Improvements, and costs and expenses
9 incurred or to be incurred by Developer in furtherance of the purposes of this Ground Lease. The
10 mortgage loan being made by the Bank of America, FSB (the "Bank") and the Indenture of Trust
11 by and among the Bank, the Agency and Dai-Ichi Kangyo Bank of California, as trustee
12 ("Trustee"), are approved Leasehold Mortgages for all purposes under this Ground Lease.

13 **25.02 Holder Not Obligated to Construct**

14 The holder of any mortgage, deed of trust or other security interest authorized by Article
15 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not
16 obligated to complete the rehabilitation of the Improvements or to guarantee such completion;
17 nor shall any covenant or any other provision of this Ground Lease be construed so to obligate
18 such Holder. However, in the event the Holder does undertake to complete or guarantee the
19 completion of the rehabilitation of the Improvements, nothing in this Ground Lease shall be
20 deemed or construed to permit or authorize any such Holder or its successors or assigns to devote
21 the Site or any portion thereof to any uses, or to construct or rehabilitate any Improvements
22 thereon, other than those uses or Improvements provided for or authorized in the Redevelopment
23 Plan. To the extent any Holder or its successors in interest wish to change such uses or construct

1 different improvements, that Holder or its successors in interest must obtain the written consent
2 of the Agency.

3 **25.03 Failure of Holder to Complete Improvements**

4 In any case where six months after assumption of obligations pursuant to Article 25.02
5 above, a Lender, having first exercised its option to construct, has not proceeded diligently with
6 rehabilitation, the Agency shall be afforded the rights against such Holder it would otherwise
7 have against Developer under this Ground Lease for events or failures occurring after such
8 assumption.

9 **25.04 Default by Developer and Agency's Rights**

10 **25.04a. Right of Agency to Cure**

11 In the event of a default or breach by Developer in or of its obligations under any
12 Leasehold Mortgage, and Developer's failure to timely commence or diligently prosecute cure of
13 such default or breach, the Agency may, at its option, cure such breach or default. In such event,
14 the Agency shall be entitled to reimbursement from Developer of all costs and expenses
15 reasonably incurred by the Agency in curing the default or breach. The Agency shall also be
16 entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and
17 disbursements. Any such lien shall be subject to the lien of any then existing Leasehold
18 Mortgage authorized by this Ground Lease, including any lien contemplated because of advances
19 yet to be made.

20 **25.04b. Notice of Default to Agency**

21 The Lender shall give the Agency prompt written notice of any such default or
22 breach, and every Leasehold Mortgage shall so provide and shall also contain the Agency's right
23 to cure as above set forth.

1 **25.04c. Agency's Right to Assignment of the Leasehold Mortgage**

2 In any case where, subsequent to default or breach by Developer in or of its obligations under
3 any Leasehold Mortgage, Developer shall have failed to fully cure such breach or default within
4 the applicable time provided therefor, the Agency shall have the option of paying to the holder
5 thereof the amount of the Leasehold Mortgage debt and securing an assignment of such debt and
6 of the Leasehold Mortgage and every Leasehold Mortgage shall so provide. In the event that
7 Developer's interest in the Site, or any part thereof, has vested in such holder by way of
8 foreclosure or action in lieu thereof, without notice to the Agency at least thirty (30) days prior to
9 such vesting that foreclosure or action in lieu thereof was pending, the Agency shall be entitled,
10 at its option, if exercised in writing within sixty (60) days after the Agency acquires actual
11 knowledge of such transfer of Developer's interest, to a conveyance to it of Developer's interest
12 in the Site or part thereof, upon payment to such holder of an amount equal to the sum of:

- 13 (a) The Leasehold Mortgage debt at the time of foreclosure or action
14 in lieu thereof, less all appropriate credits, including those resulting from collection and
15 application of rentals received during foreclosure proceedings;
- 16 (b) All expenses with respect to the foreclosure;
- 17 (c) The net expenses, if any, exclusive of general overhead, incurred
18 by such holder in and as a direct result of the subsequent management of the Site; and
- 19 (d) An amount equivalent to the interest that would have accrued on
20 the aggregate of such amounts had all such amounts become part of the Leasehold Mortgage debt
21 and had such debt continued in existence.
- 22

1 **ARTICLE 26: PROTECTION OF LENDER**

2 **26.01 Notification to Agency**

3 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to
4 the existence of any of the rights set forth in this Article 26, each and every Lender shall give
5 written notice to the Agency of the Lender's address and of the existence and nature of its
6 Leasehold Mortgage. The Bank of America, FSB and Trustee are deemed to have given such
7 notice as is required to obtain the rights and protections of a Lender under this Ground Lease.

