

File No. 151150

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date November 30, 2015

Board of Supervisors Meeting

Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 700 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vacancy Notice |
| <input type="checkbox"/> | <input type="checkbox"/> | Information Sheet |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Amended / Restated Ground Lease</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Ground Lease</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Memo of Assignment</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Alisa Somera Date November 25, 2015

Completed by: _____ Date _____

1 [Amended and Restated Ground Lease - Improved Real Property located at 477
2 O'Farrell Street - O'Farrell Towers Associates, L.P.]

3 **Resolution authorizing the execution and performance of an Amended and**
4 **Restated Ground Lease, with a term of 99 years, between the City and**
5 **County of San Francisco and O'Farrell Towers Associates, L.P., a California**
6 **limited partnership, of real property located at 477 O'Farrell Street, for the**
7 **rehabilitation of 101 units of affordable housing for low and very low**
8 **income seniors.**

9
10 WHEREAS, The former San Francisco Redevelopment Agency (the "Agency")
11 leased the land for the property located at 477 O'Farrell Street (Assessor's Block No.
12 0324, Lot No. 024) (the "Property") to Citizen Housing Corporation ("Citizen") pursuant
13 to that certain ground lease dated August 4, 2000 (the "Original Ground Lease"); and

14 WHEREAS, Citizen assigned its interest in the Original Ground Lease to O'Farrell
15 Senior Housing, Inc. ("OSHI") on April 19, 2005, an affiliate of Citizen; and

16 WHEREAS, OSHI has operated the building located on the Property (the
17 "Improvements") as affordable housing for low and very low income seniors with ground floor
18 commercial use; and

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

1 Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code, Section
2 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all
3 of the Agency's rights and obligations with respect to the Site; and

4 WHEREAS, MOHCD wishes to consent to the assignment by OSHI to
5 O'Farrell Towers Associates, L.P. (the "Partnership"), the general partner of which is
6 managed by an affiliate of OSHI, of OSHI's leasehold interest in the Property and
7 concurrently enter into an amended and restated ground lease with the Partnership
8 in order to facilitate a tax credit rehabilitation of the Improvements to retain its current
9 use as 101 units of affordable housing for low and very low income seniors; now,
10 therefore, be it

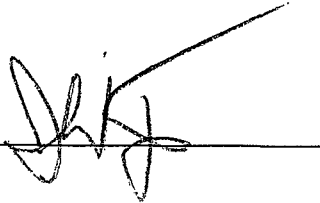
11 RESOLVED, That in accordance with the recommendations of the Director of
12 Property and the Director of MOHCD, the Board of Supervisors hereby approves and
13 authorizes the Director of Property, along with the Director of MOHCD, to finalize
14 negotiations for the amended and restated Ground Lease (the "Amended Ground
15 Lease") and following the negotiations for the Amended Ground Lease authorizes the
16 Director of MOHCD to execute and deliver the Amended Ground Lease; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 MOHCD, in consultation with the City Attorney, to enter into any additions,
19 amendments or other modifications to the Amended Ground Lease that the Director of
20 MOHCD determines are in the best interests of the City, do not decrease the revenues
21 of the City in connection with the Property, or otherwise materially increase the
22 obligations or liabilities of the City, and are in compliance with all applicable laws,
23 including the City's Charter.

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

RECOMMENDED:

Director of Property



Director of the Mayor's Office of Housing and Community Development



Mayor's Office of Housing and Community Development
City and County of San Francisco



Edwin M. Lee
Mayor

Olson Lee
Director

November 2, 2015

Honorable Jane Kim
City and County of San Francisco
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Approval of an Amended and Restated Ground Lease for 99 years to provide rehabilitation funds for 101 units of affordable senior housing at 477 O'Farrell Street

Dear Supervisor Kim,


Thank you for agreeing to introduce this resolution authorizing the execution of an amended and restated ground lease agreement for the property, located at 477 O'Farrell Street, between the Mayor's Office of Housing and Community Development ("MOHCD"), and O'Farrell Towers Associates LP., an affiliate corporation of Tenderloin Neighborhood Development Corporation.

MOHCD respectfully requests your support in introducing and sponsoring this resolution (attached) at the Board of Supervisors on Tuesday November 3, 2015. Our hope is to have the resolution calendared for the Land Use Committee on Monday November 16, 2015, and then returned to the full BoS on December 1, 2015.

The project serves seniors earning up to 50% of AMI. This lease amendment will facilitate the construction rehabilitation of important affordable housing stock in the Tenderloin using **no new city capital**.

The attached resolution has been reviewed by Deputy City Attorney Beth Anderson and approved by myself as well as Director of Real Estate John Updike on behalf of Director of Real Estate John Updike. If you have any questions about the resolution or the project, please contact Kevin Kitchingham at 701-5523. Thank you.

Sincerely,


Olson Lee
Director

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

AMENDED AND RESTATED GROUND LEASE

by and between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

O'FARRELL TOWERS ASSOCIATES, L.P.,
as Tenant

For the lease of

477 O'Farrell Street
San Francisco, California

Dated: _____

TABLE OF CONTENTS

1		
2	<u>ARTICLE 1: DEFINITIONS</u>	2
3	<u>ARTICLE 2: TERM</u>	7
4	<u>ARTICLE 3: FINANCING</u>	8
5	<u>ARTICLE 4: RENT</u>	8
6	<u>ARTICLE 5: CITY COVENANTS</u>	11
7	<u>ARTICLE 6: TENANT COVENANTS</u>	11
8	<u>ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION</u>	15
9	<u>ARTICLE 8: CONDITION OF SITE - "AS IS"</u>	16
10	<u>ARTICLE 9: IMPROVEMENTS AND PERMITTED USES</u>	16
11	<u>ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS</u>	17
12	<u>ARTICLE 11: COMPLETION OF IMPROVEMENTS</u>	23
13	<u>ARTICLE 12: CHANGES TO THE IMPROVEMENTS</u>	26
14	<u>ARTICLE 13: TITLE TO IMPROVEMENTS</u>	26
15	<u>ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE</u>	27
16	<u>ARTICLE 15: TAXES</u>	2829
17	<u>ARTICLE 16: UTILITIES</u>	29
18	<u>ARTICLE 17: MAINTENANCE</u>	29
19	<u>ARTICLE 18: LIENS</u>	30
20	<u>ARTICLE 19: GENERAL REMEDIES</u>	31
21	<u>ARTICLE 20: DAMAGE AND DESTRUCTION</u>	35
22	<u>ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;</u>	
23	<u>INDEMNIFICATION</u>	37
24	<u>ARTICLE 22: INSURANCE</u>	39
25	<u>ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS</u>	47
26	<u>ARTICLE 24: ENTRY</u>	48
27	<u>ARTICLE 25: MORTGAGE FINANCING</u>	50
28	<u>ARTICLE 26: PROTECTION OF LENDER</u>	53
29	<u>ARTICLE 27: CONDEMNATION AND TAKINGS</u>	61
30	<u>ARTICLE 28: ESTOPPEL CERTIFICATE</u>	63
31	<u>ARTICLE 29: QUITCLAIM</u>	63
32	<u>ARTICLE 30: EQUAL OPPORTUNITY</u>	63
33	<u>ARTICLE 31: CERTIFICATE OF PREFERENCE PROGRAM</u>	64
34	<u>ARTICLE 32: LABOR STANDARDS PROVISIONS</u>	64
35	<u>ARTICLE 33: CONFLICT OF INTEREST</u>	65
36	<u>ARTICLE 34: NO PERSONAL LIABILITY</u>	65
37	<u>ARTICLE 35: ENERGY CONSERVATION</u>	65
38	<u>ARTICLE 36: WAIVER</u>	65
39	<u>ARTICLE 37: TENANT RECORDS</u>	66
40	<u>ARTICLE 38: NOTICES AND CONSENTS</u>	66
41	<u>ARTICLE 39: HEADINGS</u>	68
42	<u>ARTICLE 40: SUCCESSORS AND ASSIGNS</u>	68

