

File No. 171195

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 11, 2018

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Linda Wong Date January 5, 2018  
Completed by: Linda Wong Date \_\_\_\_\_

1 [Second Amendment to Ground Lease - Mission Bay Affordable Housing, L.P - 150 Berry  
2 Street, 201, 207, 213, 215, 217, 219, 221, 223, 225, and 227 King Streets - Rich Sorro  
3 Commons]

4 **Resolution authorizing the execution and performance of a Second Amendment to the**  
5 **Ground Lease between the City and County of San Francisco and Mission Bay**  
6 **Affordable Housing, L.P., for real property located at 150 Berry Street, 201, 207, 213,**  
7 **215, 217, 219, 221, 223, 225 and 227 King Streets, in connection with the loan**  
8 **refinancing and minor rehabilitation of community space at Rich Sorro Commons, a**  
9 **100-unit affordable housing development for very low income individuals and families,**  
10 **with no change to the length of term or amount.**

11 WHEREAS, The Former Redevelopment Agency of the City and County of San  
12 Francisco ("Agency") leased the property located at 150 Berry Street, 201, 207, 213, 215,  
13 217, 219, 221, 223, 225 and 227 King Streets San Francisco, CA 94107 (Assessor's Parcel  
14 Block No. 8706, Lot No. 003; Block No. 8706, Lot No. 005; Block No. 8706, Lot No. 006; Block  
15 No. 8706, Lot No. 010; Block No. 8706 Lot No. 011-263; Block No. 8706, Lot No. 013; Block  
16 No. 8706, Lot No. 264-308) (together the "Property") to Mission Bay Affordable Housing, L.P.  
17 ("Developer") pursuant to that certain Orlando Cepeda Place Ground Lease dated as of  
18 November 28, 2000 ("Ground Lease"); and

19 WHEREAS, Developer has constructed and operated the building located thereon (the  
20 "Building") as affordable housing for very low income individuals and families; and

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

1 Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted  
2 by City to, and approved by, the State of California Department of Finance pursuant to AB  
3 1484 (Cal. Health & Safety Code, Section 34176(a)(2)), City is successor in interest to  
4 Agency's fee interest in the Property and to all of the Agency's rights and obligations with  
5 respect to the Lease and the Property; and

6 WHEREAS, The Developer desires to refinance its existing debt with a new lender, and  
7 such lender has requested the City and the Developer amend the Ground Lease to provide  
8 certain protections in the event of a default by the Developer; and

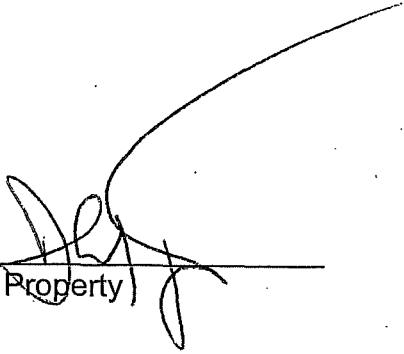
9 WHEREAS, The Mayor's Office of Housing and Community Development ("MOHCD")  
10 desires to enter into a Second Amendment to the Ground Lease ("Second Amendment") with  
11 the Developer substantially in the form approved by the Director of Property and MOHCD on  
12 file with the Clerk of the Board of Supervisors in File No. 171195, incorporated herein by  
13 reference; now, therefore, be it

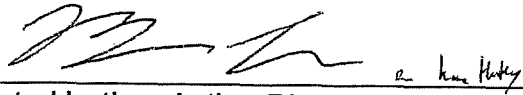
14 RESOLVED, That in accordance with the recommendations of the Director of Property  
15 and the Director of MOHCD, the Board of Supervisors hereby approves and authorizes the  
16 Director of Property, along with the Acting Director of MOHCD, to finalize negotiations for the  
17 Second Amendment and following the negotiations for the Second Amendment authorizes the  
18 Director of MOHCD to execute and deliver the Second Amendment; and be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
20 Property and Acting Director of MOHCD, in consultation with the City Attorney, to enter into  
21 any additions, amendments or other modifications to the Second Amendment that the Director  
22 of Property and Director of MOHCD determines are in the best interests of the City, do not  
23 decrease the revenues of the City in connection with the Property, or otherwise materially  
24 increase the obligations or liabilities of the City, and are in compliance with all applicable laws,  
25 including the City's Charter; and, be it

1 FURTHER RESOLVED, That the Director of Property shall provide the Clerk of the  
2 Board of the Supervisors a fully executed copy of the Second Amendment to the Ground  
3 Lease within thirty (30) days of signature of same.

4  
5 RECOMMENDED:

6  
7  
8   
9 \_\_\_\_\_  
10 John Updike, Director of Property

11  
12   
13 \_\_\_\_\_  
14 Kate Hartley, Acting Director of the Mayor's Office of Housing  
15 and Community Development  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## SECOND AMENDMENT TO THE ORLANDO CEPEDA PLACE GROUND LEASE

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

### RECITALS:

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

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

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

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

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

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

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

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

1. The last sentence of Section 14.01 (Assignment, Sublease or Other Conveyance by Tenant) is hereby deleted in its entirety.
2. Section 26.09 (Transfer of Loans) is hereby added to Article 26 of the Ground Lease as follows:

**26.09 Transfer of Loans**

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

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

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

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

**26.10 No Merger.**

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

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

**26.11 Insurance or Condemnation Proceedings.**

Landlord agrees that in the event of a taking of the Site, the Improvements or any portion thereof as set forth in Article 27 (Condemnation and Takings) or adjustment of losses as to any casualty or hazard insurance proceeds as set forth in Article 20 (Damage and Destruction), a Lender shall have the right to participate in

any proceedings with respect to the determination of value, as provided for under its Leasehold Mortgage and the other loan documents.

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

**26.12 New Lease**

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

6. Article 48 (City Requirements) is hereby added to the Lease as follows:

**ARTICLE 48: CITY PROVISIONS**

**48.01 Non-Discrimination**

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

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

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core

Benefits”), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

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

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

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

Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect,



which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Ground Lease.

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

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

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

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

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

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

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

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Ground Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

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

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

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

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

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

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (the "HCAO"), as set

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) The disclosure is authorized by this Ground Lease;
- (ii) Tenant received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

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

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

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

#### **48.16 Graffiti**

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

Tenant shall remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within forty-eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other

improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction Premises, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Tenant to comply with this section of this Ground Lease shall constitute an event of default of this Ground Lease.

#### **48.17 Incorporation**

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

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

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

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

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

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

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

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

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

(c) Tenant and subtenants (if any) shall not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that



has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

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

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance,

demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, contact the City's Office of Labor Standards Enforcement.

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

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

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

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

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

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

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

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

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

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

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

### **B. MISCELLANEOUS.**

1. **Governing Law.** This Second Amendment shall be governed by the laws of the laws of the State of California without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction.
2. **Conflict.** If any provision of this Second Amendment conflicts with any provision in the Lease, the provision in this Second Amendment shall govern and control.
3. **Severable Positions.** If any provision of this Second Amendment shall be invalid or unenforceable to any extent, then the other provisions of this Amendment, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
4. **Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.
5. **Estoppel.** Except as set forth herein, as of the date hereof, the Lease has not been amended or modified in any way, Tenant has not defaulted under the Lease, and the Lease remains in full force and effect.
6. **No Joint Venture.** This Second Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Second Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.
7. **Attorneys Fees.** In the event a dispute arises concerning this Second Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Second Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.
8. **Notices.** From and after the date of this Second Amendment for so long as Citi or Freddie Mac is the First Mortgage Lender, any notice to be delivered to First Mortgage Lender hereunder shall be delivered to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Attention: Operations Manager/Asset Manager  
Deal Id. No. 24896  
Facsimile: (805) 557 0924

AND:

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

AND:

Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Rich Sorro Commons - Citi Deal ID No: 24896  
Facsimile: (215) 441-7295

And a copy of any notices  
of default sent to:

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

9. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Second Amendment.
10. **Effective Date.** The date of which this Second Amendment shall become effective as of the date this Second Amendment is duly executed and exchanged by the parties hereto.
11. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Second Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conveys, cancels any and all previous negotiations, agreements, or understandings, if any,

regarding the matters contained herein. The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Second Amendment.

[signature page follows immediately]

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

**LANDLORD:**  
**CITY AND COUNTY OF SAN FRANCISCO,**  
**CALIFORNIA**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM**

DENNIS J. HERRERA, City Attorney

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

**TENANT:**

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

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

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

## EXHIBIT A

### LEGAL DESCRIPTION

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

**Parcel One:**

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

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

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

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



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

**Parcel Two:**

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

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

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

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

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

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

Parcel Three:

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

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

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

Assessor's Lot 003; Block 8706

FIRST AMENDMENT TO THE

ORLANDO CEPEDA PLACE GROUND LEASE

by and between the

REDEVELOPMENT AGENCY OF THE  
CITY AND COUNTY OF SAN FRANCISCO

as Landlord

and

MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,

a California limited partnership

as Tenant

Dated January 1, 2010

## GROUND LEASE

This FIRST AMENDMENT to the GROUND LEASE ("First Amendment") is entered into as of January 1, 2010, by and between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the "Agency"), as Landlord, and MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP, a California limited partnership (the "Tenant"), as Tenant under this Ground Lease.

## RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq., the "Law"), the Agency undertakes programs for the reconstruction of blighted areas and the construction of affordable housing in the City and County of San Francisco;

B. In accordance with the Law, the City and County of San Francisco (the "City"), acting through its Board of Supervisors, approved a Redevelopment Plan for the Mission Bay North Redevelopment Project Area by Ordinance No. 327-98 adopted on October 26, 1998. The Redevelopment Plan is referred to as the "Mission Bay North Redevelopment Plan." In cooperation with the City, the Agency is responsible for implementing the Mission Bay North Redevelopment Plan.

C. The Mission Bay North Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the China Basin Channel and Townsend, Third and Seventh Streets and containing approximately 65 acres of land. The Mission Bay North Redevelopment Plan anticipates and describes a mixed-use development comprised of public open space, retail, commercial, entertainment uses, and parking and loading uses.

D. On September 17, 1998, the Agency Commission approved the Mission Bay North and South Redevelopment Plans and Owner Participation Agreements ("OPAs") with Catellus Development Corporation ("Catellus Development"). The OPAs required that a percentage of housing units developed at Mission Bay be affordable to low- and moderate-income households. As part of these agreements, Catellus Development transferred Parcel 2 of Block N2 to the Agency with all required environmental remediation complete and appropriate site infrastructure installed.

E. Pursuant to a 1999 request for proposals for Parcel 2/Block N2, the Agency selected Mission Housing Development Corporation ("MHDC") to develop 100 units of affordable housing, on-site child-care and service centers, and ground-floor retail on the site (the "Project"). The Project's original name, Orlando Cepeda

Place, was later changed to Rich Sorro Commons.

F. Between 1999 and 2002, the Agency authorized several actions enabling the Tenant, a limited partnership, of which MHDC is the managing general partner, to proceed with the Project's development, including a Ground Lease Agreement, a HOPWA Loan Agreement for approximately \$1,000,000, a Tax Increment Loan Agreement for approximately \$6,300,000, a tax-exempt bond issuance, and a Standby Payment Agreement.

