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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 as of November 28, 2000

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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 31st 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 31st 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 (31st) 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 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 (1) General Liability and Automobile Liability Coverage:

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

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

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

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

22 (2) Workers' Compensation and Employers Liability Coverage: The insurer shall agree to
23 waive all rights of subrogation against the Agency, the City and County of San Francisco
24 and their respective officers, agents, employees and Commissioners for losses arising from
25 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: _____
12 _____
13 _____, _____
14 Attn.: Executive Director

15
16 If to Tenant's
17 Limited Partner at: Pacific Gas & Electric Housing Fund L.P.
18 C/O Merritt Community Capital Corporation
19 1736 Franklin Street, Suite 600
20 Oakland, CA 94612

21
22 if to the Agency at: San Francisco Redevelopment Agency
23 770 Golden Gate Avenue
24 San Francisco, California 94102
25 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
2

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

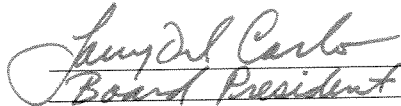
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**TENANT AS TENANT:
MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,
a California limited partnership**


6
7

By: Mission Housing Development Corporation
Its General Partner

8
9

By: 
Its: Board President

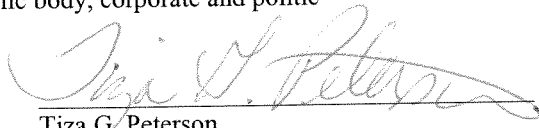
10
11

By: 
Its: EXECUTIVE DIRECTOR


12
13
14
15

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

16
17
18

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

19
20
21
22

APPROVED AS TO FORM:
By: 
Bertha A. Ontiveros
Agency General Counsel

23
24

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