1 **ARTICLE 41: TIME** 68
2 **ARTICLE 42: PARTIAL INVALIDITY** 68
3 **ARTICLE 43: APPLICABLE LAW** 69
4 **ARTICLE 44: ATTORNEY'S FEES** 69
5 **ARTICLE 45: EXECUTION IN COUNTERPARTS** 69
6 **ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE** 69
7 **ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT** 69
8 **ARTICLE 48: CITY PROVISIONS** 70
9 **ARTICLE 49: COMPLETE AGREEMENT** 83
10 **ARTICLE 50: ATTACHMENTS** 83

11
12 Attachments to Ground Lease

- 13
14 1. Legal Description of Site
15 2. Schedule of Performance
16 3. City Consent of Leasehold Mortgage
17 4. Certificate of Preference Policy
18 5. Memorandum of Ground Lease
19 6. Form of Tenant Income Certification
20
21
22

1 **AMENDED AND RESTATED GROUND LEASE**

2 This ground lease ("Ground Lease") is dated as of, _____ 2015, by and between
3 the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City" or
4 "Landlord"), represented by the Mayor, acting by and through the Mayor's Office of Housing and
5 Community Development ("MOHCD"), and O'FARRELL TOWERS ASSOCIATES, L.P., a
6 California limited partnership, as tenant (the "Tenant" or the "Partnership").

7 **RECITALS**

8 A. The City is the fee owner of the land described in Attachment 1 attached hereto
9 ("Site"). The former San Francisco Redevelopment Agency (the "Agency") leased the Site to
10 Citizens Housing Corporation ("Citizens") pursuant to that certain ground lease dated August 4,
11 2000 (the "Original Ground Lease")

12 B. Citizens assigned its interest in the Original Ground Lease to O'Farrell Senior
13 Housing, Inc. ("OSHI") on April 19, 2005, an affiliate of Citizens.

14 C. OSHI has operated the building located on the Property (the "Improvements")
15 as affordable housing for low and very low income seniors with ground floor commercial use.

16 D. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-
17 12, first Extraordinary Session) ("AB 26"), the Agency dissolved as a matter of law on February
18 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 ("AB
19 1484"), and Resolution No. 11-12, adopted by the City's Board of Supervisors and Mayor on
20 January 26, 2012, Ordinance No. 215-12, adopted by the City's Board of Supervisors and Mayor
21 on October 12, 2012, and the approved housing asset list submitted by City to, and approved by,
22 the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code
23 Section 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all of

1 the Agency's rights and obligations with respect to the Site.

2 E. MOHCD wishes to consent to the assignment by OSHI to the Partnership, the
3 general partner of which is managed by an affiliate of OSHI, of OSHI's leasehold interest in the
4 Site and concurrently enter into this amended and restated ground lease ("Ground Lease") with
5 the Partnership in order to facilitate a tax credit rehabilitation of the Improvements to retain its
6 current use as 101 unit senior rental housing development serving low-income households
7 (including one manager's unit), which is known as O'Farrell Towers (the "Project").

8 Concurrently with the execution of this Ground Lease, Tenant is purchasing a fee interest in the
9 improvements and desires to rehabilitate said improvements.

10 F. The City has established an affordable housing program to promote the
11 retention and development of housing which is affordable to low income households.

12 G. The City believes that the fulfillment of the terms and conditions of this Ground
13 Lease are in the vital and best interests of the City and the health, safety, morals and welfare of its
14 residents, and in full accord with the public purposes and provisions of applicable State and
15 Federal laws and requirements.

16
17 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
18 City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as
19 defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter
20 set forth, to each and all of which the City and Tenant hereby mutually agree.

21 **ARTICLE 1: DEFINITIONS**

22 Terms used herein have the meanings given them when first used or as set forth in this

1 Article 1, unless the context clearly requires otherwise.

2 **1.01 Agreement Date** means the date set forth on the cover page.

3 **1.02 Area Median Income** (or “AMI”) means area median income as determined by
4 the United States Department of Housing and Urban Development for the San Francisco area,
5 adjusted solely for household size, but not high housing cost area.

6 **1.03 Effective Date** means the date the City records a Memorandum of Ground Lease
7 against the Site, but in no event shall the date be prior to the approval of the Ground Lease by the
8 City’s Board of Supervisors and Mayor.

9 **1.04 First Lease Payment Year** means the year in which rehabilitation activities are
10 completed on the Project, as evidenced by a NOC (as defined in Section 10.14 of this Ground
11 Lease).

12 **1.05 First Mortgage Lender** means any lender and its successors, assigns and
13 participants or other entity holding the first deed of trust on the Leasehold Estate.

14 **1.06 Ground Lease** means this Ground Lease of the Site to the Tenant from the City, as
15 amended from time to time.

16 **1.07 Improvements** means all physical construction, including all structures, fixtures
17 and other improvements to be rehabilitated on the Site.

18 **1.08 Law** means all statutes, laws, ordinances, regulations, orders, writs, judgments,
19 injunctions, decrees or awards of the United States or any state, county, municipality or
20 governmental agency.

21 **1.09 Lease Year** means each calendar year during the term hereof, beginning on
22 January 1 and ending on December 31, provided that the “First Lease Year” shall commence on

1 the Effective Date and continue through December 31st of that same calendar year. Furthermore,
2 the “Last Lease Year” shall end upon the expiration of the Term hereof.

3 **1.10 Leasehold Estate** means the estate held by the Tenant pursuant to and created by
4 this Ground Lease.

5 **1.11 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of
6 credit or other security instrument, and any assignment of the rents, issues and profits from the
7 Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this
8 Ground Lease and will be approved in writing by the City.

9 **1.12 Lender** means any entity holding a Leasehold Mortgage.

10 **1.13 Loan Documents** means those certain loan agreements, notes, deeds of trust and
11 declarations and any other documents executed and delivered in connection with the construction
12 and permanent financing for the Project.

13 **1.14 Low-Income Households** means households earning no more than sixty percent
14 (60%) of Area Median Income.

15 **1.15 MOHCD** means the Mayor’s Office of Housing and Community Development for
16 the City.

17 **1.16 Occupant** means any person or entity authorized by Tenant to occupy a residential
18 unit on the Site, or any portion thereof.

19 **1.17 Permitted Limited Partner** means Wincopin Circle LLP as investor limited
20 partner .

21 **1.18 Premises** means the Site together with any Improvements thereon. [NOTE: No
22 preapproved transfers so Prohibited Person concept not needed]

1 **1.19 Project** means the rehabilitation of the existing Improvements, consisting of 101
2 units of multifamily rental housing plus community space and common areas serving low and
3 very low income households. If indicated by context, Project means the leasehold interest in the
4 Site and the fee interest in the Improvements on the Site.