G... On April 3, 2002, Catellus Operating Limited Partnership ("Master Lessee "or "Catellus Operating") and Tenant entered into a Master Retail Lease Agreement governing the retail spaces at the project.

G. On September 17, 2008, without notification to the Agency, MHDC and Catellus Operating executed an Assignment and Assumption Agreement ("Assignment") which transferred the Master Retail Lease from Catellus Operating to MHDC.

H. The Agency determined that the unauthorized transfer of the Master Retail Lease violated the Agency's and Tenant's Ground Lease and Loan Agreement ("Agreements") for the Project, and the Agency issued a Notice of Default under those Agreements on March 4, 2009.

I. Tenant has disputed the Default, and in order to resolve the Default and dispute related thereto, Tenant and Agency have agreed to implement certain changes to existing agreements, including the elimination of the Master Retail Lease with MHDC and new operating terms for the commercial space that are designed to protect and preserve the financial health of the Project. A First Amendment to the Ground Lease shall memorialize the Agreement between the Agency and Tenant for commercial operations.

**NOW THEREFORE**, the Ground Lease is now affirmed and amended as follows:

1. **Section 1.06 Commercial Additional Rent** is deleted in its entirety and replaced with:

1.06 "Intentionally Left Blank."

2. **Section 1.07 Commercial Base Rent** is deleted in its entirety and replaced with

1.07 "Intentionally Left Blank."

3. **Section 1.08(a)** is hereby added, as follows:

**1.08(a) Commercial Operating Expenses** shall include property taxes assessed on the Commercial Premises and not paid as part of a Commercial Lease; a commercial property management fee of six percent (6%) of the gross Commercial Rent; and any operating expense attributable to the Commercial Premises not covered by CAM Payments.

4. Section 108(b) is hereby added, as follows:

1.08(b) Commercial Operating Reserve means a reserve fund established and maintained by Tenant in a segregated, interest-bearing account funded from Surplus Commercial Rent up to, initially, \$131,412, and maintained at 50% of the previous year's gross Commercial Rent.

5. Section 108(e) is hereby added, as follows:

108(c) Commercial Property Manager means a management company selected by Tenant and approved by the Agency that is experienced in the leasing, financial operations, and management of commercial properties and that is able to comply with the insurance and bonding requirements of this Ground Lease, as well as all other Ground Lease requirements and applicable laws and regulations.

6. Section 108(d) is hereby added, as follows:

108(d) Commercial Rent means all income received by Tenant from non-residential subtenants, less CAM Payments.

7. Section 108(e) is hereby added, as follows:

108(e) Commercial Surplus Income means Commercial Rent less Commercial Operating Expenses.

1. Section 6.02(h) Permitted Uses of Surplus Cash is deleted in its entirety and replaced with:

All annual rent revenue, including Commercial Surplus Income, prior to the calculation of Surplus Cash, shall be used to pay property expenses in the following order: any and all operating expenses, debt service (other than on the HOPWA Loan and Mission Bay Affordable Housing Program Loan made by Agency (collectively, the "Agency Loans"), and required reserves, as agreed to in writing by Agency and the First Mortgage Lender. Any cash remaining after payment of each and all of the above mentioned obligations shall be deemed Surplus Cash as defined in Section 4.04 of this Ground Lease. If the Tenant is found by the Agency to be in compliance with all applicable requirements and agreements, Tenant shall be authorized to use Surplus Cash to make the following payments:

- (1) For the first thirty (30) years beginning with the First Lease Year, first to partnership management fee in the amount of \$20,000, increasing at an annual rate of two percent (2%), except that payment of the partnership management fee shall terminate at the end of

the tax credit compliance period; second to the Base Rent payment in the amount of \$20,000; third to a limited partner asset management fee in the amount of \$2,000, increasing at an annual rate of two percent (2%), except that payment of the limited partner asset management fee shall terminate at the end of the tax credit compliance period or exit of the limited partner, whichever occurs sooner, at which time the Tenant shall be paid an Asset Management Fee in compliance with the Mayor's Office of Housing's Asset Management Fee Policy, which provides for payment of the Asset Management Fee as an operating expense; fourth, to any outstanding operating deficit loan repayment as authorized by the Agency; fifth, to fund the Commercial Operating Reserve; then two-thirds (2/3) of any remaining Surplus Cash to the Residual Rent payment, and one-third (1/3) to Tenant as an incentive management fee in an amount not to exceed \$85,000. In the event that the remaining one-third of Surplus Cash exceeds \$85,000, one hundred percent (100%) of the excess Surplus Cash shall be applied to the Residual Rent payment, and should the excess Surplus Cash exceed the maximum Residual Rent payment for any given year, the remainder of Surplus Cash shall be allocated to repayment of the Agency Loans on a proportionate basis to the respective loan amounts.

- (2) Beginning on the thirty-first (31<sup>st</sup>) anniversary of the end of the First Lease Year, continuing until the end of the Term; first to Base Rent payment in the amount of \$20,000; then fifty percent (50%) of any remaining Surplus Cash to repayment of the Agency Loans on a proportionate basis to the respective loan amounts. The remaining fifty percent (50%) of Surplus Cash shall be applied two-thirds (2/3) to the Residual Rent payment, and one-third (1/3) to Tenant as an incentive management fee in an amount not to exceed \$85,000. In the event that the remaining one-third of Surplus Cash exceeds \$85,000, one hundred percent (100%) of the excess Surplus Cash shall be applied to Residual Rent. Tenant shall be entitled to all remaining Surplus Cash after the above payments have been made in full.

IN WITNESS WHEREOF, the Tenant and the Agency have executed this First Amendment to the Ground Lease as of the day and year first above written.

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

By: Mission Housing Development Corporation  
Its General Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**AGENCY AS LANDLORD:**  
**REDEVELOPMENT AGENCY OF THE CITY  
AND COUNTY OF SAN FRANCISCO,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Amy Lee  
Deputy Executive Director, Finance and Administration

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
James B. Morales  
Agency General Counsel

Authorized by Agency Resolution No. \_\_\_\_-2010, adopted May 4, 2010.

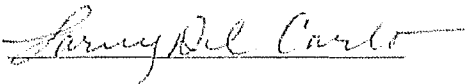


IN WITNESS WHEREOF, the Tenant and the Agency have executed this First Amendment to the Ground Lease as of the day and year first above written.

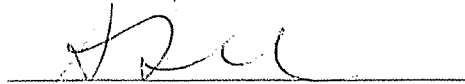
**TENANT AS TENANT:**  
**MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,**  
a California limited partnership

By: Mission Housing Development Corporation  
Its General Partner

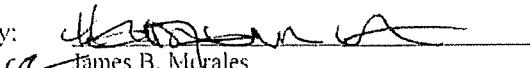
By: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Its: \_\_\_\_\_

**AGENCY AS LANDLORD:**  
**REDEVELOPMENT AGENCY OF THE CITY  
AND COUNTY OF SAN FRANCISCO,**  
a public body, corporate and politic

By:   
Amy Lee  
Deputy Executive Director, Finance and Administration

**APPROVED AS TO FORM:**

By:   
James B. Mcrales  
Agency General Counsel

Authorized by Agency Resolution No. \_\_\_\_-2010, adopted May 4, 2010.

1  
1 **ORLANDO CEPEDA PLACE GROUND LEASE**

2 **by and between the**

3 **REDEVELOPMENT AGENCY OF THE**

4 **CITY AND COUNTY OF SAN FRANCISCO**

5 **as Landlord**

6 **and**

7 **MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,**

8 **a California limited partnership,**

9 **as Tenant**

10 **Dated as of November 28, 2000**

TABLE OF CONTENTS

1			
2	<b><u>ARTICLE 1: DEFINITIONS</u></b>		2
3	1.01	Agency	2
4	1.02	Agency Standby Note	2
5	1.03	Agreement Date	2
6	1.04	Area Median Income (or "AMI")	2
7	1.05	CAM Payments	3
8	1.06	Commercial Additional Rent	3
9	1.07	Commercial Base Rent	3
10	1.08	Commercial Leases	3
11	1.09	Commercial Premises	3
12	1.10	Construction Lease Period	3
13	1.11	Effective Date	3
14	1.12	First Mortgage Lender	3
15	1.13	Ground Lease	3
16	1.14	Improvements	4
17	1.15	Lease Year	4
18	1.16	Leasehold Estate	4
19	1.17	Leasehold Mortgage	4
20	1.18	Lender	4
21	1.19	Low Income Households	4
22	1.20	Occupant	4
23	1.21	Premises	4
24	1.22	Site	4
25	1.23	Subsequent Owner	4
26	1.24	Tenant	5
27	<b><u>ARTICLE 2: TERM</u></b>		5
28	<b><u>ARTICLE 3: FINANCING</u></b>		6
29	<b><u>ARTICLE 4: RENT</u></b>		6
30	4.01	Annual Rent	6
31	4.02	Base Rent	6
32	4.03	Residual Rent	7
33	4.04	Surplus Cash	7
34	4.05	Triple Net Lease	8
35	<b><u>ARTICLE 5: AGENCY COVENANTS</u></b>		8
36	<b><u>ARTICLE 6: TENANT COVENANTS</u></b>		8
37	6.01	Limited Partnership/Authority	8
38	6.02	Use of Site and Rents	8
39	6.03	Agency Deemed Beneficiaries of Covenants	11
40	<b><u>ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION</u></b>		11
41	<del><b><u>ARTICLE 8: CONDITION OF SITE - "AS IS"</u></b></del>		12
42	<b><u>ARTICLE 9: IMPROVEMENTS AND PERMITTED USES</u></b>		12
43	9.01	Scope of Development and Schedule of Performance	12
44	9.02	Permitted Uses and Occupancy Restrictions	12
45	<b><u>ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS</u></b>		14
46	10.01	General Requirements and Rights of Agency	14
47	10.02	Agency Approvals and Limitation Thereof	14
48	10.03	Construction to be in Compliance with Construction Documents and Law	15
49	10.04	Approval of Construction Documents by Agency	15
50	10.05	Disapproval of Construction Documents by Agency	16