8 **26.02 Lender's Rights to Prevent Termination**

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

17 **26.03 Lender's Rights When Developer Defaults**

18 Should any event of default under this Ground Lease occur, and not be cured within the
19 applicable cure period, the Agency shall not terminate this Ground Lease nor exercise any other
20 remedy hereunder unless it first gives notice of such event of default to Lender and

21 (i) If such event of default is a failure to pay a monetary obligation of Developer,
22 Lender shall have failed to cure such default within sixty (60) days from the date of notice from
23 the Agency to Lender; or

1 (ii) If such event of default is not a failure to pay a monetary obligation of Developer,
2 Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to
3 remedy such default; or (b) to obtain title to Developer's interest in the Site in lieu of foreclosure;
4 or (c) to commence foreclosure or other appropriate proceedings in the nature thereof and
5 thereafter diligently prosecute such proceedings to completion, in which case such event of
6 default shall be remedied or deemed remedied in accordance with Article 26.04 below.

7 All rights of the Agency to terminate this Ground Lease as the result of the occurrence of any
8 such event of default shall be subject to, and conditioned upon, the Agency having first given
9 Lender notice of such event of default and Lender having failed to remedy such default or
10 acquire Developer's Leasehold Estate created hereby or commence foreclosure or other
11 appropriate proceedings in the nature thereof as set forth in and within the time specified by this
12 Article 26.03.

13 **26.04 Default Which Cannot be Remedied by Lender**

14 Any event of default under this Ground Lease which in the nature thereof cannot be
15 remedied by Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving
16 notice from the Agency setting forth the nature of such event of default, or prior thereto, Lender
17 shall have acquired Developer's leasehold estate created hereby or shall have commenced
18 foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently
19 prosecute any such proceedings to completion, (iii) Lender shall have fully cured any event of
20 default arising from failure to pay or perform any monetary obligation in accordance with the
21 terms of this Ground Lease, and (iv) after gaining possession of the Site perform, or diligently
22 proceed to perform, all other obligations of Developer as and when the same are due in
23 accordance with the terms of this Ground Lease.

1 **26.05 Court Action Preventing Lender's Action**

2 If Lender is prohibited by any process or injunction issued by any court or by reason of
3 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding
4 involving Developer from commencing or prosecuting foreclosure or other appropriate
5 proceedings in the nature thereof, the times specified in Articles 26.03 and 26.04 above for
6 commencing or prosecuting such foreclosure or other proceedings shall be extended for the
7 period of such prohibition; provided that Lender shall have fully cured any default in the
8 payment of any monetary obligations of Developer under this Ground Lease and shall continue
9 to pay currently such monetary obligations as and when the same fall due.

10 **26.06 Lender's Rights to Record, Foreclose and Assign**

11 The Agency hereby agrees with respect to any Leasehold Mortgage, that

12 (i) the Lender may cause same to be recorded and enforced and upon
13 foreclosure sell and assign the Leasehold Estate created hereby to an assignee from whom it may
14 accept a purchase price; subject, however, to the Agency's right to purchase provided for by
15 Article 25, and to Lender's first securing written approval from Agency, which approval shall not
16 be unreasonably withheld. Lender, furthermore, may acquire title to the Leasehold Estate in any
17 lawful way, and if the Lender shall become the assignee, may sell and assign said Leasehold
18 Estate subject to Agency approval, which shall not be unreasonably withheld, and to the
19 Agency's rights under Article 25. Should the Agency fail or refuse to approve a Lender's sale or
20 assignment of said Leasehold Estate for any reason other than the unsatisfactory financial
21 condition of the purchaser or assignee, the Agency shall pay such purchaser an amount computed
22 in accordance with Article 25.04, whereupon the Agency shall be entitled to conveyance of the
23 Leasehold Estate; and

1 (ii) that should the Lender acquire the Leasehold Estate hereunder by
2 foreclosure or other appropriate proceedings in the nature of foreclosure or as the result of any
3 other action or remedy provided for by any Leasehold Mortgage, or should Lender sell or assign
4 the same to an Agency approved purchaser or assignee, Lender or its purchaser or assignee shall
5 take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so
6 long as and only so long as it shall be the owner of such estate, except as provided elsewhere in
7 this Ground Lease, assume all of the obligations of Developer under this Ground Lease;
8 provided, however, as stated at Article 9.03, the Lender or its purchaser or assignee may operate
9 and maintain the 72 dwelling units without any limitations on the rents charged or the income of
10 the occupants thereof.

