

FIRST AMENDMENT TO THE  
ORLANDO CEPEDA PLACE GROUND LEASE

by and between the

REDEVELOPMENT AGENCY OF THE  
CITY AND COUNTY OF SAN FRANCISCO

as Landlord

and

MISSION BAY AFFORDABLE HOUSING LIMITED PARTNERSHIP,

a California limited partnership

as Tenant

Dated January 1, 2010

## GROUND LEASE

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

## RECITALS

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

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

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

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

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

Place, was later changed to Rich Sorro Commons.

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

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

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

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

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

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

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

1.06 "Intentionally Left Blank."

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

1.07 "Intentionally Left Blank."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By: Mission Housing Development Corporation  
Its General Partner

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

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

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

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

**APPROVED AS TO FORM:**

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

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

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

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

By: Mission Housing Development Corporation  
Its General Partner

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

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

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

By:   
Amy Lee  
Deputy Executive Director, Finance and Administration

**APPROVED AS TO FORM:**

By:   
James B. Morales  
Agency General Counsel

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