1	10.06	Final Construction Documents to be Approved by Agency	16
2	10.07	Issuance of Building Permits	16
3	10.08	Performance and Payment Bonds	17
4	10.09	Agency Approval of Changes after Commencement of Construction	17
5	10.10	Times for Construction	17
6	10.11	Force Majeure	17
7	10.12	Reports	18
8	10.13	Access to Site	18
9	<b><u>ARTICLE 11: COMPLETION OF IMPROVEMENTS</u></b>		19
10	11.01	Certificate of Completion - Issuance	19
11	11.02	Certifications to be Recordable	19
12	11.03	Certification of Completion - Non-Issuance Reasons	20
13	<b><u>ARTICLE 12: CHANGES TO THE IMPROVEMENTS</u></b>		20
14	12.01	Post Acquisition Changes	20
15	12.02	Definition of Change	20
16	12.03	Enforcement	21
17	<b><u>ARTICLE 13: TITLE TO IMPROVEMENTS</u></b>		21
18	<b><u>ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE</u></b>		21
19	14.01	Assignment, Sublease or Other Conveyance by Tenant	21
20	14.02	Assignment, Sublease or Other Conveyance by Agency	22
21	<b><u>ARTICLE 15: TAXES</u></b>		22
22	<b><u>ARTICLE 16: UTILITIES</u></b>		23
23	<b><u>ARTICLE 17: MAINTENANCE</u></b>		23
24	<b><u>ARTICLE 18: LIENS</u></b>		23
25	<b><u>ARTICLE 19: GENERAL REMEDIES</u></b>		24
26	19.01	Application of Remedies	24
27	19.02	<u>Notice and Cure Rights for Tenant Limited Partner</u>	24
28	19.03	Breach by Agency	25
29	19.04	Breach by Tenant	25
30	<b><u>ARTICLE 20: DAMAGE AND DESTRUCTION</u></b>		27
31	20.01	Insured Casualty	27
32	20.02	Uninsured Casualty	27
33	20.03	Distribution of the Insurance Proceeds	28
34	20.04	Clean Up of Housing Site	28
35	<b><u>ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;</u></b>		
36	<b><u>INDEMNIFICATION</u></b>		29
37	21.01	Damage to Person or Property -General Indemnification	29
38	21.02	Hazardous Materials -Indemnification	29
39	<b><u>ARTICLE 22: INSURANCE AND FIDELITY BOND</u></b>		30
40	22.01	Insurance	30
41	<b><u>ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS</u></b>		34
42	23.01	Compliance with Legal Requirements	34
43	23.02	Compliance with Site-Related Documents	34
44	<b><u>ARTICLE 24: ENTRY</u></b>		35
45	<b><u>ARTICLE 25: MORTGAGE FINANCING</u></b>		35
46	25.01	No Encumbrances Except for Development Purposes	35
47	25.02	Holder Not Obligated to Construct	35
48	25.03	Failure of Holder to Complete Improvements	36
49	25.04	Default by Tenant and Agency's Rights	37
50	25.05	Cost of Mortgage Loans to be Paid by Tenant	37

1	<b><u>ARTICLE 26: PROTECTION OF LENDER</u></b>	38
2	26.01 Notification to Agency	38
3	26.02 Lender's Rights to Prevent Termination	38
4	26.03 Lender's Rights When Tenant Defaults	38
5	26.04 Default Which Cannot be Remedied by Lender	39
6	26.05 Court Action Preventing Lender's Action	39
7	26.06 Lender's Rights to Record, Foreclose and Assign	40
8	26.07 Ground Lease Rent After Lender Foreclosure or Assignment	41
9	26.08 Permitted Uses After Lender Foreclosure	42
10	<b><u>ARTICLE 27: CONDEMNATION AND TAKINGS</u></b>	42
11	27.01 Parties' Rights and Obligations to be Governed by Agreement	42
12	27.02 Total Taking	43
13	27.03 Partial Taking	43
14	27.04 Effect on Rent	43
15	27.05 Restoration of Improvements	43
16	27.06 Award and Distribution	43
17	27.07 Payment to Lenders	44
18	<b><u>ARTICLE 28: ESTOPPEL CERTIFICATE</u></b>	44
19	<b><u>ARTICLE 29: QUITCLAIM</u></b>	44
20	<b><u>ARTICLE 30: EQUAL OPPORTUNITY</u></b>	45
21	<b><u>ARTICLE 31: CERTIFICATE AND BUSINESS PREFERENCE PROGRAM</u></b>	45
22	<b><u>ARTICLE 32: AGENCY LABOR STANDARDS PROVISIONS</u></b>	45
23	<b><u>ARTICLE 33: CONFLICT OF INTEREST</u></b>	45
24	<b><u>ARTICLE 34: NO PERSONAL LIABILITY</u></b>	45
25	<b><u>ARTICLE 35: ENERGY CONSERVATION</u></b>	45
26	<b><u>ARTICLE 36: WAIVER</u></b>	45
27	<b><u>ARTICLE 37: TENANT RECORDS</u></b>	46
28	<b><u>ARTICLE 38: NOTICES AND CONSENTS</u></b>	46
29	<b><u>ARTICLE 39: COMPLETE AGREEMENT</u></b>	47
30	<b><u>ARTICLE 40: HEADINGS</u></b>	47
31	<b><u>ARTICLE 41: SUCCESSORS AND ASSIGNS</u></b>	47
32	<b><u>ARTICLE 42: TIME</u></b>	48
33	<b><u>ARTICLE 43: PARTIAL INVALIDITY</u></b>	48
34	<b><u>ARTICLE 44: APPLICABLE LAW</u></b>	48
35	<b><u>ARTICLE 45: ATTORNEYS' FEES</u></b>	48
36	<b><u>ARTICLE 46: EXECUTION IN COUNTERPARTS</u></b>	48
37	<b><u>ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE</u></b>	48
38	<b><u>ARTICLE 48: ATTACHMENTS</u></b>	50

---

Attachments to Ground Lease

- |    |  |
|----|--|
| 42 |  |
| 43 | 1. Site Plan   |
| 44 | 2. Legal Description of Site                           |
| 45 | 3. Scope of Development (Intentionally Omitted)        |
| 46 | 4. Schedule of Performance                             |
| 47 | 5. Agency Consent of Leasehold Mortgage                |
| 48 | 6. Operational Rules for Certificate Holder's Priority |
| 49 | 7. Equal Opportunity Program                           |
| 50 | 8. Prevailing Wage Provisions                          |

1  
2  
3  
4  
5  
6  
7  
8

9. Income Computation and Certification
10. Additional Provisions (Intentionally Omitted)
11. Attachment K, Environmental Investigation and Response Program for North Plan Area Affordable Housing Parcels, Open Space Parcels, and Street Parcels of the Mission Bay North Owner Participation Agreement
12. Risk Management Plan for Mission Bay Area
13. Covenant and Environmental Restrictions Recorded Against the Site

1 GROUND LEASE

2 This GROUND LEASE is entered into as of November 28, , 2000, by and between the  
3 REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate  
4 and politic (the "Agency"), as Landlord, and MISSION BAY AFFORDABLE HOUSING LIMITED  
5 PARTNERSHIP, a California limited partnership (the "Tenant"), as Tenant under this Ground Lease.

6 RECITALS

7 A. In furtherance of the objectives of the California Community Redevelopment Law (Health and  
8 Safety Code, section 33000 et seq. the "Law"), the Agency undertakes programs for the reconstruction and  
9 construction of slums and blighted areas in the City and County of San Francisco; and

10 B. In accordance with the Law, the City and County of San Francisco (the "City"), acting through its  
11 Board of Supervisors, approved a Redevelopment Plan for the Mission Bay North Redevelopment Project Area (the  
12 "Project Area") by Ordinance No. 327-98 adopted on October 26, 1998. The Redevelopment Plan is referred to as  
13 the "Mission Bay North Redevelopment Plan." In cooperation with the City, the Agency is responsible for  
14 implementing the Mission Bay North Redevelopment Plan.

15 C. The Mission Bay North Redevelopment Plan provides for the redevelopment, construction and  
16 revitalization of the area generally bounded by the China Basin Channel and Townsend, Third and Seventh Streets  
17 and containing approximately 65 acres of land. The Mission Bay North Redevelopment Plan anticipates and  
18 describes a mixed-use development comprised of public open space, retail, commercial, entertainment uses, and  
19 parking and loading uses.

20 D. Catellus Development Corporation, a Delaware corporation, will contribute to the Agency, at no  
21 ~~cost, between approximately 3.3 and 3.8 acres of land suitable for development of affordable housing and the Agency~~  
22 will oversee the development of up to three hundred forty-five (345) affordable housing units.

23 E. The Tenant has been selected by the Agency and has agreed to lease certain land in the Project  
24 Area, shown generally on the site Plan, Attachment 1, and described in the Site Legal Description, Attachment 2 (the  
25 "Site"), and to develop and maintain the Site as affordable housing in accordance with the uses specified in the

1 Redevelopment Plan, the Owner Participation Agreement (the "OPA"), and more particularly described in this  
2 Ground Lease.

3 D. The Agency believes that the fulfillment of the terms and conditions of this Ground Lease are in the  
4 vital and best interests of the City and the health, safety, morals and welfare of its residents, and in full accord with  
5 the public purposes and provisions of applicable State and Federal laws and requirements.

6 E. The Agency, on the basis of the foregoing and the undertakings of the Tenant pursuant to this  
7 Ground Lease, is willing to lease the Site to the Tenant for the purpose of accomplishing its construction in  
8 accordance with the provisions of the Redevelopment Plan, the OPA and this Ground Lease.

9 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the Agency hereby  
10 leases to Tenant, and Tenant hereby leases from the Agency, the Site, for the term, and subject to the terms,  
11 covenants, agreements and conditions hereinafter set forth, to each and all of which the Agency and Tenant hereby  
12 mutually agree.

13 **ARTICLE 1: DEFINITIONS**

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

16 **1.01 Agency** means the Redevelopment Agency of the City and County of San Francisco, a public body,  
17 corporate and politic, exercising its functions and powers and organized and existing under the Community  
18 Redevelopment Law of the State of California and includes any successor public agency designated by or pursuant to  
19 law. The Agency is the owner of the Site.

20 **1.02 Agency Standby Agreement** means evidence of certain obligations pursuant to the San Francisco  
21 Redevelopment Agency Standby Payment Agreement dated \_\_\_\_\_, 2000.

22 **1.03 Agreement Date** means the date that this Ground Lease is deemed to be entered into and effective,  
23 as set forth on the cover page.

24 **1.04 Area Median Income (or "AMI")** means the median household or family income for San  
25 Francisco, adjusted for household size, as determined pursuant to Section 50093 of the California Health and Safety



1 Code.

2 **1.05 CAM Payments** means payments received by Tenant from all subtenants for common area  
3 maintenance expenses as set by Tenant pursuant to its lease agreement with its subtenants.

4 **1.06 Commercial Additional Rent** means all income received by Tenant from any of its subtenants in  
5 excess of the Commercial Base Rent, less CAM Payments and a five percent (5%) management fee.

6 **1.07 Commercial Base Rent** means certain income received by Tenant from Catellus Development  
7 Corporation through a master lease of the neighborhood serving retail space at a rate of two dollars fifteen cents  
8 (\$2.15) per usable square feet per month.

9 **1.08 Commercial Leases** means all leases entered into by Tenant with subtenants for lease of the  
10 Commercial Premises.

11 **1.09 Commercial Premises** means those certain portions of the Improvements devoted to neighborhood  
12 serving retail (approximately 9,835 square feet) and a licensed child care center (approximately 3,250 of interior  
13 space with additional outside play area space).

14 **1.10 Construction Lease Period** means, for the purposes of lease payments only, the time period which  
15 shall commence upon the Effective Date and shall end thirty (30) days following ninety-five percent (95%)  
16 residential occupancy of the Improvements.

17 **1.11 Effective Date** means the date of recordation of a memorandum which publicly notices the  
18 existence of this Ground Lease Agreement.

19 **1.12 First Mortgage Lender** means Citibank, F.S.B., or any other successor in the capacity of primary  
20 bearer of the first mortgage lending risk.

21 ~~**1.13 Ground Lease** means this Ground Lease of the Site to the Tenant from the Agency, as amended~~  
22 from time to time.

23 **1.14 Improvements** means all physical construction, including all structures, fixtures and other  
24 improvements on the Site.