5 **1.20 Project Expenses** means all charges incurred by Tenant in the operation of the
6 Project including but not limited to: (a) lease payments, utilities, real estate and/or possessory
7 interest taxes, assessments, and liability, fire and other hazard insurance premiums; (b) salaries,
8 wages and other compensation due and payable to the employees or agents of Tenant who
9 maintain, administer, operate or provide services in connection with the Project, including all
10 withholding taxes, insurance premiums, Social Security payments and other payroll taxes or
11 payments required for such employees; (c) payments of required interest and principal, if any, on
12 any construction or permanent financing secured by the Project; (d) all other expenses incurred by
13 Tenant to cover routine operating and services provision costs of the Project, including
14 maintenance and repair and the reasonable fee of any managing agent; (e) any extraordinary
15 expenses as approved in advance by the City; (f) deposits to reserves accounts required to be
16 established under the Loan Documents or Partnership Agreement, and (g) an asset management
17 fee in the amount of \$18,420 per year (for 2015), which fee shall increase by 3.5% per year,(h)
18 deferred developer fee; and (i) approved expenses for social services.

19 **1.21 Project Income** means all revenue, income receipts, and other consideration
20 actually received from the operation of leasing the Improvements and Project, including non-
21 residential and/or commercial uses of the Site. Project Income shall include but not be limited to:
22 all rents, fees and charges paid by tenants or users of any portion of the Site; Section 8 or other

1 rental subsidy payments received for the dwelling units; supportive services funding, if
2 applicable; commercial lease income; deposits forfeited by tenants; all cancellation fees, price
3 index adjustments and any other rental adjustments to leases or rental agreements; proceeds from
4 vending and laundry room machines; and the proceeds of business interruption or similar
5 insurance. Project Income shall not include tenants' security deposits, loan proceeds, capital
6 contributions or similar advances.

7 **1.22 Seller Note** means the promissory note executed by Owner in favor of O'Farrell
8 Senior Housing, Inc. in the original principal amount of \$19,666,654.

9 **1.23 Site** means the real property as more particularly described in the Site Legal
10 Description, Attachment 1.

11 **1.24 Subsequent Owner** means any successor (including a Lender or an affiliate or
12 assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the
13 Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure,
14 or transfer from a Lender, its affiliate, and any successors to any such person or entity.

15 **1.25 Surplus Cash** means the excess of Project Income over Project Expenses. All
16 permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(g) of this
17 Ground Lease.

18 **1.26 Tenant** means O'Farrell Towers Associates, L.P., a California limited partnership
19 and its successors and assigns (or a Subsequent Owner, where appropriate).

20 **1.27 Very Low-Income Households** means households earning no more than fifty
21 percent (50%) of Area Median Income.

22 Whenever an Attachment is referenced under this Ground Lease, it means an attachment

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

4 **ARTICLE 2: TERM**

5 (a) Initial Term. The term of this Ground Lease shall commence upon the Effective
6 Date and shall end sixty five (65) years from that date ("Term"), unless extended pursuant to
7 section (b) below or earlier terminated pursuant to the terms hereof.

8 (b) Option for Extension. Provided that the Tenant is not in default under the terms of
9 this Ground Lease and the Loan Documents, beyond any notice, grace or cure period, either at the
10 time of giving of an Extension Notice (as defined below), as described in subparagraph (c) below,
11 or on the last day of the Term (the "Termination Date"), the Term may be extended at the option
12 of the Tenant for one thirty four (34) year period as provided below. If the Term is extended
13 pursuant to this section, all references in this Ground Lease to the "Term" shall mean the Term as
14 extended by this extension period.

15 (c) Notice of Extension. Tenant shall have one (1) option to extend the term of this
16 Ground Lease for a period of thirty four (34) years from the Termination Date. Not later than one
17 hundred eighty (180) days prior to the Termination Date, the Tenant may notify the City in
18 writing that it wishes to exercise its option to extend the term of this Ground Lease (an "Extension
19 Notice"). In the event that Tenant fails to deliver timely the Exercise Notice, City shall deliver to
20 Tenant written notice of Tenant's failure to deliver timely the Exercise Notice (the "Reminder
21 Extension Notice") and Tenant shall have an additional one hundred eighty (180) days after
22 receipt of the Reminder Extension Notice to exercise the option to extend the term of this Ground

1 Lease. Upon Tenant's exercise of this option, the Initial Term shall be extended for thirty four
2 (34) years from the Termination Date for a total Ground Lease term of not to exceed ninety-nine
3 (99) years.

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

6 (e) Right of First Refusal. If during the Term or extended term of this Ground Lease,
7 the City desires to sell its interest in the Site, the Tenant will have the right of first refusal to
8 negotiate for the purchase of the Site as set forth in Section 14.02 provided that the Tenant agrees
9 to maintain the Site as a low and very low income housing development for fifty-five (55) years
10 from the date of purchase.

11 (f) Holding Over. Any holding over after expiration of the Term or, if applicable,
12 extended term without the City's written consent will constitute a default by Tenant and entitle
13 the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City
14 elects to accept one or more payments of Annual Rent.

15 **ARTICLE 3: FINANCING**

16 Tenant shall submit to the City in accordance with the dates specified in the Schedule of
17 Performance, Attachment 2, for approval by the City, evidence satisfactory to the City that Tenant
18 has sufficient equity capital and commitments for construction and permanent financing, and/or
19 such other evidence of capacity to proceed with the rehabilitation of the Improvements in
20 accordance with this Ground Lease, as is acceptable to the City. City hereby acknowledges that
21 as of the Effective Date, Tenant has satisfied this requirement.

22 **ARTICLE 4: RENT**

1 **4.01 Annual Rent**

2 (a) Tenant shall pay to the City Two Hundred Ten Thousand (\$210,000) (the “Annual
3 Rent”) per year for each year of the Term of this Ground Lease. Annual Rent consists of Base
4 Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as
5 otherwise permitted by this Lease) and without necessity of demand, notice or invoice. Annual
6 Rent shall be re-determined on the fifteenth (15th) anniversary of the date of the First Lease
7 Payment Year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of
8 the appraised value of the Site as determined by an MAI appraiser selected by and at the sole cost
9 of the City.

10 (b) If the Tenant elects to extend the term of this Ground Lease pursuant to Article 2
11 above, Annual Rent (along with any potential future adjustments) during any such extended term
12 shall be set by mutual agreement of the parties, taking into account the affordable housing
13 restrictions contained in Section 9.02, project debt (including any surplus cash debt obligations)
14 and the annual income expected to be generated by the Project; provided however that Annual
15 Rent during the extended term shall in no event be less than the Annual Rent set forth in 4.01(a)
16 above. If the parties cannot agree on Annual Rent during any extended term, either party may
17 invoke a neutral third-party process and shall agree on a neutral third-party appraiser to set the
18 Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving
19 similar rent determination disputes in San Francisco taking into account the affordable housing
20 restrictions contained in Section 9.02 Project debt (including any surplus cash debt obligations)
21 and the annual income expected to be generated by the Project or, in the event that there is no
22 then-prevailing practice, in accordance with the rules of the American Arbitration Association.

1 Provided, however, that after the neutral third party process, Tenant, in its sole discretion may
2 rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease. The
3 costs associated with such third-party process shall be shared equally by the parties.

4 **4.02 Base Rent**

5 (a) "Base Rent", means, in any given Lease Year, FIFTEEN THOUSAND DOLLARS
6 (\$15,000) per annum. Base Rent shall be due and payable in arrears on January 31st of each
7 Lease Year, however no Base Rent shall be due until after completion of the Project. The first
8 Base Rent payment shall be due on the January 31st of the calendar year following the First Lease
9 Payment Year, and shall be equal to \$15,000 times the number of days in the year following
10 receipt of the initial certificate of occupancy for the Improvements, divided by 365; and provided,
11 further, that in the event that the Tenant or any Subsequent Owner fails, after notice and
12 opportunity to cure, to comply with the provisions of Section 9.02, Base Rent shall be increased
13 to the full amount of Annual Rent. Additionally, in the event that a Subsequent Owner elects
14 pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or any
15 Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without compliance
16 with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

17 (b) If the Project does not have sufficient Project Income to pay Base Rent and the
18 City has received written notice from Tenant regarding its inability to pay Base Rent from Project
19 Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue with
20 compound annual [AFR] until paid ("**Base Rent Accrual**"). The Base Rent Accrual shall be due
21 and payable each year from and to the extent Surplus Cash is available to make such payments
22 and, in any event, upon the earlier of (i) sale of the Project, (ii) or termination of this Ground

1 Lease or (iii) 57 years from the date of this Lease. All Base Rent payable after year 57 shall be
2 due and payable annually in arrears on January 31 regardless of the (AVAILABILITY) of
3 Surplus Cash.