11 (iii) the Agency shall mail or deliver to any Lender which has an outstanding
12 Leasehold Mortgage a duplicate copy of all notices which the Agency may from time to time
13 give to Developer pursuant to this Ground Lease.

14 (iv) any limited partners of Developer shall have the same rights as any Lender
15 under Sections 26.02, 26.03, and 26.06 (iii), and any reference to a Lender in said section shall
16 be deemed to include such limited partners; provided, however, that the rights of such limited
17 partners shall be subordinate to the rights of any Lender.

18 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

19 From and after the time that the Lender or any assignee of Lender, including any
20 purchaser at a foreclosure sale (“Subsequent Owner”), acquires title to the Leasehold Estate,
21 Annual Rent shall be set as follows:

22 (a) If the Lender continues to operate the Project subject to the use and
23 occupancy restrictions of Section 9.02, then Annual Rent otherwise due shall be deferred until

1 such time as the Project is no longer operated by the Lender subject to such restrictions. All
2 deferred Annual Rent shall accrue, with simple interest at three percent (3%) per annum until
3 paid, and shall be due and payable upon sale or assignment of the Project by Lender or within
4 sixty (60) days after Lender ceases to operate the Project in accordance with such restrictions.

5 (b) If the Lender exercises its rights under Sections 9.03 and 26.06(ii) to
6 operate the Project without being subject to Section 9.02, Annual Rent shall be set at the then fair
7 market value rental taking into account any affordability restrictions agreed to by the Subsequent
8 Owner; provided, however, that the Agency shall be entitled to reduce Annual Rent by any dollar
9 amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will
10 be required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such
11 units occupied by Low Income households as the Agency and the Subsequent Owner shall agree.

12
13 **ARTICLE 27: CONDEMNATION**

14 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

15 If, during the term of this Ground Lease, there is any condemnation of all or any part of
16 the site or any interest in the Leasehold Estate is taken by condemnation, the rights and
17 obligations of the parties shall be determined pursuant to this Article 27, subject to the rights of
18 any Lender.

19 **27.02 Total Taking**

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

22 **27.03 Partial Taking**

23 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in

1 effect, except that Developer may elect to terminate this Ground Lease if, in Developer's
2 reasonable judgment, the remaining portion of the Improvements are rendered unsuitable for
3 Developer's continued use of the Site. If Developer elects to terminate this Ground Lease,
4 Developer must exercise its right to terminate pursuant to this paragraph by giving notice to the
5 Agency within thirty (30) days after the Agency notifies Developer of the nature and the extent
6 of the taking. If Developer elects to terminate this Ground Lease as provided in this Article
7 27.03, Developer also shall notify the Agency of the date of termination, which date shall not be
8 earlier than thirty (30) days nor later than six (6) months after Developer has notified the Agency
9 of its election to terminate; except that this Ground Lease shall terminate on the date the
10 condemnor has the right to possession of the Site if such date falls on a date before the date of
11 termination as designated by Developer. If Developer does not terminate this Ground Lease
12 within such thirty (30) day notice period, this Ground Lease shall continue in full force and
13 effect.

14 **27.04 Effect on Rent**

15 If any portion of the Improvements is taken by condemnation or threat of condemnation
16 and this Ground Lease remains in full force and effect, then on the date of taking the rent shall be
17 reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of
18 the Improvements taken bears to the total value of the Improvements immediately before the date
19 of the taking.

20 **27.05 Restoration of Improvements**

21 If there is a partial taking of the Improvements and this Ground Lease remains in full
22 force and effect pursuant to Article 27.03, Developer may use the proceeds of the taking to
23 accomplish all necessary restoration to the Improvements.

1 **27.06 Award and Distribution**

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

5 (a) First, to pay the balance due on any outstanding Leasehold Mortgages to the
6 extent provided therein;

7 (b) Second, to the Developer in an amount equal to the actual equity invested by
8 the partners in the partnership;

9 (c) Third, the balance to the Agency.