25 **1.15 Lease Year** means each calendar year during the term hereof, beginning on January 1 and ending on

1 December 31, provided that the "First Lease Year" shall commence upon the end of the Construction Lease Period  
2 and continue through December 31<sup>st</sup> of that same calendar year. Furthermore, the "Last Lease Year" shall end upon  
3 the expiration of the term hereof.

4 **1.16 Leasehold Estate** means the estate held by the Tenant pursuant to and created by this Ground  
5 Lease.

6 **1.17 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit or other  
7 security instrument, including the deeds of trust securing the Agency and the First Mortgage Lender, and any  
8 assignment of the rents, issues and profits from the Site; or any portion thereof, which constitute a lien on the  
9 Leasehold Estate created by this Ground Lease and have been approved in writing by the Agency.

10 **1.18 Lender** means any entity holding a Leasehold Mortgage.

11 **1.19 Low Income Households** means a tenant household whose initial income does not exceed Sixty  
12 Percent (60%) of Area Median Income, based on actual household size, and whose subsequent income does not  
13 exceed One Hundred and Twenty Percent (120%) of AMI, based on actual household size.

14 **1.20 Occupant** means any person or entity authorized by Tenant to occupy a residential unit on the Site,  
15 or any portion thereof.

16 **1.21 Premises** means the Site together with any Improvements thereon.

17 **1.22 Site** means the real property shown on the Site Plan, Attachment 1, and described in the Site Legal  
18 Description, Attachment 2.

19 **1.23 Subsequent Owner** means any successor (including a Lender or an affiliate or assignee of a  
20 Lender as applicable) to the Tenant's interest in the Leasehold Estate and the Improvements who acquires such  
21 interest as a result of a foreclosure, deed in lieu of foreclosure, or transfer from a Lender, its affiliate, and any  
22 successors to any such person or entity.

23 **1.24 Tenant** means Mission Bay Affordable Housing Limited Partnership, a California limited  
24 partnership (or a Subsequent Owner, where appropriate).

25 Whenever an 'Attachment' is referenced, it means an attachment to this Ground Lease unless otherwise

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

3 **ARTICLE 2: TERM**

4 (a) Initial Term. The term of this Ground Lease shall commence upon the Agreement Date and shall  
5 end seventy-five (75) years from that date, unless extended pursuant to section (b) below.

6 (b) Option for Extension. Provided that the Tenant is not in default of the terms of its obligations to the  
7 Agency either at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the last day  
8 of the term (the "Termination Date"), the term of this Ground Lease may be extended at the option of the Tenant for  
9 one twenty-four (24) year period as provided below.

10 (c) Notice of Extension. Not later than one hundred and eighty (180) days prior to the Termination  
11 Date, the Tenant may notify the Agency in writing that it wishes to exercise its option to extend the term of this  
12 Ground Lease (an "Extension Notice"). The extended term shall be for twenty-four (24) years from the Termination  
13 Date, which option the Tenant may exercise only once, for a total Ground Lease term of not to exceed ninety-nine  
14 (99) years.

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

16 (e) Right of First Refusal. If, following the term of this Ground Lease, or any extensions of this  
17 Ground Lease, the Agency desires to sell its interest in the Site, the Tenant will have the right of first refusal to  
18 negotiate for the purchase of the Site provided that the Tenant agrees to maintain the Site as a low income housing  
19 development for fifty (50) years from the date of purchase.

20 **ARTICLE 3: FINANCING**

21 ~~Tenant shall submit to the Agency in accordance with the dates specified in the Schedule of Performance,~~

22 Attachment 4, for approval by the Agency, evidence satisfactory to the Agency that Tenant has sufficient equity  
23 capital and commitments for permanent financing, and/or such other evidence of capacity to proceed with the  
24 construction of the Improvements, in accordance with this Ground Lease, as is acceptable to the Executive Director  
25 of the Agency. Such satisfactory evidence of financing shall include permanent financing if required as part of any

1 construction financing.

2 **ARTICLE 4: RENT**

3 **4.01 Annual Rent**

4 (a) Tenant shall pay the Agency SIX HUNDRED TWENTY-FIVE THOUSAND dollars (\$625,000)  
5 per year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Sections 4.02 and 4.03 below,  
6 without offset of any kind and without necessity of demand, notice or invoice from the Agency (together, "Annual  
7 Rent").

8 (b) If the Tenant elects to extend the term of this Ground Lease, Annual Rent during any such extended  
9 term shall be set by mutual agreement of the parties, taking into account the affordable housing restrictions contained  
10 in Section 9.02, project debt and the annual income expected to be generated by the Project. If the parties cannot  
11 agree on Annual Rent, either party may invoke a neutral third-party process to set Rent at fair market rent in  
12 accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco taking  
13 into account the affordable housing restrictions contained in Section 9.02 or, in the event that there is no then-  
14 prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that  
15 after the neutral third party process, Tenant, in its sole discretion may rescind its extension notice if it does not wish  
16 to extend the term of this Ground Lease.

17 **4.02 Base Rent**

18 (a) "Base Rent", means, in any given Lease Year, TWENTY THOUSAND dollars (\$20,000) plus the  
19 Commercial Additional Rent, except that no rent will be charged for the Construction Lease Period. Base Rent shall  
20 be due and payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the First Lease  
21 Year shall be due on the January 31<sup>st</sup> of the following calendar year, and shall be equal to \$20,000 times the number  
22 of days in the First Lease Year, divided by 365; and provided, further, that in the event that the Tenant or any  
23 Subsequent Owner fails to comply with the provisions of Section 9.02, Base Rent shall be increased to the full  
24 amount of Annual Rent.

25 (b) If the Project does not have sufficient Surplus Cash (as defined in Section 4.04) to pay Base Rent in

1 any given Lease Year, and the Agency has received a notice from Tenant pursuant to the Agency Standby Agreement  
2 (“Standby Agreement Notice”), the unpaid amount shall be deferred and all such deferred amounts shall accrue  
3 without interest until paid (“Base Rent Accrual”). The Base Rent Accrual shall be due and payable each year from  
4 and to the extent Surplus Cash is available to make such payments and, in any event, upon the earlier of sale of the  
5 Project or termination of this Ground Lease. If the Project does not have sufficient Surplus Cash in any given Lease  
6 Year to pay Base Rent, and Tenant has not provided a notice under the Agency Standby Agreement, Base Rent shall  
7 be deferred and a late penalty assessed pursuant to Section 4.01(c) of this Agreement.

8 (c) There shall be a late payment penalty of two percent (2%) for each month or any part thereof if  
9 Base Rent payment is delinquent, unless the Agency has received a Standby Agreement Notice.

10 **4.03 Residual Rent**

11 “Residual Rent” means the difference between the Annual Rent (\$625,000 during the initial term) and the  
12 Base Rent in any given Lease Year. Residual Rent shall be due in arrears on April 15th of each Lease Year. Base  
13 Rent and Residual Rent shall be payable only from and to the extent that the Project has Surplus Cash, as defined in  
14 Sections 4.04 and 6.02(h) below, available in such Lease Year from the previous year’s operations.

15 **4.04 Surplus Cash**

16 “Surplus Cash” means all revenue generated from the Premises remaining in any given Lease Year after  
17 deduction of all operating expenses, debt service, and reserve deposits as agreed to in writing by Agency and the First  
18 Mortgage Lender. All permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(h) of this  
19 Ground Lease.

20 **4.05 Triple Net Lease**

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

25 **ARTICLE 5: AGENCY COVENANTS**

1           The Agency is a public body, corporate and politic, duly created and validly existing in good standing under  
2 the Law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease.  
3 Agency covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the lease term,  
4 peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so  
5 long as the Tenant is not in default under this Ground Lease.

6    **ARTICLE 6: TENANT COVENANTS**

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

9           **6.01    Limited Partnership/Authority**

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

12          **6.02    Use of Site and Rents**

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

15                 **6.02(a) Permitted Uses**

16                 Except as provided in Sections 26.06 and 26.07, devote the Site to, exclusively and in accordance  
17 with, the uses specified in this Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by  
18 this Ground Lease.

1                   **6.02(b) Non-Discrimination**

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

11                   **6.02(c) Non-Discriminatory Advertising**

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

14                   **6.02(d) Access for Disabled Persons**

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

17                   **6.02(e) Equal Opportunity Marketing Plan**

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

20                   **6.02(f) Lead Based Paint**

21 ~~Comply with the regulations issued by the Secretary of Housing and Urban Development set forth in 24~~  
22 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain  
23 residential structures undergoing federally assisted construction and require the elimination of lead-based paint  
24 hazards.

25                   **6.02(g) Renewal of Section 8 Contracts**

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

5 **6.02(h) Permitted Uses of Surplus Cash**

6 All annual rent revenue, prior to the calculation of Surplus Cash, shall be used to pay property  
7 expenses in the following order: any and all operating expenses, debt service (other than on the HOPWA Loan and  
8 Mission Bay Affordable Housing Program Loan made by Agency (collectively, the "Agency Loans")), and required  
9 reserves as agreed to in writing by Agency and the First Mortgage Lender. Any cash remaining after payment of  
10 each and all of the above mentioned obligations shall be deemed Surplus Cash as defined in Section 4.04 of this  
11 Ground Lease. If the Tenant is found by the Agency to be in compliance with all applicable requirements and  
12 agreements, Tenant shall be authorized to use Surplus Cash to make the following payments:

13 (1) For the first thirty (30) years beginning with the First Lease Year, first to the Base Rent  
14 payment in the amount of \$20,000; second to a partnership management fee in the amount  
15 of \$20,000, increasing at an annual rate of three percent (3%), however, in the event that  
16 the Agency receives a Standby Agreement Notice, payment shall be made first to the  
17 partnership management fee and then to Base Rent; then two-thirds (2/3) of any remaining  
18 Surplus Cash to the Residual Rent payment, and one-third (1/3) to Tenant as an incentive  
19 management fee in an amount not to exceed \$50,000. In the event that the remaining one-  
20 third of Surplus Cash exceeds \$50,000, one hundred percent (100%) of the excess Surplus  
21 ~~Cash shall be applied to the Residual Rent payment, and should the excess Surplus Cash~~  
22 exceed the maximum Residual Rent payment for any given year, the remainder of Surplus  
23 Cash shall be allocated to repayment of the Agency Loans on a proportionate basis to the  
24 respective loan amounts.

25 (2) Beginning on the thirty-first (31<sup>st</sup>) anniversary of the end of the First Lease Year,



1 continuing until the end of the Term; first to Base Rent payment in the amount of \$20,000;  
2 second to the partnership management fee as described above; then fifty percent (50%) of  
3 any remaining Surplus Cash to repayment of the Agency Loans on a proportionate basis to  
4 the respective loan amounts. The remaining fifty percent (50%) of Surplus Cash shall be  
5 applied two-thirds (2/3) to the Residual Rent payment, and one-third (1/3) to Tenant as an  
6 incentive management fee in an amount not to exceed \$50,000. In the event that the  
7 remaining one-third of Surplus Cash exceeds \$50,000, one hundred percent (100%) of the  
8 excess Surplus Cash shall be applied to Residual Rent. Tenant shall be entitled to all  
9 remaining Surplus Cash after the above payments have been made in full.