4 (c) If Tenant has not provided City with written notice that it cannot pay Base Rent
5 due to insufficient Project Income, the City shall assess a late payment penalty of two percent
6 (2%) for each month or any part thereof that any Base Rent payment is delinquent. The Tenant
7 may request in writing that the City waive such penalties by describing the reasons for Tenant's
8 failure to pay Base Rent and Tenant's proposed actions to insure that Base Rent will be paid in
9 the future. The City may, in its sole discretion, waive in writing all or a portion of such penalties
10 if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is
11 diligently pursuing reasonable solutions to such failure to pay.

12 4.03 Residual Rent

13 "Residual Rent" means, in any given Lease Year, ONE HUNDRED NINETY
14 FIVE THOUSAND DOLLARS (\$195,000), subject to any periodic adjustments pursuant to
15 Section 4.01(a). Residual Rent shall be due in arrears on April 15th following each Lease Year.
16 Except as otherwise provided in Section 26.07(a), Residual Rent shall be payable only to the
17 extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent shall
18 accrue at a compound annual interest rate equal to [AFR]% and shall be paid in a later year from
19 available Surplus Cash, but in all events all Residual Rent accrued during the first fifty-five years
20 of the Term shall be paid no later than December 31, 2070. In the event that in any year Surplus
21 Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to the City in
22 writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant

1 shall provide to City any supporting documentation reasonably requested by City to allow City to
2 verify the insufficiency. Any accrued but unpaid Residual Rent shall be due and payable upon the
3 earlier of (i) sale of the Project; (ii) termination of this Ground Lease or (iii) 57 years from the
4 date of this Lease. All Residual Rent payable after year 57 shall be due and payable annually in
5 arrears on January 31 regardless of the (AVAILABILITY) of Surplus Cash.

6 7 **4.04 Triple Net Lease**

8 This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs,
9 charges, taxes, impositions and other obligations related thereto accruing after the Agreement
10 Date. If the City pays any such amounts, whether to cure a default or otherwise protect its
11 interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such
12 payments as additional rent within thirty (30) days of written demand by City. Failure to timely
13 pay the additional rent shall be an event of default.

14 **ARTICLE 5: CITY COVENANTS**

15 The City is duly created, validly existing and in good standing under the Law, and has full
16 right, power and authority to enter into and perform its obligations under this Ground Lease. City
17 covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the lease
18 term, peaceful, quiet and undisputed possession of the Site leased without hindrance or
19 molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

20 **ARTICLE 6: TENANT COVENANTS**

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

1 **6.01 Limited Partnership Authority**

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

4 **6.02 Use of Site and Rents**

5 During the Term of this Ground Lease, Tenant and such successors and assigns shall
6 comply with the following requirements:

7 **6.02(a) Permitted Uses**

8 Except as otherwise provided in Section 26.06 and 26.07 of this Ground Lease,
9 Tenant shall devote the Site to, exclusively and in accordance with, the uses specified in this
10 Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground
11 Lease.

12 **6.02(b) Non-Discrimination**

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

1 **6.02(c) Non-Discriminatory Advertising**

2 All advertising (including signs) for sublease of the whole or any part of the Site
3 shall include the legend “Equal Housing Opportunity” in type or lettering of easily legible size
4 and design, or as required by applicable law.

5 **6.02(d) Access for Disabled Persons**

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

9 **6.02(e) Equal Opportunity Marketing Plan**

10 Tenant shall submit a Fair Housing Marketing Plan to be approved by the City
11 which approval shall not be unreasonably withheld, conditioned or delayed. Any Fair Housing
12 Marketing Plan must follow the City’s marketing requirements for such plans.

13 **6.02(f) Lead Based Paint**

14 Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all
15 applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain
16 residential structures undergoing federally assisted construction and require the elimination of
17 lead-based paint hazards.

18 **6.02(g) Permitted Uses of Surplus Cash**

19 All annual Project Income, prior to the calculation of Surplus Cash, shall be used
20 to pay Project Expenses. If the Tenant is in compliance with all applicable requirements and
21 agreements under this Ground Lease, Tenant shall then use any Surplus Cash to make the

1 following payments:

- 2 i. First to Base Rent Accrual payments, if any;
- 3 ii. Second, to replenish the operating reserve account, if necessary, up to the
4 amount required by Lenders;
- 5 iii. Third, to an asset management fee to the limited partner of Tenant in the
6 annual amount of \$5,000, increasing by 3% per year;
- 7 iv. Then, sixty six and sixty six hundredths percent (66.66%) of remaining
8 Surplus Cash to the City as payment of the Residual Rent and thirty percent
9 (30.00%) as payment on the Seller Note;
- 10 v. Then, any remaining Surplus Cash may be used by Tenant for any purposes
11 permitted under the amended and restated limited partnership agreement of
12 Tenant, as it may be amended from time to time.

13 **6.03 City Deemed Beneficiary of Covenants**

14 In amplification, and not in restriction, of the provisions of the preceding subsections, it is
15 intended and agreed that the City shall be deemed beneficiary of the agreements and covenants
16 provided in this Article 6 for and in its own right and also for the purposes of protecting the
17 interests of the community and other parties, public or private, in whose favor or for whose
18 benefit such agreements and covenants have been provided. Such agreements and covenants shall
19 run in favor of the City for the entire period during which such agreements and covenants shall be
20 in force and effect, without regard to whether the City has at any time been, remains, or is an
21 owner of any land or interest therein to, or in favor of, which such agreements and covenants
22 relate. The City shall have the right, in the event of any breach of any such agreements or

1 covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights
2 and remedies and to maintain any actions at law or suits in equity or other proper proceedings to
3 enforce the curing of such breach of covenants, to which it or any other beneficiaries of such
4 agreements or covenants may be entitled.

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

6 Forty-five (45) days after recordation of a NOC (as defined in Section 10.14) by the
7 Tenant for the Improvements, and not later than December 31st of each year thereafter, Tenant
8 will furnish to the City a list of the persons who are Occupants of the Improvements, the specific
9 unit which each person occupies, the household income of the Occupants of each unit, the
10 household size and the rent being charged to the Occupants of each unit along with an income
11 certification, in the form set forth in Attachment 6, for each Occupant. In addition, each
12 Occupant must be required to provide any other information, documents or certifications deemed
13 necessary by the City to substantiate the Occupant's income. If any state or federal agency
14 requires an income certification for Occupants of the Improvements containing the above-
15 referenced information, the City agrees to accept such certification in lieu of Attachment 6 as
16 meeting the requirements of this Ground Lease. In addition to such initial and annual list and
17 certification, Tenant agrees to provide the same information and certification to the City regarding
18 each Occupant of the Improvements not later than twenty (20) business days after such Occupant
19 commences occupancy.