10 **27.07 Payment to Lenders**

11 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
12 when any compensation resulting from a condemnation or threatened condemnation is to be paid
13 to Developer, such award shall be disposed of as provided in the Lender's loan documents.

14
15 **ARTICLE 28: ESTOPPEL CERTIFICATE**

16 The Agency or Developer, as the case may be, shall execute, acknowledge and deliver to
17 the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Ground
18 Lease is unmodified and in full force and effect (or, if there have been modifications, that this
19 Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates,
20 if any, to which rent has been paid, (c) whether there are then existing any charges, offsets or
21 defenses against the enforcement by the Agency or Developer to be performed or observed and,
22 if so, specifying the same, and (d) whether there are then existing any defaults by Developer or
23 the Agency in the performance or observance by Developer or the Agency of an agreement,

1 covenant or condition hereof on the part of Developer or the Agency to be performed or observed
2 and whether any notice has been given to Developer or the Agency of any default which has not
3 been cured and, if so, specifying the same.
4

5 **ARTICLE 29: QUITCLAIM**

6 Upon expiration or sooner termination of this Ground Lease, Developer shall surrender
7 the applicable portions of the Site to the Agency and, at the Agency's request, shall execute,
8 acknowledge, and deliver to the Agency a good and sufficient quitclaim deed with respect to any
9 interest of Developer in the same portions of the Site.
10

11 **ARTICLE 30: EQUAL OPPORTUNITY**

12 Developer agrees to comply with all of the Equal Opportunity and related requirements
13 attached hereto as Attachment 7.
14

15 **ARTICLE 31: CERTIFICATE AND BUSINESS PREFERENCE PROGRAM**

16 Developer agrees to comply with the requirements of the Agency's Certificate and
17 Business Preference Program as set forth on Attachment 6.
18

19 **ARTICLE 32: AGENCY LABOR STANDARDS PROVISIONS**

20 Developer agrees to comply with the requirements of the Agency's Labor Standards
21 Provisions as set forth on Attachment 8.
22

23 **ARTICLE 33: CONFLICT OF INTEREST**

1 No commissioner, official, or employee of the Agency shall have any personal or
2 financial interest, direct or indirect, in this Ground Lease, nor shall any such commissioner,
3 official, or employee participate in any decision relating to this Ground Lease which affects his
4 or her personal interests or the interests of any corporation, partnership, or association in which
5 he or she is directly or indirectly interested.

6
7 **ARTICLE 34: NO PERSONAL LIABILITY**

8 No commissioner, official, or employee of the Agency shall be personally liable to
9 Developer or any successor in interest in the event of any default or breach by the Agency or for
10 any amount which may become due to Developer or its successors or on any obligations under
11 the terms of this Ground Lease.

12
13 **ARTICLE 35: ENERGY CONSERVATION**

14 Developer agrees that it will use its best efforts to maximize provision of, and
15 incorporation of, both energy conservation techniques and systems and improved waste-handling
16 methodology in the design of the Improvements to be constructed pursuant to this Ground Lease.

17
18 **ARTICLE 36: WAIVER**

19 The waiver by the Agency or Developer of any term, covenant, agreement or condition
20 herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any
21 other term, covenant, agreement or condition herein contained, nor shall any custom or practice
22 which may grow up between the parties in the administration of the terms hereof be construed to
23 waive or to lessen the right of the Agency or Developer to insist upon the performance by the

1 other in strict accordance with the said terms. The subsequent acceptance of rent or any other
2 sum of money hereunder by the Agency shall not be deemed to be a waiver of any preceding
3 breach by Developer of any term, covenant, agreement or condition of this Ground Lease, other
4 than the failure of Developer to pay the particular rent or other sum so accepted, regardless of the
5 Agency's knowledge of such preceding breach at the time of acceptance of such rent or other
6 sum.