10 **6.03 Agency Deemed Beneficiaries of Covenants**

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

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

23 Forty-five days after the receipt of a certificate of occupancy for all residential and commercial units by  
24 Tenant from the San Francisco Department of Building Inspection, and on January 15th of each year thereafter,  
25 Tenant will furnish to the Agency a list of all of the names of the persons who are Occupants of the Improvements on

1 the Site, the specific unit which each person occupies, the household income of the Occupants of each unit, the  
2 household size and the rent being charged to the Occupants of each unit. If any state or federal agency requires an  
3 income certification for Occupants of the Improvements containing the above-referenced information, the Agency  
4 agrees to accept such certification in lieu of Attachment 9 as meeting the requirements of this Ground Lease. In  
5 addition to such initial and annual list and certification, Tenant agrees to provide the same information and  
6 certification to the Agency regarding each Occupant of the Improvements not later than ten (10) business days after  
7 such Occupant commences occupancy.

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

9 Neither the Agency, nor any employee, agent or representative of the Agency has made any representation,  
10 warranty or covenant, expressed or implied, with respect to the Site, its physical condition, the condition of any  
11 improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or  
12 enjoyment of the Site other than as set forth explicitly in this Ground Lease, and the Tenant understands and agrees  
13 that the Agency is making no such representation, warranty or covenant, expressed or implied; it being expressly  
14 understood that the Site is being leased in an "AS IS" condition with respect to all matters.

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

16 **9.01 Scope of Development and Schedule of Performance**

17 Tenant agrees to undertake and complete all physical construction on the Site, if any, as approved by the  
18 Agency, in accordance with the Schedule of Performance, Attachment 4.

19 **9.02 Permitted Uses and Occupancy Restrictions**

20 (a) The permitted uses of the Project are limited to one hundred (100) dwelling units, including one (1)  
21 ~~manager's unit and ninety-nine (99) residential units ("Residential Units"), a community room, a laundry room,~~  
22 ground floor commercial space/unit, a licensed child care center, and related parking. Upon the completion of  
23 construction, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the  
24 Project shall be occupied or held vacant and available for rental by households of Low Income.

25 (b) Ten (10) dwelling units shall be occupied and rented through the San Francisco Housing Authority

1 (SFHA) Project-Based Section 8 Rental Assistance Program, or its successor program, for as long as the Project  
2 receives Project-Based Section 8 assistance, in accordance with SFHA and/or U.S. Department of Housing and Urban  
3 Development requirements. Tenant shall apply for, accept and renew Project-Based Section 8 assistance from San  
4 Francisco Housing Authority, or any successor rent subsidy program, for as long as it is offered by the San Francisco  
5 Redevelopment Agency. The ten (10) units rented through SFHA Project-Based Section 8 Rental Assistance  
6 Program must also be rented in accordance with the Housing Opportunities for Persons with AIDS (HOPWA) Capital  
7 Loan Agreement, dated \_\_\_\_\_, 2000, between Agency and Tenant.

8 (c) Upon vacancy of any of the ten (10) dwelling units rented through the SFHA Project-Based Section  
9 8 Rental Assistance Program, that vacant unit shall be rented to a tenant who qualifies under the SFHA Project-Based  
10 Section 8 Rental Assistance Program and who satisfies the requirements of the HOPWA Capital Loan Agreement, so  
11 long as applicable. In the event SFHA no longer provides Section 8 assistance and the occupancy restrictions related  
12 to the HOPWA Capital Loan Agreement have expired, rent for that dwelling unit, including utility allowance, shall in  
13 no event exceed 30% of 60% of AMI, adjusted by imputed household size, for the particular unit size, as determined  
14 pursuant to Section 33760.5(d) of the California Health and Safety Code.

15 (d) Twenty (20) dwelling units shall be occupied on a preference basis by Tenant-Based Section 8  
16 Voucher Holders. The rental charges on the Tenant-Based Section 8 units shall be set at a rate which is consistent  
17 with Tenant's Housing Assistant Payment (HAP) contracts with the SFHA pursuant to each voucher holder. The  
18 voucher holders' rent contribution towards the total HAP rental charge shall, including utility allowance, not exceed  
19 30% of the lesser of the voucher holder's actual income or 60% of AMI adjusted by imputed household size for the  
20 particular unit size, as determined pursuant to Section 33760.5(d) of the California Health and Safety Code.

~~21 Pursuant to the Agency Standby Agreement, in the event, that subsequent to Tenant's best efforts, any number of the~~  
22 ~~23~~ ~~24~~ ~~25~~ aforementioned twenty (20) units cannot be rented to Tenant-Based Section 8 Voucher Holders, rent for those  
23 dwelling units, including utility allowance, shall in no event exceed 30% of 60% of AMI, adjusted by imputed  
24 household size, for the particular unit size, as determined pursuant to Section 33760.5(d) of the California Health and  
25 Safety Code.

1                   **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

2   **10.01 General Requirements and Rights of Agency**

3                   Construction documents for the construction of the Improvements by Tenant (the "Construction  
4 Documents") shall be prepared by a person registered in and by the State of California to practice architecture and  
5 shall be in conformity with the Redevelopment Plan and this Ground Lease, including any limitations established in  
6 the Agency's approval of the schematic drawings, preliminary construction documents, and final construction  
7 documents for the Premises, and all applicable Federal, State and local laws and regulations. The architect shall use,  
8 as necessary, members of associated design professions, including engineers and landscape architects. The Agency  
9 has approved Simon Martin-Vegue Winklestein Moris as the architect for the Improvements.

10                  **10.02 Agency Approvals and Limitation Thereof**

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

12                  **10.02(a) Compliance with Redevelopment Plan and Ground Lease**

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

18                  **10.02(b) Agency Does Not Approve Compliance with Construction Requirements**

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

22                  **10.02(c) Agency Determination Final and Conclusive**

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

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

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

3           The Improvements to be constructed shall be constructed in strict compliance with the Agency-  
4 approved and City-approved Construction Documents, including compliance with: (1) Attachment K, Environmental  
5 Investigation and Response Program for North Plan Area Affordable Housing Parcels, Open Space Parcels and Street  
6 Parcels of the Mission Bay North Owner Participation Agreement; (2) the Risk Management Plan for the Mission  
7 Bay Area; and (3) the covenant and environmental restriction recorded against the Site.

8           **10.03(b) Compliance with Local, State and Federal Law**

9           The Improvements shall be constructed in strict compliance with all applicable local, State and  
10 Federal laws and regulations.

11           **10.04 Approval of Construction Documents by Agency**

12           Tenant shall submit and the Agency shall approve or disapprove the Construction Documents referred to in  
13 this Ground Lease within the times established in the Schedule of Performance. Failure by the Agency either to  
14 approve or disapprove within the times established in the Schedule of Performance shall be deemed approval.

15           **10.05 Disapproval of Construction Documents by Agency**

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

23           **10.06 Final Construction Documents to be Approved by Agency**

24           The Final Construction Documents, including all drawings, specifications and other related documents  
25 necessary for the construction of the Improvements in accordance with the requirements of this Ground Lease, must

1 be approved by the Agency.

2 **10.07 Issuance of Building Permits**

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

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

14 **10.08 Performance and Payment Bonds**

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

18 **10.09 Agency Approval of Changes after Commencement of Construction**

19 Once construction has commenced, the only Construction Document matters subject to further review by the  
20 Agency will be requests for any material changes in the Construction Documents which affect matters previously  
21 ~~approved by the Agency. For purposes of determining materiality in the Construction Documents, any single change~~  
22 order of \$10,000 or more in value and any change order which causes the aggregate value of all change orders to  
23 exceed \$100,000 shall be considered material and require the Agency's prior written approval unless waived by the  
24 Agency. Permission to make such changes shall be requested by Tenant in writing directed to the Agency, Attention:  
25 Housing Program Manager, with a copy to the Architecture Division Manager. The Agency shall reply in writing

1 giving approval or disapproval of the changes within ten (10) business days after receiving such request. If the  
2 request is disapproved, the reply must specify the reasons for the disapproval. If the Agency does not respond within  
3 this ten-day period, the Agency will be deemed to have approved the changes as submitted.

4 **10.10 Times for Construction**

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

10 **10.11 Force Majeure**

11 For the purposes of any of the provisions of this Ground Lease, neither the Agency nor Tenant, as the case  
12 may be, shall be considered in breach of or default in its obligations, nor shall there be deemed a failure to satisfy any  
13 conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect  
14 thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due  
15 to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of  
16 God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine  
17 restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of  
18 subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence  
19 of any such enforced delay, the time or times for the satisfaction of conditions to this Ground Lease including those  
20 with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided,  
21 ~~however,~~ that the party seeking the benefit of the provisions of this paragraph shall have notified the other party  
22 thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay  
23 and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not  
24 apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of  
25 performance of any of Tenant's obligations to be performed prior to the commencement of construction, nor shall the

1 failure to timely perform pre-commencement of construction obligations extend or be construed to extend Tenant's  
2 obligations to commence, prosecute and complete construction of the Improvements in the manner and at the times  
3 specified in this Ground Lease.

4 **10.12 Reports**

5 Subsequent to commencement of construction of the Improvements and until they have been completed,  
6 Tenant shall make a report in writing to the Agency every three (3) months, in such detail as may reasonably be  
7 required by the Agency, as to the actual progress of the Tenant with respect to such construction. During such period  
8 the work of the Tenant shall be subject to inspection by representatives of the Agency, at reasonable times and upon  
9 reasonable advance notice.

10 **10.13 Access to Site**

11 Tenant shall permit access to the Site to the Agency and the City whenever and to the extent necessary to  
12 carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance  
13 notice.

14 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

15 **11.01 Certificate of Completion - Issuance**



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

13 **11.02 Certifications to be Recordable**

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

16 **11.03 Certification of Completion - Non-Issuance Reasons**

17 If the Agency shall refuse or fail to provide any certification in accordance with the provisions of Section  
18 11.01, the Agency shall provide Tenant with a written statement, within fifteen (15) days after written request by  
19 Tenant, indicating in adequate detail in what respects Tenant has failed to complete the construction of the  
20 Improvements in accordance with the provisions of this Ground Lease or is otherwise in default hereunder and what  
21 ~~measures or acts will be necessary, in the opinion of the Agency, for Tenant to take or perform in order to obtain such~~  
22 certification.

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

2           **12.01 Post Completion Changes**

3           The requirements of The Mission Bay North Redevelopment Plan and Design for Development shall control  
4 changes to the Improvements after the construction has been completed. Because of the location of the Site, the  
5 nature of the Improvements, the Permitted Uses and their relationship to surrounding developments, the Agency has a  
6 particular interest in the Site and in the nature and extent of the permitted changes to the Improvements.

7 Accordingly, it desires to and does hereby impose the following particular controls on the Site and on the  
8 Improvements: during the term of this Ground Lease, neither Tenant, nor any voluntary or involuntary successor or  
9 assign, shall make or permit any change in the Improvements, as change is hereinafter defined, unless the express  
10 prior written consent for any change shall have been requested in writing from the Agency and obtained, and, if  
11 obtained, upon such terms and conditions as the Agency may require. The Agency agrees not to withhold or delay its  
12 response to such a request unreasonably.