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

21 Neither the City, nor any employee, agent or representative of the City has made any
22 representation, warranty or covenant, expressed or implied, with respect to the Site, its physical

1 condition, the condition of any improvements, any environmental laws or regulations, or any
2 other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth
3 explicitly in this Ground Lease, and the Tenant understands and agrees that the City is making no
4 such representation, warranty or covenant, expressed or implied; it being expressly understood
5 that the Site is being leased in an "AS IS" condition with respect to all matters.

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

7 **9.01 Schedule of Performance**

8 Tenant agrees to undertake and complete all physical construction on the Site, if any, as
9 approved by the City, in accordance with the Schedule of Performance, Attachment 2

10 **9.02 Permitted Uses and Occupancy Restrictions**

11 The permitted uses of the Project are limited to 100 units of affordable rental housing plus
12 one manager's unit (collectively, the "Residential Units") and common areas. At all times during
13 the Term, 100 units in the Project shall be occupied or held vacant and available for rental by Low
14 Income Households. Residential Units shall be occupied and rented in accordance with all
15 applicable restrictions imposed on the Project by Lenders for so long as such restrictions are
16 required by the applicable Lender.

17 **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

18 **10.01 General Requirements and Rights of City**

19 All construction documents, including but not limited to preliminary and final plans and
20 specifications for the rehabilitation of the Improvements by Tenant (collectively the
21 "Construction Documents") shall be prepared by a person registered in and by the State of
22 California to practice architecture and shall be in conformity with this Ground Lease, including

1 any limitations established in the City's reasonable approval of the schematic drawings, if any,
2 preliminary construction documents, and final construction documents for the Premises, and all
3 applicable Federal, State and local laws and regulations. The architect shall use, as necessary,
4 members of associated design professions, including engineers and landscape architects.

5 **10.02 City Approvals and Limitation Thereof**

6 The Construction Documents must be approved by the City in the manner set forth
7 below:

8 **10.02(a) Compliance with Ground Lease**

9 The City's approval with respect to the Construction Documents is limited to
10 determination of their compliance with this Ground Lease, including, if applicable, the Scope of
11 Development. The Construction Documents shall be subject to general architectural review and
12 guidance by City as part of this review and approval process.

13 **10.02(b) MOHCD Does Not Approve Compliance with Construction**
14 **Requirements**

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

18 **10.02(c) City Determination Final and Conclusive**

19 The City's determination respecting the compliance of the Construction
20 Documents with this Ground Lease shall be final and conclusive (except that it makes no
21 determination and has no responsibility for the matters set forth in Section 10.02(b), above).

22

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

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

3 The construction shall be in strict compliance with the City-approved Construction
4 Documents.

5 **10.03(b) Compliance with Local, State and Federal Law**

6 The construction shall be in strict compliance with all applicable local, State and
7 Federal laws and regulations.

8 **10.04 Approval of Construction Documents by City**

9 Tenant shall submit and City shall approve or disapprove the Construction Documents
10 referred to in this Ground Lease within the times established in the Schedule of Performance.
11 Failure by City either to approve or disapprove within the times established in the Schedule of
12 Performance shall entitle Tenant to a day for day extension of time for completion of any
13 activities delayed as a direct result of City's failure to timely approve or disapprove the
14 Construction Documents. City hereby acknowledges that as of the Effective Date, City has
15 approved the Construction Documents.

16 **10.05 Disapproval of Construction Documents by City**

17 If the City disapproves the Construction Documents in whole or in part as not being in
18 compliance with this Ground Lease, Tenant shall submit new or corrected plans which are in
19 compliance within thirty (30) days after written notification to it of disapproval, and the provision
20 of this section relating to approval, disapproval and re-submission of corrected Construction
21 Documents shall continue to apply until the Construction Documents have been approved by the
22 City; provided, however, that in any event Tenant must submit satisfactory Construction

1 Documents (i.e., approved by City) no later than the date specified therefor in the Schedule of
2 Performance.

3 **10.06 Intentionally Omitted**

4 **10.07 Issuance of Building Permits**

5 Tenant shall have the sole responsibility for obtaining all necessary building
6 permits and shall make application for such permits directly to the City's Department of Building
7 Inspection. The City understands and agrees that Tenant may use the Fast Track method of
8 permit approval for rehabilitation of the Improvements.

9 **10.08 Performance and Payment Bonds**

10 Prior to commencement of construction of the Improvements, Tenant shall deliver to City
11 performance and payment bonds, each for the full value of the cost of construction of the
12 Improvements, which bonds shall name the City as co-obligee, or such other completion security
13 which is acceptable to the City. The payment and performance bonds may be posted by Tenants'
14 general contractor and name Tenant and City as co-obligees.

15 **10.09 City Approval of Changes after Commencement of Construction**

16 Once construction has commenced, the only Construction Document matters subject to
17 further review by the City will be requests for any material changes in the Construction
18 Documents which affect matters previously approved by the City. Permission to make such
19 changes shall be requested by Tenant in writing directed to MOHCD, Attention: Senior Project
20 Manager/Construction Supervisor or his or her designee. MOHCD shall reply in writing giving
21 approval or disapproval of the changes within ten (10) business days after receiving such request.
22 If the request is disapproved, the reply must specify the reasons for the disapproval.

1 **10.10 Times for Construction**

2 Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any
3 part thereof, that Tenant and such successors and assigns shall promptly begin and diligently
4 prosecute to completion the rehabilitation of the Improvements upon the Site, and that such
5 construction shall in any event commence and thereafter diligently continue and shall be
6 completed no later than the dates specified in the Schedule of Performance, subject to force
7 majeure, unless such dates are extended by the City.

8 **10.11 Force Majeure**

9 For the purposes of any of the provisions of this Ground Lease, and notwithstanding
10 anything to the contrary, neither the City nor Tenant, as the case may be, shall be considered in
11 breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions
12 with respect to the beginning and completion of construction of the Improvements, or progress in
13 respect thereto, in the event of enforced delay in the performance of such obligations or
14 satisfaction of such conditions, due to unforeseeable causes beyond its control and without its
15 fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the
16 Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes,
17 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
19 event of the occurrence of any such enforced delay, the time or times for the satisfaction of
20 conditions to this Ground Lease including those with respect to construction of the Improvements,
21 shall be extended for the period of the enforced delay; provided, however, that the party seeking
22 the benefit of the provisions of this paragraph shall have notified the other party thereof in writing

1 of the cause or causes thereof within thirty (30) days after the beginning of any such enforced
2 delay and requested an extension for the period of the enforced delay; and, provided further, that
3 this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be
4 construed to extend, the time of performance of any of Tenant's obligations to be performed prior
5 to the commencement of construction, nor shall the failure to timely perform pre-commencement
6 of construction obligations extend or be construed to extend Tenant's obligations to commence,
7 prosecute and complete rehabilitation of the Improvements in the manner and at the times
8 specified in this Ground Lease.

9 **10.12 Reports**

10 **10.12(a)** Commencing when rehabilitation of the Improvements commences
11 and continuing until completion of rehabilitation of the Improvements, Tenant shall make a report
12 in writing to the City every month, in such detail as may reasonably be required by the City, as to
13 the actual progress of the Tenant with respect to such construction. Commencing as of the
14 Effective Date and continuing until completion of the rehabilitation of the Improvements, Tenant
15 shall be subject to inspection by representatives of the City, at reasonable times and upon
16 reasonable advance notice.

17 **10.12(b)** Tenant will have the right to have an employee, agent, or other
18 representative of Tenant accompany the City representative at all times while the Landlord
19 representative is present on the Site. The City and its representatives will exercise due care in
20 entering upon and/or inspecting the Site, and will perform all entry and inspection in a
21 professional manner and so as to preclude any damage to the Site or Improvements, or any
22 disruption to the work of construction or operation of the Improvements. The City and its

1 representatives will abide by any reasonable safety and security measures Tenant imposes.