7
8 **ARTICLE 37: DEVELOPER RECORDS**

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

17
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 Developer and the Agency as shall
22 from time to time be designated by the parties for the receipt of notices, or when deposited in the
23 United States mail, certified, postage prepaid, or by express delivery service with a delivery

1 receipt and addressed

2

3 if to Developer at: GGA 1820 Post, L.P.
4 1525 Grant Avenue
5 San Francisco, CA 94133
6 Attn: General Partner
7

8 if to the Agency at: San Francisco Redevelopment Agency
9 770 Golden Gate Avenue
10 San Francisco, California 94102
11 Attn: Executive Director
12
13

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

18

19 **ARTICLE 39: COMPLETE AGREEMENT**

20 There are no oral agreements between Developer and the Agency affecting this Ground
21 Lease, and this Ground Lease supersedes and cancels any and all previous negotiations,
22 arrangements, agreements and understandings between Developer and the Agency with respect
23 to the Lease of the Site.

24

25 **ARTICLE 40: HEADINGS**

26 Any titles of the several parts and sections of this Ground Lease are inserted for
27 convenience of reference only and shall be disregarded in construing or interpreting any of its
28 provisions. "Paragraph" and "section" may be used interchangeably.

1 **ARTICLE 41: SUCCESSORS AND ASSIGNS**

2 This Ground Lease shall be binding upon and inure to the benefit of the successors and
3 assigns of the Agency and Developer and where the term "Developer" or "Agency" is used in this
4 Ground Lease, it shall mean and include their respective successors and assigns; provided,
5 however, that the Agency shall have no obligation under this Ground Lease to, nor shall any
6 benefit of this Ground Lease accrue to, any unapproved successor or assign of Developer where
7 Agency approval of a successor or assign is required by this Ground Lease.

8
9 **ARTICLE 42: TIME**

10 Time is of the essence in the enforcement of the terms and conditions of this Ground
11 Lease.

12
13 **ARTICLE 43: PARTIAL INVALIDITY**

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

17
18 **ARTICLE 44: APPLICABLE LAW**

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

1 **ARTICLE 45: 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
4 and costs of suit, including fees and costs on appeal, from the other party.

5
6 **ARTICLE 46: EXECUTION IN COUNTERPARTS**

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

10
11 **ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE**

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

17
18 **ARTICLE 48: TERMINATION OF EXISTING LDA**

19 The execution and delivery of this Ground Lease will operate to release and terminate
20 that certain Agreement for Disposition of Land for Low-to-Moderate Priced Private Housing
21 Redevelopment, dated as of January 18, 1978, between Agency and Golden Gate Apartments,
22 Ltd., a limited partnership, and recorded as Document No. AO 66798 at Liber C505, Page 339,
23 and the covenants, conditions and restrictions contained in such Agreement shall be of no further

1 force and effect from and after the Agreement Date of this Ground Lease.

2

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

3
4 Developer as Tenant:

5
6 GGA 1820 Post Street, L.P., a California limited partnership


7
8 By Chinatown Community Development Center, Inc., a California nonprofit
9 public benefit corporation, its general partner

10
11
12 By 


13
14 Its President

15
16
17 Agency as Landlord:

18
19 Redevelopment Agency of the City and County of San Francisco, a public body,
20 corporate and politic

21
22 By 
23 Richard T. Kono
24 Its Senior Deputy Executive Director

25
26
27
28
29 Approved As To Form:

30
31 By 
32 for Agency General Counsel

33
34
35
36 Authorized by Agency Resolution No. 51-99, adopted May 11, 1999, and Board of
37 Supervisors Resolution, File No.990806, adopted May 17, 1999.

ATTACHMENT 2 -- LEGAL DESCRIPTION OF SITE

All of the physical construction, including all structures, fixtures and other improvements, situated at, on or upon the land described as follows:

BEGINNING at a point on the Northerly line of Post Street, distant thereon 93 feet Easterly from the Easterly line of Fillmore Street; running thence Northerly at a right angle to said line of Post Street 137 feet and 6 inches; thence at a right angle Easterly 104 feet; thence at a right angle Northerly 137 feet and 6 inches to the Southerly line of Sutter Street; thence at a right angle Easterly along said Southerly line of Sutter Street 215 feet and 6 inches to the Westerly line of Webster Street; thence at a right angle Southerly along said Westerly line of Webster Street 275 feet to the Northerly line of Post Street; thence at a right angle Westerly along said Northerly line of Post Street 319 feet and 6 inches to the point of beginning.

BEING a portion of Western Addition Block No. 310.

ATTACHMENT 3 - (not used)

ATTACHMENT 4

Schedule Of Performance - 1820 Post Street, Golden Gate Apartments

Submission - Evidence of Financing.