13           **12.02 Definition of Change**

14           'Change' as used in this Article means any alteration, modification, addition and/or substitution of or to the  
15 Site, the Improvements, the density of development and/or the extent and nature of the Site open space, which differs  
16 materially from that which existed upon the completion of construction of the Improvements in accordance with this  
17 Ground Lease, and shall include without limitation the exterior design, exterior materials and/or exterior color. For  
18 purposes of the foregoing, exterior shall mean and include the roof of the Improvements.

19           **12.03 Enforcement**

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

23           **ARTICLE 13: TITLE TO IMPROVEMENTS**

24           Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of  
25 this Ground Lease, subject to Section 14.01 below. Subject to the rights of any Lenders and as further consideration

1 for the Agency entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title  
2 to all the Improvements shall vest in the Agency without further action of any party, without any obligation by the  
3 Agency to pay any compensation therefore to Tenant and without the necessity of a deed from Tenant to the Agency.

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

5 **14.01 Assignment, Sublease or Other Conveyance by Tenant**

6 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its  
7 interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s), or allow any  
8 person or entity to occupy or use all or any part of the Site, other than leases to residential tenants in the ordinary  
9 course of business and certain commercial tenants discussed further below, nor may it contract or agree to do any of  
10 the same, without the prior written approval of the Agency, which approval shall not be unreasonably withheld or  
11 delayed; provided, however, that the Tenant may sell, assign, convey, sublease or transfer its interests to a nonprofit  
12 public benefit corporation under common control with the general partner of the Tenant, without the consent of the  
13 Agency. Notwithstanding the above, the Agency acknowledges that Tenant has or will enter into Commercial  
14 Leases with Catellus Development Corporation and with Mission Neighborhood Center for the Commercial  
15 Premises, and reserves the right to review and approve the Leases, which approval shall not be unreasonably  
16 withheld. Furthermore, Tenant shall not pledge any lease or sublease of the retail space or the child care center as  
17 collateral for a Leasehold Mortgage, except for an assignment of the Commercial Base Rent.

18 **14.02 Assignment, Sublease or Other Conveyance by Agency**

19 The parties acknowledges that any sale, assignment, transfer or conveyance of all or any part of the Agency's  
20 interest in the Site, the Improvements, or this Ground Lease, are subject to this Ground Lease. The Agency will  
21 ~~require that any purchaser, assignee or transferee expressly assume all of the obligations of the Agency under this~~  
22 Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease shall not be  
23 affected by any such sale, and Tenant shall attorn to any such purchaser or assignee. In the event that the Agency  
24 intends to sell all or any part of the Site, the Agency shall notify Tenant of the proposed terms of such sale not later  
25 than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of

1 such notice to exercise a right of first refusal to purchase the Site on the same terms and conditions of such proposed  
2 sale.

3 **ARTICLE 15: TAXES**

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

18 **ARTICLE 16: UTILITIES**

19 Tenant shall procure water and sewer service from the City and electricity, telephone, natural gas and any  
20 other utility service from the City or utility companies providing such services, and shall pay all connection and use  
21 ~~charges imposed in connection with such services. As between the Agency and Tenant, Tenant shall be responsible~~  
22 for the installation and maintenance of all facilities required in connection with such utility services to the extent not  
23 installed or maintained by the City or the utility providing such service.

24 **ARTICLE 17: MAINTENANCE**

25 Tenant, at all times during the term hereof, shall maintain or cause to be maintained the Premises in good

1 condition and repair to the reasonable satisfaction of the Agency, including the exterior, interior, substructure and  
2 foundation of the Improvements and all fixtures, equipment and landscaping from time to time located on the Site or  
3 any part thereof. The Agency shall not be obligated to make any repairs, replacements or renewals of any kind,  
4 nature or description whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

5 **ARTICLE 18: LIENS**

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

17 **ARTICLE 19: GENERAL REMEDIES**

18 **19.01 Application of Remedies**

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

20 **19.02 Notice and Cure Rights for Tenant**

21 ~~(a) The Agency may not exercise its remedies under this Ground Lease for a default by the Tenant~~  
22 unless and until (i) the Agency has given written notice of any such default, in accordance with the notice provisions  
23 of Article 38, to the Tenant's limited partners who have requested notice as set forth below ("Permitted Limited  
24 Partners"), and (ii) such default has not been cured within sixty (60) days following the giving of such notice or, if  
25 such default cannot be cured within such 60-day period, such longer period as is reasonably necessary to cure such

1 default, provided that such cure has been commenced within such 60-day period and is being prosecuted diligently to  
2 completion. If a Permitted Limited Partner cannot cure a default because the general partner of the Tenant is in  
3 bankruptcy, any cure period will be tolled during the pendency of such bankruptcy.

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

8 (c) Any limited partner wishing to become a Permitted Limited Partner must provide five (5) days'  
9 written notice to the Agency in accordance with the notice provisions of this Ground Lease, setting forth a notice  
10 address and providing a copy of such notice to the Tenant and all of the Tenant's general partners. Such limited  
11 partner will become a Permitted Limited Partner upon the expiration of the five-day period. A limited partner will  
12 not be afforded the protections of this section with respect to any default occurring prior to the time such limited  
13 partner becomes a Permitted Limited Partner. The Agency hereby acknowledges that Pacific Gas and Electric  
14 Housing Fund L.P. is a Permitted Limited Partner, and that Pacific Gas and Electric Housing Fund L.P. is thus  
15 exempt from the five (5) day notice described above.

16 **19.03 Breach by Agency**

17 If Tenant believes a material breach of this Ground Lease has occurred, Tenant shall first notify the Agency  
18 in writing of the purported breach, giving the Agency sixty (60) days from receipt of such notice to cure such breach.  
19 In the event Agency does not then cure or, if the breach is not reasonably susceptible to cure within that sixty (60)  
20 day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then

21 ~~Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i)~~  
22 ~~terminating in writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an action for~~  
23 ~~damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law or equity.~~

24 **19.04 Breach by Tenant**

25 **19.04(a) Default by Tenant**

1 The following events each constitute a basis for the Agency to take action against Tenant:

- 2 (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in  
3 Section 9.02;
- 4 (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer or assign this  
5 Ground Lease or any rights in this Ground Lease, or in the Improvements, except as  
6 permitted by this Ground Lease;
- 7 (3) Tenant, or its successor in interest, shall fail to pay real estate taxes or assessments on the  
8 Premises or any part thereof when due, or shall place thereon any encumbrance or lien  
9 unauthorized by this Ground Lease, or shall suffer any levy or attachment to be made, or  
10 any material supplier's or mechanic's lien or any other unauthorized encumbrance or lien  
11 to attach, and such taxes or assessments shall not have been paid, or the encumbrance or  
12 lien removed or discharged; provided, however, that Tenant shall have the right to contest  
13 any tax or assessment pursuant to Article 15 and Article 18 and, upon the posting of an  
14 adequate bond or other security, to contest any such lien or encumbrance. In the event of  
15 any such contest, Tenant shall protect, indemnify and hold Agency harmless against all  
16 losses and damages, including reasonable attorneys' fees and costs resulting therefrom;
- 17 (4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer in de-fraud of  
18 creditors, or make an assignment for the benefit of creditors, or bring or have brought  
19 against Tenant any action or proceeding of any kind under any provision of the Federal  
20 Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in  
21 ~~the event such proceedings are involuntary, Tenant is not dismissed from the same within~~  
22 ~~sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of~~  
23 ~~Tenant and such receiver is not discharged within sixty (60) days;~~
- 24 (5) Tenant breaches any other material provision of this Ground Lease; or
- 25 (6) Tenant fails to pay any portion of Annual Rent when due in accordance with the terms and

1 provisions of this Ground Lease.

2 **19.04(b) Notification and Agency Remedies**

3 Upon the happening of any of the events described in Section 19.04(a) above, the Agency shall  
4 notify Tenant and Lender in writing of the Tenant's purported breach, failure or act, giving Tenant sixty (60) days  
5 from receipt of such notice to cure such breach, failure or act. In the event Tenant does not cure or, if the breach,  
6 failure or act is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)  
7 days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject  
8 to Section 19.02 and Article 26, the Agency thereafter shall be afforded all of its rights at law or in equity, including  
9 any or all of the following remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for  
10 damages; or (3) seeking specific performance of this Ground Lease; or (4) increasing the Base Rent to the full amount  
11 of the Annual Rent.

12 **ARTICLE 20: DAMAGE AND DESTRUCTION**

13 **20.01 Insured Casualty**

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



1 Improvements, the insurance proceeds shall be divided among the Agency, Tenant and any Lender in accordance  
2 with the provisions of Section 20.03.

3 **20.02 Uninsured Casualty**

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

18 **20.03 Distribution of the Insurance Proceeds**

19 In the event of an election by Tenant to terminate and surrender as provided in either Sections 20.01 or  
20 20.02, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by  
21 Tenant hereunder shall be as follows:

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

24 (b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying  
25 property, and for the cost of any work or service required by any statute, law, ordinance, rule, regulation or order of

1 any federal, state or local government, or any agency or official thereof, for the protection of persons or property  
2 from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or  
3 destruction caused thereby;

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

6 (d) The remainder to Tenant.

7 **20.04 Clean Up of Housing Site**

8 In the event the Tenant terminates this Ground Lease pursuant to the provisions of Sections 20.01 or 20.02  
9 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Article  
10 20.03(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

11 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;**  
12 **INDEMNIFICATION**

13 **21.01 Damage to Person or Property -General Indemnification**

14 Agency shall not in any event whatsoever be liable for any injury or damage to any person happening on or  
15 about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other  
16 person, entity or association on or about the Site. Tenant shall defend, hold harmless and indemnify the Agency, the  
17 City and their respective commissioners, officers, agents, and employees, of and from all claims, loss, damage,  
18 injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from  
19 its tenancy, its use of the Site, including adjoining sidewalks and streets, and any of its operations activities thereon or  
20 connected thereto; provided, however, that this Article 21 shall not be deemed or construed to and shall not impose an  
21 ~~obligation to indemnify and save harmless the Agency, the City or any of their commissioners, officers, agents or~~  
22 employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way  
23 related to or connected with any willful misconduct or gross negligence by the person or entity seeking such  
24 indemnity.

25 **21.02 Hazardous Materials -Indemnification**

1 (a) Tenant shall indemnify, defend and hold Agency and the City, and their respective commissioners,  
2 officers, agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified Parties")  
3 harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature  
4 whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering  
5 consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to,  
6 or in any manner relating to a violation of any Environmental Law, or any Release, threatened Release and any  
7 condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site occurring  
8 after the date of this Agreement.

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

10 (i) "Hazardous Substance" shall have the meaning set forth in the Comprehensive  
11 Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42  
12 U.S.C. '9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction  
13 thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"),  
14 PCB-containing materials, all hazardous substances identified in the California Health & Safety Code '25316 and  
15 '25281(d), all chemicals listed pursuant to the California Health & Safety Code '25249.8, and any substance deemed a  
16 hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing  
17 definition shall not include substances which occur naturally on the Site.