2 **10.13 Access to Site**

3 Commencing as of the Effective Date, Tenant shall permit access to the Site to the City
4 whenever and to the extent necessary to carry out the purposes of the provisions of this Ground
5 Lease, at reasonable times and upon reasonable advance notice. In accessing the Site, City shall
6 comply with Section 10.12(b).

7 **10.14 Notice of Completion**

8 Promptly upon completion of the rehabilitation of the Improvements in accordance with
9 the provisions of this Ground Lease, Tenant shall file a Notice of Completion (“NOC”), which
10 shall be recorded in the San Francisco Recorder’s Office.

11 **10.15 Completion of Improvements by New Developer**

12 In the event Lender or a successor thereto forecloses, obtains a deed in lieu of
13 foreclosure or otherwise realizes upon the Premises and undertakes rehabilitation of the
14 Improvements (“New Developer”) (A) such New Developer shall not be bound by the provisions
15 of the Schedule of Performance with respect to any deadlines for the completion of the
16 rehabilitation of the Improvements but shall only be required to complete the rehabilitation of the
17 Improvements with due diligence and in conformance with a new Schedule of Performance as
18 agreed upon by the New Developer and the City, (B) such New Developer shall only be required
19 to complete the rehabilitation of the Improvements in accordance with all applicable building
20 codes and ordinances, and the approved Construction Documents with such changes that are
21 mutually agreed upon by the City and the New Developer pursuant to Subsection (C) hereof; and
22 (C) City and New Developer shall negotiate in good faith such reasonable amendments and

1 reasonable modifications to Section 10 of this Lease as the parties mutually determine to be
2 reasonably necessary based upon the financial and construction conditions then existing.

3 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

4 **11.01 Certificate of Completion – Issuance**

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

19 City may elect to issue to Tenant a Certificate of Completion if no events of default by
20 Tenant are then existing under this Agreement and Tenant has completed the Improvements in
21 accordance with this Agreement, except for: (1) punch list items; (2) landscaping and other
22 outside areas of the Improvements; and (3) other items that do not adversely affect or impair

1 Tenant's use and occupancy of the Improvements for the purposes contemplated by this
2 Agreement and that do not preclude the City's issuance of a certificate of occupancy or other
3 certificate or authorization of Tenant's use and occupancy of the Improvements. However, City
4 will not be obligated to issue a Certificate of Completion in these circumstances unless and until
5 Tenant has provided to the City, at the City's request, a bond, letter of credit, certificate of
6 deposit, or other security reasonably acceptable to the City in an amount equal to 110% of the
7 estimated cost of completing the items described in clauses (1) through (3) above, as reasonably
8 determined by the City.

9 **11.02 Certifications to be Recordable**

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

12 **11.03 Certification of Completion - Non-Issuance Reasons**

13 If MOHCD shall refuse or fail to provide any certification in accordance with the
14 provisions of Section 11.01, the City shall provide Tenant with a written statement, within fifteen
15 (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant
16 has failed to complete the construction of the Improvements in accordance with the provisions of
17 this Ground Lease or is otherwise in default hereunder and what measures or acts will be
18 necessary, in the opinion of the City, for Tenant to take or perform in order to obtain such
19 certification. Failure by the City to either issue a Certificate of Completion or a written statement
20 within the times provided herein will entitle Tenant to a day for day extension of time for the
21 period of delay caused by City.

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

2 **12.01 Post Completion Changes**

3 The City has a particular interest in the Project and in the nature and extent of the
4 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the
5 following particular controls on the Site and on the Improvements: during the term of this
6 Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or
7 permit any Change in the Improvements (as defined in Section 12.02), unless the express prior
8 written consent for any change shall have been requested in writing from the City and obtained,
9 and, if obtained, upon such terms and conditions as the City may require. The City agrees not to
10 withhold or delay its response to such a request unreasonably.

11 **12.02 Definition of Change**

12 'Change' as used in this Article means any alteration, modification, addition and/or
13 substitution of or to the Site, the Improvements, and/or the density of development which differs
14 materially from that which existed upon the completion of construction of the Improvements in
15 accordance with this Ground Lease, and shall include without limitation the exterior design and
16 exterior materials. For purposes of the foregoing, exterior shall mean and include the roof of the
17 Improvements. Changes shall not include repairs, maintenance and interior alterations in the
18 normal course of operation of the Project, tenant improvements made by tenants to the
19 commercial space pursuant to commercial leases, or as may be required in an emergency to
20 protect the safety and well-being of the Project's Occupants.

21 **12.03 Enforcement**

22 Subject to Article 19 hereof, City shall have any and all remedies in law or equity

1 (including without limitation restraining orders, injunctions and/or specific performance), judicial
2 or administrative, to enforce the provisions of this Article 12, including without limitation any
3 threatened breach thereof or any actual breach or violation thereof.

4 **ARTICLE 13: TITLE TO IMPROVEMENTS**

5 City acknowledges that fee title to the Improvements is vested in Tenant. City and Tenant
6 hereby agree that fee title to the Improvements shall remain vested in Tenant during the Term,
7 subject to Section 14.01 below; provided however that, subject to the rights of any Lenders and as
8 further consideration for the City entering into this Ground Lease, at the expiration or earlier
9 termination of this Ground Lease, Tenant shall convey fee title to all the Improvements to the City
10 without any obligation by the City to pay any compensation therefor to Tenant. Upon expiration
11 or sooner termination of this Ground Lease, Tenant shall execute, acknowledge, and deliver to the
12 City a good and sufficient grant deed with respect to Tenant's fee interest in the Improvements.
13 City acknowledges and agrees that any and all depreciation, amortization and tax credits for
14 federal or state tax purposes relating to the Improvements and any and all additions thereto,
15 substitutions therefor, fixtures therein and other property relating thereto shall be deducted or
16 credited exclusively to Tenant during the Term and for the tax years during which the Term
17 begins and ends.

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

19 **14.01 Assignment, Sublease or Other Conveyance by Tenant**

20 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or
21 any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other
22 than to Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other

1 than leases to residential tenants in the ordinary course of business nor may it contract or agree to
2 do any of the same, without the prior written approval of the City, which approval shall not be
3 unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary,
4 Tenant may sell, assign, convey, sublease or transfer any or all of its interests in and to this
5 Ground Lease to Tenderloin Neighborhood Development Corporation (“TNDC”), or to an
6 affiliate or successor of TNDC, and may change, assign, acquire, or liquidate partnership interests
7 in Tenant, as permitted under Article 47 of this Ground Lease. The City reserves the right to
8 review and approve any commercial leases for the Site, which approval shall not be unreasonably
9 withheld, conditioned or delayed.

10 **14.02 Assignment, Sublease or Other Conveyance by City**

11 The parties acknowledge that any sale, assignment, transfer or conveyance of all or any
12 part of the City's interest in the Site, the Improvements, or this Ground Lease, is subject to this
13 Ground Lease. The City will require that any purchaser, assignee or transferee expressly assume
14 all of the obligations of the City under this Ground Lease by a written instrument recordable in
15 the Official Records of the City. This Ground Lease shall not be affected by any such sale, and
16 Tenant shall attorn to any such purchaser or assignee. In the event that the City intends to sell all
17 or any part of the Site, the City shall notify Tenant of the proposed terms of such sale not later
18 than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days
19 from the giving of such notice to exercise a right of first refusal to purchase the Site on the same
20 terms and conditions of such proposed sale, provided that any sale of City's interest in the Site
21 shall be subject to the prior approval of the City's Board of Supervisors and Mayor.