Developer shall submit its evidence of equity capital and mortgage financing to fund the Project Budget to the Agency for approval.

No later than 1 calendar day prior to closing.

Approval - Evidence of Financing.

Agency shall approve or disapprove the Developer's evidence of equity capital and mortgage financing to fund the Project Budget to the Agency for approval.

On or before Conveyance of the Site

Close of Escrow / Conveyance of Site.

The Agency shall execute and deliver the Lease for the Site to the Developer and Developer shall accept conveyance of the Site.

After Developer performance, to the satisfaction of the Agency, of all conditions to Conveyance, but in no event later than June 30, 1999.

Submittal - Equal Opportunity Program

Developer shall submit for Agency review and approval its Equal Opportunity Program with respect to construction, design and professional services

No later than 5 business days after execution of the Ground Lease and Loan Agreement (presumed at Conveyance of the Site)

Approval - Equal Opportunity Program

Agency shall approve or disapprove the Developer's Program with respect to construction, design and professional services

No later than 10 business days after submittal of the Developer's Equal Opportunity Program

Submission - Final Construction Documents.

Developer shall prepare and submit Final Construction Documents to Agency, lender and investor for approval.

By August 25, 1999.

Approval - Final Construction Documents.

Agency (along with lender and investor) shall approve or disapprove the Final Construction Documents.

Within 5 business days of submittal of Final Construction Documents by Developer.

Submittal of Final Budget. (based on Final Construction Documents).

Developer shall submit Final Budget to Agency for approval.

Prior to Commencement of Construction

Approval - Final Budget.

Agency shall approve or disapprove the Developer's Final Budget.

Within 5 business days of submittal of Final Budget by Developer.

Schedule of Performance

**1820 Post Street, Western Addition A-2
Attachment 4
Page 1 of 2**

Commencement of Construction.

The Developer will commence rehabilitation of the improvements on the Site.

After Developer performance, to the satisfaction of the Agency, of all conditions to the Ground Lease, but in no event later than September 30, 1999.

Submission - HAP Contract Request.

Developer shall request entry into a HAP contract with the San Francisco Housing Authority and shall submit evidence of that request to the Agency.

By October 20, 1999.

Completion of Construction.

Developer shall complete the rehabilitation of the improvements on the Site.

By June 30, 2000.

ATTACHMENT 5 - (not used)

ATTACHMENT 6

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 Agency 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 "I". Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the Agency and applicant in writing of the reason for rejection. In order to implement this Attachment "I":

- A. The Agency 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 Agency 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 Agency shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the Agency.
 - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.
 - (5) Occupancy requirements must be described in full and found reasonable by the Agency
 - (6) Duration of rental agreement or lease.

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

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

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

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

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

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

3. All Certificate Holders found acceptable by the Owner shall have the opportunity to inspect a model or other available completed unit, and be assigned an appropriate unit for future occupancy. Units may be offered to non-Certificate Holders at any time as long as the current status report shows that there are sufficient units available to satisfy applications from Certificate Holders for units of appropriate size in any stage of processing. ALL OBLIGATIONS TO SHOW MODELS OR OTHER AVAILABLE COMPLETED UNITS SHALL REMAIN IN EFFECT DURING INITIAL OCCUPANCY PERIOD. Initial Occupancy is defined for all purposes of this Attachment "I" as the earlier of ninety (90) calendar days following the Agency's receipt of a certified copy of a Certificate (or Certificates) of Occupancy issued by the City and County of San Francisco for the respective unit (or units) to be so approved for occupancy, or the date when all units have been rented to the first occupants thereof. Upon Initial Occupancy the Agency will certify compliance with this Attachment "I" with a written notice provided ten (10) days after Initial Occupancy. Such certification in no way negates the Owner's continued obligations to provide housing to persons displaced or to be displaced by the Agency's redevelopment activities as vacancies occur amount the units designated for Low Income Households.