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

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

1 **ARTICLE 22: INSURANCE AND FIDELITY BOND**

2 **22.01 Insurance**

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

4 **22.01(a) Insurance Requirements for Tenant**

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

9 **22.01(b) Minimum Scope of Insurance**

10 Coverage shall be at least as broad as:

- 11 (1) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG  
12 00010196).
- 13 (2) Insurance Services Office form number CA 00011293 covering Automobile Liability,  
14 code 1 "any auto."
- 15 (3) Workers' Compensation insurance as required by the Labor Code of the State of California  
16 and Employer's Liability insurance.
- 17 (4) Whenever an architect or engineer is employed, Professional Liability Insurance covering  
18 all negligent acts, errors and omissions in Tenant's Architectural and Engineering  
19 Professional Design Services. As an alternative to Tenant providing said Professional  
20 liability insurance, Tenant shall require that all architectural and engineering professional  
21 consultants for the project have liability insurance covering negligent acts, errors and  
22 omissions. Tenant shall provide the Agency with copies of consultants' insurance  
23 certificates showing such coverage.
- 24 (5) Property Liability Insurance against all risks of direct physical loss to the Project.

25 **22.01(c) Minimum Limits of Insurance**

1 Coverage shall maintain limits no less than:

- 2 (1) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury,  
3 personal injury and property damage. If Commercial General Liability Insurance or other  
4 form with a general aggregate limit shall apply separately to this project/location, the  
5 general aggregate limit shall be twice the required occurrence limit.
- 6 (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and  
7 property damage.
- 8 (3) Workers' Compensation and Employers Liability: Workers' Compensation limits as  
9 required by the Labor Code of the State of California and Employers Liability limits of  
10 \$1,000,000 per accident.
- 11 (4) Professional Liability: \$1,000,000 per occurrence during the course of new construction or  
12 remodeling in excess of \$100,000.
- 13 (5) Property Insurance:
- 14 (a) During the course of construction, Full Completed Value of the Project.
- 15 (b) Following completion of construction, Full replacement value of the Project with  
16 no coinsurance penalty provision.
- 17 (6) Review of Minimum Limits: At no less than every five years during the Term, Agency  
18 may reasonably adjust the Minimum Limits of coverage required in this Article 22.01c.

19 **22.01(d) Deductibles and Self-Insured Retentions**

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

24 **22.01(e) Other Insurance Provisions**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(1) General Liability and Automobile Liability Coverage:

- (a) The Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners, are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Tenant; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant; or automobiles owned, leased, hired or borrowed by the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City and County of San Francisco and their respective officers, agents, employees or Commissioners.
- (b) The Tenant's insurance coverage shall be primary insurance as respects the Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners. Any insurance or self-insurance maintained by the Agency, the City and County of San Francisco and their respective officers, agents, employees or Commissioners shall be excess of the Tenant's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City and County of San Francisco and their respective officers, agents, employees or Commissioners.
- (d) The Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners for losses arising from work performed by the Tenant for the Agency.

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

5 **22.01(f) Acceptability of Insurers**

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

7 **22.01(g) Verification of Coverage**

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

13 **22.01(h) Subcontractors**

14 Tenant shall include all subcontractors as additional insureds under its policies or shall furnish  
15 separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all  
16 of the requirements stated herein.

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

18 **23.01 Compliance with Legal Requirements**

19 Tenant shall at its cost and expense, promptly comply with all laws, statutes, ordinances and governmental  
20 rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any  
21 ~~board of fire underwriters or other similar body now or hereafter constituted, with any direction or occupancy~~  
22 certificate issued pursuant to any law by any public officer or officers, insofar as any thereof relate to or affect the  
23 condition, use or occupancy of the Site. In the event Tenant contests any of the foregoing, Tenant shall not be  
24 obligated to comply therewith to the extent that the application of the contested law, statute, ordinance, rule,  
25 regulation or requirement is stayed by the operation of law or administrative or judicial order and Tenant indemnifies

1 the Agency against all loss, cost, expense or damage resulting from noncompliance.

2 **23.02 Compliance with Site-Related Documents**

3 Tenant shall comply with (1) Attachment K, Environmental Investigation and Response Program for North  
4 Plan Area Affordable Housing Parcels, Open Space Parcels and Street Parcels of the Mission Bay North Owner  
5 Participation Agreement; (2) the Risk Management Plan for the Mission Bay Area; and (3) the covenant and  
6 environmental restriction recorded against the Site.

7 **ARTICLE 24: ENTRY**

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

12 **ARTICLE 25: MORTGAGE FINANCING**

13 **25.01 No Encumbrances Except for Development Purposes**

14 Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the  
15 Agency in the form attached hereto as Attachment 5, which consent shall not be unreasonably withheld or delayed,  
16 Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of  
17 funds to be used for financing the acquisition, design, construction or future renovation or reconstruction of the  
18 Improvements and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct,  
19 renovate, construct or reconstruct the Improvements under this Ground Lease and in connection with the operation of  
20 the Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this

21 ~~Ground Lease. The mortgage loans being made by the First Mortgage Lender and the Agency are approved~~

22 Leasehold Mortgages for all purposes under this Ground Lease.

23 **25.02 Holder Not Obligated to Construct**

24 The holder of any mortgage, deed of trust or other security interest authorized by Sections 25.01 ("Holder"  
25 or "Lender"), including the successors or assigns of such Holder, is not obligated to complete any construction of the



1 Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Ground Lease  
2 be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee  
3 the completion of the construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease  
4 shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or  
5 any portion thereof to any uses, or to construct or construct any Improvements thereon, other than those uses or  
6 Improvements authorized under Section 9.02. To the extent any Holder or its successors in interest wish to change  
7 such uses or construct different improvements, subject to Section 26.06(ii), that Holder or its successors in interest  
8 must obtain the written consent of the Agency.

9 **25.03 Failure of Holder to Complete Improvements**

10 In any case where six months after assumption of obligations pursuant to Section 25.02 above, a Lender,  
11 having first exercised its option to construct, has not proceeded diligently with construction, the Agency shall be  
12 afforded the rights against such Holder it would otherwise have against Tenant under this Ground Lease for events or  
13 failures occurring after such assumption.

1           **25.04 Default by Tenant and Agency's Rights**

2                   **25.04(a) Right of Agency to Cure a Default or Breach by Tenant under a leasehold Mortgage**

3           In the event of a default or breach by Tenant in or of its obligations under any Leasehold Mortgage,  
4 and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, the Agency may, at  
5 its option, cure such breach or default at any time prior to one hundred nineteen (119) days after the date on which the  
6 Lender files a notice of default. In such event, the Agency shall be entitled to reimbursement from Tenant of all costs  
7 and expenses reasonably incurred by the Agency in curing the default or breach. The Agency shall also be entitled to  
8 a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements. Any such lien  
9 shall be subject to the lien of any then existing Leasehold Mortgage authorized by this Ground Lease, including any  
10 lien contemplated because of advances yet to be made. After ninety (90) days following the date of lender filing a  
11 notice of default, the Agency shall also have the right to assign Tenant's interest in the Ground Lease to another  
12 entity, subject to such Lender's written consent, which shall not be unreasonably withheld or delayed, but which may  
13 be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under  
14 the Leasehold Mortgage.

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

16           Each Lender shall give the Agency prompt written notice of any such default or breach and each  
17 Leasehold Mortgage shall so provide and shall also contain the Agency's right to cure as above set forth.

18           **25.05 Cost of Mortgage Loans to be Paid by Tenant**

19           Tenant covenants and affirms that it shall bear all of the costs and expenses in connection with (i) the  
20 preparation and securing of any Leasehold Mortgage, (ii) the delivery of any instruments and documents and their  
21 filing and recording, if required, and (iii) all taxes and charges payable in connection with any Leasehold Mortgage.

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 the existence of any  
4 of the rights set forth in this Article 26, each Lender shall give written notice to the Agency of the Lender's address  
5 and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 5 shall constitute Agency's  
6 acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender  
7 under this Ground Lease. The Agency hereby acknowledges that the First Mortgage Lender and the Agency are  
8 deemed to have given such written Notice.

9 **26.02 Lender's Rights to Prevent Termination**

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

16 **26.03 Lender's Rights When Tenant Defaults**

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

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

22 (ii) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have  
23 failed, within sixty (60) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to  
24 Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in  
25 the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to

1 completion, in which case such event of default shall be remedied or deemed remedied in accordance with Article  
2 26.04 below.

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

9 **26.04 Default Which Cannot be Remedied by Lender**

10 Any event of default under this Ground Lease which in the nature thereof cannot be remedied by Lender  
11 shall be deemed to be remedied if (i) within thirty (30) days after receiving notice from the Agency setting forth the  
12 nature of such event of default, or prior thereto, Lender shall have acquired Tenant's leasehold estate created hereby  
13 or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall  
14 diligently prosecute any such proceedings to completion, within a 60-day period, or if such breach or default cannot  
15 be cured within such 60-day period, such longer period as is reasonably necessary to cure such breach or default,  
16 provided that the Lender has given written notice within such 60-day period to the Agency that the Lender intends to  
17 cure such breach or default and thereafter diligently pursues such cure to completion (iii) Lender shall have fully  
18 cured any event of default arising from failure to pay or perform any monetary obligation in accordance with the  
19 terms of this Ground Lease, and (iv) after gaining possession of the Improvements, Lender shall diligently proceed to  
20 perform, all other obligations of Tenant as and when the same are due in accordance with the terms of this Ground  
21 Lease.

22 **26.05 Court Action Preventing Lender's Action**

23 If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any  
24 court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or  
25 prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Sections 26.03

1 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the  
2 period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the Agency  
3 agrees to enter into a new Ground lease with the First Mortgage Lender on the same terms set forth in this Ground  
4 Lease.

5 **26.06 Lender's Rights to Record, Foreclose and Assign**

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

7 (i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell and assign the  
8 Leasehold Estate created hereby to an assignee from whom it may accept a purchase price; subject, however, to  
9 Lender's first securing written approval from Agency, which approval shall not be unreasonably withheld, and if the  
10 Subsequent Owner has elected to maintain the use restrictions of Article 9, said subsequent owner shall be controlled  
11 by a California nonprofit public benefit 501(c)(3) corporation such that the Premises receives an exemption from  
12 state property taxes as provided under Section 214 of the California Revenue and Taxation Code. Lender,  
13 furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender shall become the assignee,  
14 may sell and assign said Leasehold Estate subject to Agency approval, which shall not be unreasonably withheld, and  
15 to the Agency's rights under Article 25; and

16 (ii) should the Lender acquire the Leasehold Estate hereunder by foreclosure or other appropriate  
17 proceedings in the nature of foreclosure or as the result of any other action or remedy provided for by any Leasehold  
18 Mortgage, or should Lender sell or assign the same to an Agency approved purchaser or assignee, Lender or its  
19 purchaser or assignee shall take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall,  
20 so long as and only so long as it shall be the owner of such estate, except as provided elsewhere in this Ground Lease,  
21 ~~assume all of the obligations of Tenant under this Ground Lease; provided, however, the Lender or its purchaser or~~  
22 ~~assignee may operate and maintain the one hundred (100) dwelling units without any limitations on the rents charged~~  
23 ~~or the income of the occupants thereof.~~

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

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

4 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

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

7 (a) Any accrued Base Rent at the time of foreclosure shall be forgiven by the Agency, and shall not  
8 remain an obligation of the Lender, its assignee, or the Subsequent Owner. Subsequent to foreclosure, if the Lender  
9 continues to operate the Project subject to the use and occupancy restrictions of Section 9.02, then Annual Rent  
10 otherwise due may, at the option of the Lender, be deferred until such time as the Project is no longer operated by the  
11 Lender subject to such restrictions. All deferred Annual Rent shall accrue, with simple interest at six percent (6%)  
12 per annum until paid, and shall be due and payable upon sale or assignment of the Project by Lender or within sixty  
13 (60) days after Lender ceases to operate the Project in accordance with such restrictions.