22 **ARTICLE 15: TAXES**

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

20 **ARTICLE 16: UTILITIES**

21 Tenant shall procure water and sewer service from the City and electricity, telephone,
22 natural gas and any other utility service from the City or utility companies providing such

1 services, and shall pay all connection and use charges imposed in connection with such services.
2 From and after the Effective Date, as between the City and Tenant, Tenant shall be responsible
3 for the installation and maintenance of all facilities required in connection with such utility
4 services to the extent not installed or maintained by the City or the utility providing such service.

5 **ARTICLE 17: MAINTENANCE**

6 Tenant, at all times during the term hereof, shall maintain or cause to be maintained the
7 Premises in good condition and repair to the reasonable satisfaction of the City, including the
8 exterior, interior, substructure and foundation of the Improvements and all fixtures, equipment
9 and landscaping from time to time located on the Site or any part thereof. The City shall not be
10 obligated to make any repairs, replacements or renewals of any kind, nature or description
11 whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

12 **ARTICLE 18: LIENS**

13 Tenant shall use its best efforts to keep the Site free from any liens arising out of any work
14 performed or materials furnished by itself or its subtenants. In the event that Tenant shall not
15 cause the same to be released of record or bonded around within twenty (20) days following
16 written notice from the City of the imposition of any such lien, the City shall have, in addition to
17 all other remedies provided herein and by law, the right but not the obligation to cause the same to
18 be released by such means as it shall deem proper, including payment of the claim giving rise to
19 such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it
20 in connection therewith, shall be payable to the City by Tenant on demand; provided, however,
21 Tenant shall have the right, upon posting of an adequate bond or other security, to contest any
22 such lien, and the City shall not seek to satisfy or discharge any such lien unless Tenant has failed

1 so to do within ten (10) days after the final determination of the validity thereof. In the event of
2 any such contest, Tenant shall protect, defend, and indemnify the City against all loss, cost,
3 expense or damage resulting therefrom.

4 **ARTICLE 19: GENERAL REMEDIES**

5 **19.01 Application of Remedies**

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

8 **19.02 Notice and Cure Rights for Tenant**

9 (a) The City may not exercise its remedies under this Ground Lease for a
10 default by the Tenant unless and until: (i) the City has given written notice of any such default, in
11 accordance with the notice provisions of Article 38, to Tenant and Permitted Limited Partners
12 who have requested notice as set forth below, and (ii) such default has not been cured within sixty
13 (60) days or such longer period as may be set forth herein, following the giving of such notice or,
14 if such default cannot be cured within such 60-day period, such longer period as is reasonably
15 necessary to cure such default, provided that such cure has been commenced within such 60-day
16 period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot
17 cure a default due to an automatic stay in Bankruptcy court because the general partner of the
18 Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic
19 stay.

20 (b) The City will not exercise its remedy to terminate this Ground Lease if a
21 Permitted Limited Partner is attempting to cure the default and such cure requires removal of the

1 General Partner, so long as the Permitted Limited Partner is proceeding diligently to remove the
2 General Partner in order to effect a cure of such default.

3 (c) Unless otherwise provided for herein, any limited partner wishing to become a
4 Permitted Limited Partner other than any Permitted Limited Partner identified in Section 38 must
5 provide five (5) days written notice to the City in accordance with the notice provisions of this
6 Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant
7 and all of the Tenant's partners. Such limited partner will become a Permitted Limited Partner
8 upon the expiration of the five-day period. A limited partner will not be afforded the protections
9 of this section with respect to any default occurring prior to the time such limited partner becomes
10 a Permitted Limited Partner.

11 **19.03 Breach by City**

12 If Tenant believes a material breach of this Ground Lease has occurred, Tenant shall first
13 notify the City in writing of the purported breach, giving the City sixty (60) days from receipt of
14 such notice to cure such breach. In the event City does not then cure or, if the breach is not
15 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)
16 days and thereafter diligently prosecute such cure to completion, then Tenant shall be afforded all
17 of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in
18 writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an
19 action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other
20 remedy available at law or equity.

21 **19.04 Breach by Tenant**

22 **19.04(a) Default by Tenant**

1 Subject to the notice and cure rights under Section 19.02, the following events
2 each constitute a default by Tenant and a basis for the City to take action against Tenant:

3 (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions
4 set forth in Section 9.02;

5 (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer
6 or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as
7 permitted by this Ground Lease or otherwise with the approval of the City;

8 (3) Tenant, or its successor in interest, shall fail to pay real estate taxes or
9 assessments on the Premises or any part thereof when due, or shall place thereon any
10 encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to
11 be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or
12 lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien
13 removed or discharged within the time period provided in Article 18; provided, however, that
14 Tenant shall have the right to contest any tax or assessment pursuant to Article 15 and Article 18
15 and, upon the posting of an adequate bond or other security, to contest any such lien or
16 encumbrance. In the event of any such contest, Tenant shall protect, indemnify and hold City
17 harmless against all losses and damages, including reasonable attorneys' fees and costs resulting
18 therefrom;

19 (4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer
20 in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have
21 brought against Tenant any action or proceeding of any kind under any provision of the Federal
22 Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event

1 such proceedings are involuntary, Tenant is not dismissed from the same within sixty (60) days
2 thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such
3 receiver is not discharged within sixty (60) days;

4 (5) Tenant breaches any other material provision of this Ground Lease;

5 (6) Tenant fails to pay any portion of Annual Rent when due in accordance
6 with the terms and provisions of this Ground Lease.

7 **19.04(b) Notification and City Remedies**

8 Upon the happening of any of the events described in Section 19.04(a) above, and
9 prior to exercising any remedies, the City shall notify Tenant, the Permitted Limited Partners, and
10 each Lender in writing of the Tenant's purported breach, failure or act in accordance with the
11 notice provisions of Article 38, giving Tenant sixty (60) days from receipt of such notice to cure
12 such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is not
13 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)
14 days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any
15 Lender and subject to Section 19.02 and Article 26, the City thereafter shall be afforded all of its
16 rights at law or in equity, including any or all of the following remedies: (1) terminating in
17 writing this Ground Lease; (2) prosecuting an action for damages; (3) seeking specific
18 performance of this Ground Lease; or (4) in the case of default under Section 19.04(a)(1),
19 increasing the Base Rent to the full amount of the Annual Rent.

20 Notwithstanding the foregoing, (i) during the 15-year tax credit compliance period,
21 City may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6)
22 above, and (ii) at all times during the term of the Lease, the ability of City to collect any unpaid

1 Residual Rent and the accrued interest on any unpaid Residual Rent shall be limited to the
2 exercise of its rights against the Property, and neither Tenant nor any of its partners shall have any
3 personal liability for repayment of any Residual Rent and/or accrued interest.

4 **ARTICLE 20: DAMAGE AND DESTRUCTION**

5 **20.01 Insured Casualty**

6 If the Improvements or any part thereof are damaged or destroyed by any cause covered
7 by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly
8 commence and diligently complete the restoration of the Improvements as nearly as possible to
9 the condition thereof prior to such damage or destruction; provided, however, that if more than
10 fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty
11 and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary
12 to accomplish the restoration, Tenant, with the written consent of Lender, may terminate this
13 Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction,
14 or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for
15 restoration. In the event Tenant is required or elects to restore the Improvements, all proceeds of
16 any policy of insurance required to be maintained by Tenant under this Ground Lease shall,
17 subject to any rights of Lenders, be used by Tenant for that purpose and Tenant shall make up
18 from its own funds or obtain additional financing as reasonably approved by the City any
19 deficiency between the amount of insurance proceeds available for the work of restoration and the
20 actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right
21 to do so under this Section 20.01, or elects not to restore the Improvements, the insurance
22 proceeds shall be divided in the order set forth in Section 20.03.