- E. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if available to the Owner from its leasing agent, a rent-up report for all Development units listing the following:
1. Unit number rented;
 2. Tenant name;
 3. Date of move-in; and
 4. Rent rate.
- F. The Owner agrees that any contract entered into for the management of the residential portions of the Development, both before and after Initial Occupancy, shall be furnished to the Agency, shall incorporate the provisions of this Attachment "I", and shall bind the management agent to comply with its requirements.
- G. After Initial Occupancy (without regard to whether the Agency has certified compliance with the obligation of the Owner respecting the period prior to Initial Occupancy), the Owner agrees to notify the Agency as far as practicable in advance of vacancies which may occur in Low Income Housing units. The Agency and the Owner agree to follow the steps set forth in paragraph (D) above with respect to such units. In the event no appropriate Certificate Holder can be found within five (5) working days after receipt of notification by the Owner to the Agency of availability of a unit, the Agency agrees that the Owner may lease the unit to Low Income Households, as appropriate, which do not hold a Certificate of Preference.
- H. The Agency reserves the right to waive any of the foregoing conditions, provided however that any such waiver shall not be deemed to have waived any other conditions, nor the same condition subsequently.

ATTACHMENT 7 - (not attached)

Equal Opportunity Program

This attachment is the same document as Attachment No. 4 to the Loan Agreement.

ATTACHMENT 8 - (not attached)

Prevailing Wage Provisions

This attachment is the same document as Attachment No. 5 to the Loan Agreement.

INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Project ("HUD") Regulations (24 CFR 813). You should make certain that this form is at all times up to date with the HUD Regulations.

Re: [Address of Apartment Building]

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1. Name of Members of the <u>Household</u>	2. Relationship to Head of <u>Household</u>	3. <u>Age</u>	4. Social Security <u>Number</u>	5. Place of <u>Employment</u>
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Income Computation

6. The total anticipated income, calculated in accordance with the provisions of this Certification, of all persons over the age of 18 years listed above for the 12-month period beginning the date that I/we plan to move into a unit is \$ _____.

Included in the total anticipated income listed above are:

- (a) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(b) the net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets),

(c) interest and dividends (including income from assets excluded below);

(d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;

(e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(f) the maximum amount of public assistance available to the above persons other than the amount of any assistance specifically designated for shelter and utilities;

(g) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(h) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(i) any earned income tax credit to the extent that it exceeds income tax liability.

Excluded from such anticipated income are:

(a) casual, sporadic or irregular gifts;

(b) amounts which are specifically for or in reimbursement of medical expenses;

(c) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

(d) amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or payments to veterans not used for the above purposes are to be included in income;

(e) special pay to a household member who is away from home and exposed to hostile fire;

(f) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(g) foster child care payments;

(h) the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1977;

(i) payments to volunteers under the Domestic Volunteer Service Act of 1973;

(j) payments received under the Alaska Native Claims Settlement Act;

(k) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(l) payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(m) payments received from the Job Training Partnership Act;

(n) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(o) the first \$2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims.

7. Do the persons whose income or contributions are included in item 6 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)?

No _____ Yes _____

(b) have they disposed of any assets (other than at a foreclosure or Credit Bankruptcy sale) during the last two years at less than fair market value?

No _____ Yes _____

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?

No _____ Yes _____

(d) If the answer to (c) above is yes, state:

(1) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent:

\$ _____

(2) the amount of such income, if any, that was included in item 6 above:

\$ _____

8. (a) Are all of the individuals who propose to reside in the unit full-time students*?

No _____ Yes _____

*A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least 1 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?

No _____ Yes _____

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner; or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Borrower to determine maximum income for eligibility to occupy the unit, and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ in the City of _____, California.

Applicant

Applicant

[Signature of all persons over the age of 18 years listed in number 2 above required]

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. calculation of eligible income:

- a. Enter amount entered for entire household in 6 above: \$ _____
- b. (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);
- (2) Multiply the amount entered in 7(c) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(c) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);
- (3) Enter at right the greater of the amount calculated under (1) or (2) above: \$ _____;
- c. TOTAL ELIGIBLE INCOME
Line 1.a plus line 1.b(3): \$ _____

2. The amount entered in 1.c:

Qualifies the applicant(s) as a Low Income Tenant(s).

Does not qualify the applicant(s) as a Low Income Tenant(s).