14 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the Project without  
15 being subject to Section 9.02, Annual Rent shall be set at the then fair market rental value taking into account any  
16 affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent shall be increased to the new  
17 fair market rent pursuant to Section 26.07(b) and the provisions of Section 6.02(h) shall be suspended; provided,  
18 however, that the Agency shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its  
19 sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to tenants on a dollar  
20 for dollar basis, with respect to such aggregate units occupied by Low Income Households as the Agency and the  
21 ~~Subsequent Owner shall agree. The fair market rental value shall be determined by a jointly-commissioned appraisal~~  
22 (instructions prepared jointly by the Subsequent Owner and the Agency, with each party paying one half of the  
23 appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market  
24 land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then  
25 appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a

1 neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice  
2 for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing  
3 practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the  
4 neutral third party process, the Lender, in its sole discretion may rescind its written notification of intent to not  
5 comply with Section 9.02 of this Ground Lease.

6 **26.08 Permitted Uses After Lender Foreclosure**

7 Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises  
8 shall be operated in accordance with the uses specified in the schematic design, preliminary construction documents,  
9 final construction documents, and the building permit with all addenda, as approved by the Agency.

10 **ARTICLE 27: CONDEMNATION AND TAKINGS**

11 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

15 **27.02 Total Taking**

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

18 **27.03 Partial Taking**

19 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in effect, except that  
20 Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment,  
21 ~~the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant~~  
22 elects to terminate this Ground Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving  
23 notice to the Agency within thirty (30) days after the Agency notifies Tenant of the nature and the extent of the  
24 taking. If Tenant elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify the  
25 Agency of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months

1 after Tenant has notified the Agency of its election to terminate; except that this Ground Lease shall terminate on the  
2 date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as  
3 designated by Tenant. If Tenant does not terminate this Ground Lease within such thirty (30) day notice period, this  
4 Ground Lease shall continue in full force and effect.

5 **27.04 Effect on Rent**

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

10 **27.05 Restoration of Improvements**

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

14 **27.06 Award and Distribution**

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

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

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

21 **27.07 Payment to Lenders**

---

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



1     **ARTICLE 28: ESTOPPEL CERTIFICATE**

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

11    **ARTICLE 29: QUITCLAIM**

12            Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the portions of the Site  
13    to the Agency and, at the Agency's request, shall execute, acknowledge, and deliver to the Agency a good and  
14    sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the Improvements shall vest  
15    automatically in the Agency as provided in Article 13 herein.

16    **ARTICLE 30: EQUAL OPPORTUNITY**

17            Tenant agrees to comply with all of the Equal Opportunity and related requirements attached hereto as  
18    Attachment 7.

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

20            Tenant agrees to comply with the requirements of the Agency's Certificate and Business Preference  
21    Program as set forth on Attachment 6.

---

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

23            Tenant agrees to comply with the requirements of the Agency's Labor Standards Provisions as set forth on  
24    Attachment 8.

25    **ARTICLE 33: CONFLICT OF INTEREST**

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

5 **ARTICLE 34: NO PERSONAL LIABILITY**

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

9 **ARTICLE 35: ENERGY CONSERVATION**

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

13 **ARTICLE 36: WAIVER**

14 The waiver by the Agency or Tenant of any term, covenant, agreement or condition herein contained shall  
15 not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or  
16 condition herein contained, nor shall any custom or practice which may grow up between the parties in the  
17 administration of the terms hereof be construed to waive or to lessen the right of the Agency or Tenant to insist upon  
18 the performance by the other in strict accordance with the said terms. The subsequent acceptance of rent or any other  
19 sum of money hereunder by the Agency shall not be deemed to be a waiver of any preceding breach by Tenant of any  
20 term, covenant, agreement or condition of this Ground Lease, other than the failure of Tenant to pay the particular  
21 ~~rent or other sum so accepted, regardless of the Agency's knowledge of such preceding breach at the time of~~

22 acceptance of such rent or other sum.

23 **ARTICLE 37: TENANT RECORDS**

24 Upon reasonable notice during normal business hours, and as often as the Agency may deem necessary,  
25 there shall be made available to the Agency and its authorized representatives for examination all records, reports,

1 data and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained  
2 herein shall entitle the Agency to inspect personal histories of residents or lists of donors or supporters. To the extent  
3 that it is permitted by law to do so, the Agency will respect the confidentiality requirements of Tenant in regard to the  
4 lists furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the residential portion of the Site.

5 **ARTICLE 38: NOTICES AND CONSENTS**

6 All notices, demands, consents or approvals which may be or are required to be given by either party to the  
7 other hereunder shall be in writing and shall be deemed to have been fully given when delivered in person to such  
8 representatives of Tenant and the Agency as shall from time to time be designated by the parties for the receipt of  
9 notices, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a  
10 delivery receipt and addressed

11 if to Tenant at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14 Attn.: Executive Director

16 If to Tenant's

17 Limited Partner at:

Pacific Gas & Electric Housing Fund L.P.  
C/O Merritt Community Capital Corporation  
1736 Franklin Street, Suite 600  
Oakland, CA 94612

22 if to the Agency at:

San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, California 94102  
Attn.: Executive Director

1  
2 or to such other address with respect to either party as that party may from time to time designate by notice  
3 to the other given pursuant to the provisions of this Article 38. Any notice given pursuant to this Article 38 shall be  
4 effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

5 **ARTICLE 39: COMPLETE AGREEMENT**

6 There are no oral agreements between Tenant and the Agency affecting this Ground Lease, and this Ground  
7 Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings  
8 between Tenant and the Agency with respect to the lease of the Site.

9 **ARTICLE 40: HEADINGS**

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

13 **ARTICLE 41: SUCCESSORS AND ASSIGNS**

14 This Ground Lease shall be binding upon and inure to the benefit of the successors and assigns of the  
15 Agency and Tenant and where the term "Tenant" or "Agency" is used in this Ground Lease, it shall mean and include  
16 their respective successors and assigns; provided, however, that the Agency shall have no obligation under this  
17 Ground Lease to, nor shall any benefit of this Ground Lease accrue to, any unapproved successor or assign of Tenant  
18 where Agency approval of a successor or assign is required by this Ground Lease.

19 **ARTICLE 42: TIME**

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

21 **ARTICLE 43: PARTIAL INVALIDITY**

---

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

25 **ARTICLE 44: APPLICABLE LAW**

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

2 **ARTICLE 45: ATTORNEYS' FEES**

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

6 **ARTICLE 46: EXECUTION IN COUNTERPARTS**

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

9 **ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE**

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

14

ARTICLE 48: ATTACHMENTS

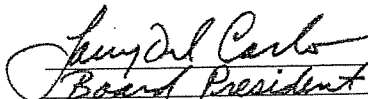
The following are attached to this Ground Lease and by this reference made a part hereof:


1. Site Plan
2. Legal Description of Site
3. Scope of Development (Intentionally Omitted)
4. Schedule of Performance
5. Agency Consent of Leasehold Mortgage
6. Operational Rules for Certificate Holder's Priority
7. Equal Opportunity Program
8. Prevailing Wage Provisions
9. Income Computation and Certification
10. Additional Tenant Covenants (Intentionally Omitted)
11. Attachment K, Environmental Investigation and Response Program for North Plan Area Affordable Housing Parcels, Open Space Parcels, and Street Parcels of the Mission Bay North Owner Participation Agreement
12. Risk Management Plan for Mission Bay Area
13. Covenant and Environmental Restrictions Recorded Against the Site

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

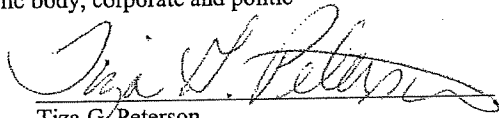
3 **TENANT AS TENANT:**  
4 **MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,**  
5 **a California limited partnership**

6 By: Mission Housing Development Corporation  
7 Its General Partner


8 By:   
9 Its: Board President

10 By:   
11 Its: EXECUTIVE DIRECTOR

12 **AGENCY AS LANDLORD:**  
13 **REDEVELOPMENT AGENCY OF THE CITY**  
14 **AND COUNTY OF SAN FRANCISCO,**  
15 **a public body, corporate and politic**

16 By:   
17 Tiza G. Peterson  
18 Its: Deputy Executive Director, Finance and Administration

19 **APPROVED AS TO FORM:**

20 By:   
21 Bertha A. Ontiveros  
22 Agency General Counsel

23 Authorized by Agency Resolution No. 236-2000, adopted Nov 28, 2000.  
24

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *For* Mayor Edwin M. Lee *[Signature]*  
RE: Second Amendment to Ground Lease – Mission Bay Affordable Housing,  
L.P – 150 Berry Street, 201, 207, 213, 215, 217, 219, 221, 223, 225 and  
227 King Streets – No Fiscal Impact  
DATE: November 14, 2017

---

Attached for introduction to the Board of Supervisors is a resolution authorizing the execution and performance of a Second Amendment to the Ground Lease between the City and County of San Francisco and Mission Bay Affordable Housing, L.P., for real property located at 150 Berry Street, 201, 207, 213, 215, 217, 219, 221, 223, 225 and 227 King Streets, in connection with the loan refinancing and minor rehabilitation of community space at Rich Sorro Commons, a 100-unit affordable housing development for very low income individuals and families.

I respectfully request that this item be calendared in Budget & Finance Committee on December 7, 2017.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2017 NOV 14 PM 1:57

BY *[Signature]*



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

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: Mission Bay Affordable Housing, L.P.	
<i>Please list the names of (1) members of the contractor's board of directors;</i> Josh Arce, Irving Gonzalez, Rhosie Tolentino, Marisela Esparza, Jon Layman, Eddie Ahn, Fernando Gomez-Benitez  <i>(2) the contractor's chief executive officer, chief financial officer and chief operating officer;</i> Executive Director - Sam Moss COO - Marcia Contreras Controller - Marizza Bautista-Ong  <i>(3) any person who has an ownership of 20 percent or more in the contractor;</i> NONE  <i>(4) any subcontractor listed in the bid or contract; and</i> NONE  <i>(5) any political committee sponsored or controlled by the contractor.</i> NONE	
Contractor address: 474 Valencia Street, Ste. 280 SF, CA 94103	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contracts: \$0
Describe the nature of the contract that was approved: Resolution authorizing the execution and performance of a Second Amendment to the Ground Lease between the City and County of San Francisco and Mission Bay Affordable Housing, L.P., in connection with the loan refinancing and minor rehabilitation of community space at Rich Sorro Commons, a 100-unit affordable housing development for very low income individuals and families. The Developer is pursuing a refinance and the new lender has requested the City and the Developer amend the Ground Lease to provide certain protections in the event of a default by the Developer.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

Print Name of Board

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

Print Name of Board

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

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

\_\_\_\_\_  
Date Signed

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

\_\_\_\_\_  
Date Signed