3. Number of apartment unit assigned: _____
Bedroom Size: _____ Rent: \$ _____

4. This apartment unit [was/was not] last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Lower Income Tenants.

5. Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other (_____)

Manager

ATTACHMENT 10

Additional Developer Covenants

- 10) Developer covenants and agrees for itself, and its successors and assigns to or of the Site, or any part thereof, the following additional covenants:
 - 10.1) Developer shall submit for Agency review and approval the CHFA re-financing commitment and any terms and conditions of that commitment;
 - 10.2) Developer shall secure any applicable approvals by HUD;
 - 10.3) Developer shall create a single-asset limited partnership for the ownership of the property, with residents selecting at least 3 out of the total 9 seats on the Board of Directors;
 - 10.4) Developer agrees to a development fee, subject to the terms and conditions of the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects (Attachment 11), in the amount of \$200,000, to be paid through an initial payment of \$80,000 at closing, and the balance to be paid in six equal annual payments of \$20,000, subject to a change in policy currently under consideration which would allow the deferred portion of developer fee to accrue interest on its remaining balance at a rate no greater than 5% per annum;
 - 10.5) Developer agrees to an allowance for an Asset Management Fee to be paid to the Developer in the flat fee amount of \$5,000 annually;
 - 10.6) If the Developer is found by the Agency to be in compliance with all applicable requirements and agreements, an eligible expense of the project shall be a thirty-three percent portion of the excess cashflow (to a maximum of \$50,000) after payment of the fixed groundlease payment, the Asset Management Fee, the deferred Developer Fee payment, and the deposit into a CHFA 2nd Loan Accrual Account; but before any payment of the residual ground lease payment and any arrears (subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts). Consistent with the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects, such funds shall only be used for CDBG-eligible housing uses within San Francisco;
 - 10.7) The Developer agrees that the City and County of San Francisco Citywide Loan Committee reserves the right to approve or disapprove the final choice of the Property Management firm. Such review and reasonable approval is hereby delegated to the Agency's Housing Program Manager;
 - 10.8) The Developer agrees that any excess acquisition funds available after the real estate closing, including but not limited to the acquisition contingency

amount, may be used to pay the unpaid balance of the deferred developer fee

- 10.9) In the event that there is any excess cash available after full payment of the residual ground lease payment and any arrears, Developer shall use such available cash to make advanced payments toward the remaining unpaid principal of the "B" tranche of the first CHFA mortgage. Should there no longer be any principal balance remaining on this portion of the first mortgage, then all excess cash shall be governed by the Mayor's Office of Housing Policy on Use of Residual Receipts, and any applicable CHFA requirements;
- 10.10) In the event that CHFA fails to fund the proposal, then the Seller 'Takeback' Loan shall convert to a residual receipts loan; payable only after the full repayment of the Agency Bridge Loan; and

10.11) DISTRIBUTIONS

10.11.1) Generally

When used in this Agreement, "Distributions" shall mean cash or other benefits, other than development fees, deferred development fees and asset management fees, necessitated deposits into the CHFA 2nd Loan Accrual Account; residual ground lease payments and any arrears, received as Project Income from the operation of the project and available to be distributed to Developer or any other party having a beneficial interest in the Project, but shall not include payments for property management or other services performed by Developer under this Agreement. Subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts, Distribution funds shall be disbursed in the following manner: (a) as advanced payment on any remaining interest and/or principal on the "B Tranche" portion of the CHFA first loan; (b) if the "B Tranche" portion of the CHFA first loan has no remaining interest or principal balance, as advanced payment on any future Annual Rent payments; (c) if there are no remaining Annual Rent payments to be made within the original term of this Agreement, as a payment to the Developer over and above the thirty-three percent portion of the excess cashflow (to a maximum of \$50,000) identified in Attachment Section 10.6. Developer may receive Distributions for a particular fiscal year only upon: (a) approval by the Agency of the annual monitoring report submitted for that year; and (b) determination by the Agency that Developer is in full compliance with the terms of this Agreement; and prior written determination by the Agency that the amount of such Distributions is consistent with the terms of this Agreement.

10.11.2) Prohibited Distributions

No Distribution shall be made under any of the following circumstances:

- (a) when written notice of default has been issued by any entity with an equitable, legal or beneficial interest in the Project; or
- (b) when the Agency has determined that Developer or Developer's management agent has failed to comply with Agency's written notice of any reasonable requirement for proper maintenance of the Project; or
- (c) if all currently required debt service on all loans secured by the Project and all operating expenses (including, but not limited to the fixed groundlease payment) for the Project have not been paid; or
- (d) if the Replacement Reserve Account and/or Operating Reserve Account is not fully funded pursuant to any applicable Agreement.