1 **20.02 Uninsured Casualty**

2 If (i) more than 50% of the Improvements are damaged or destroyed and ten percent
3 (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii)
4 in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be
5 completed or operated on an economically feasible basis; and (iii) there is not available to Tenant
6 any feasible source of third party financing for restoration reasonably acceptable to Tenant; then
7 Tenant may, with the written consent of each Lender, terminate this Ground Lease upon ninety
8 (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may
9 apply to a particular event of damage or destruction, Tenant shall notify the City promptly and not
10 consent to any settlement or adjustment of an insurance award without the City's written approval,
11 which approval shall not be unreasonably withheld or delayed. In the event that Tenant
12 terminates this Ground Lease pursuant to this Section 20.02, all insurance proceeds and damages
13 payable by reason of the casualty shall be divided among City, Tenant and Lenders in accordance
14 with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise
15 the right, to terminate this Ground Lease as a result of an uninsured casualty, Tenant shall
16 promptly commence and diligently complete the restoration of the Improvements as nearly as
17 possible to their condition prior to such damage or destruction in accordance with the provisions
18 of Section 20.01 and shall, subject to any applicable rights of Lenders, be entitled to all available
19 insurance proceeds.

20 **20.03 Distribution of the Insurance Proceeds**

21 In the event of an election by Tenant to terminate and surrender as provided in either
22 Sections 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance

1 policy required to be maintained by Tenant hereunder shall be as follows:

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

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

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

12 (d) The remainder to Tenant.

13 **20.04 Clean Up of Housing Site**

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

18 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;** 19 **INDEMNIFICATION**

20 **21.01 Damage to Person or Property - General Indemnification**

21 City shall not in any event whatsoever be liable for any injury or damage to any person
22 happening on or about the Site, for any injury or damage to the Premises, or to any property of

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

13 **21.02 Hazardous Materials – Indemnification**

14 (a) Tenant shall indemnify, defend, and hold the City, and its commissioners, officers,
15 agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified
16 Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and
17 causes of action of any nature whatsoever (including, without limitation, the reasonable fees and
18 disbursements of counsel and engineering consultants) incurred by or asserted against any
19 Indemnified Party in connection with, arising out of, in response to, or in any manner relating to
20 violation of any Environmental Law, or any Release threatened Release and any condition of
21 pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site.

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

1 (i) "Hazardous Substance" shall have the meaning set forth in the
2 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended
3 as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without
4 limitation, petroleum (including crude oil or any fraction thereof) and petroleum products,
5 asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing
6 materials, all hazardous substances identified in the California Health & Safety Code 25316 and
7 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any
8 substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant
9 under Environmental Law. The foregoing definition shall not include substances which occur
10 naturally on the Site.

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

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

20 **ARTICLE 22: INSURANCE**

21 **22.01 Insurance**

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

1 **22.01(a) Insurance Requirements for Tenant**

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

7 **22.01(b) Minimum Scope of Insurance**

8 Coverage shall be at least as broad as:

9 (1) Insurance Services Office Commercial General Liability coverage (form
10 CG 00 01 - "Occurrence") or other form approved by the City's Risk Manager.

11 (2) Insurance Services Office Automobile Liability coverage, code 1 (form CA
12 00 01 - "Any Auto") or other form approved by the City's Risk Manager.

13 (3) Workers' Compensation insurance as required by the State of California
14 and Employer's Liability insurance.

15 (4) Professional Liability Insurance: Tenant shall require that all architects,
16 engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors
17 and omissions. Tenant shall provide the City with copies of consultants' insurance certificates
18 showing such coverage.

19 (5) Insurance Services Office Property Insurance coverage (form CP 10 30 60
20 95 - "Causes of Loss - Special Form") or other form approved by the City's Risk Manager.

21 (6) Crime Policy or Fidelity Bond covering the Tenant's officers and
22 employees against dishonest with respect to the use of City funds.

23 **22.01(c) Minimum Limits of Insurance**

1 Tenant shall maintain limits no less than:

2 (1) General Liability: Commercial General Liability insurance with no less
3 than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million
4 Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including
5 coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability;
6 owners' and contractors' protective liability; products and completed operations; broad form
7 property damage; and explosion, collapse and underground (XCU) coverage during any period in
8 which Tenant is conducting any activity on, alteration or improvement to the Site with risk of
9 explosion, collapse, or underground hazards.

10 (2) Automobile Liability: Business Automobile Liability insurance with no
11 less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury
12 and property damage, including owned, hired and non-owned auto coverage, as applicable.

13 (3) Workers' Compensation and Employers Liability: Workers'
14 Compensation, in statutory amounts, with Employers' Liability limits not less than One Million
15 Dollars (\$1,000,000) each accident, injury, or illness.

16 (4) Professional Liability: Professional Liability insurance of no less than One
17 Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate
18 limit covering all negligent acts, errors and omissions of Tenant's architects, engineers and
19 surveyors. If the Professional Liability Insurance provided by the architects, engineers, or
20 surveyors is "claims made" coverage, Tenant shall assure that these minimum limits are
21 maintained for no less than three (3) years beyond completion of the construction or remodeling.

22 (5) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less

1 than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five
2 Thousand Dollars (\$5,000) each loss.

3 (6) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability
4 and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less
5 than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year,
6 this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may
7 be provided by the Tenant's contractor, provided that the policy must be "claims made" coverage
8 and Tenant must require Tenant's contractor to maintain these minimum limits for no less than
9 three (3) years beyond completion of the Project.

10 (7) Property Insurance:

11 (a) Prior to construction:

12 (i) Property insurance, excluding earthquake and flood, in the amount no
13 less than One Hundred Percent (100%) of the replacement value of all improvements prior to
14 commencement of construction and City property in the care, custody and control of the Tenant
15 or its contractor, including coverage in transit and storage off-site; the cost of debris removal and
16 demolition as may be made reasonably necessary by such perils, resulting damage and any
17 applicable law, ordinance or regulation; start up, testing and machinery breakdown including
18 electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss,
19 including the City and all subcontractors as loss payees.

20 (b) During the course of construction:

21 (i) Builder's risk insurance, special form coverage, excluding earthquake
22 and flood, for one hundred percent (100%) of the replacement value of all completed

1 improvements and City property in the care, custody and control of the Tenant or its contractor,
2 including coverage in transit and storage off-site; the cost of debris removal and demolition as
3 may be made reasonably necessary by such covered perils, resulting damage and any applicable
4 law, ordinance or regulation; start up, testing and machinery breakdown including electrical
5 arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk
6 policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand
7 Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

8 (ii) Performance and payment bonds of contractors, each in the amount of
9 One Hundred Percent (100%) of contract amounts, naming the City and Tenant as dual obligees
10 or other completion security approved by the City in its sole discretion.

11 (c) Upon completion of construction:

12 (i) Property insurance, excluding earthquake and flood, in the amount no
13 less than One Hundred Percent (100%) of the then-current replacement value of all improvements
14 and City property in the care, custody and control of the Tenant or its contractor. For
15 rehabilitation/construction projects that are unoccupied by residential or commercial tenants,
16 Tenant must obtain Property Insurance by the date that the project receives a Certificate of
17 Substantial Completion.

18 (ii) Boiler and machinery insurance, comprehensive form, covering damage
19 to, loss or destruction of machinery and equipment located on the Site that is used by Tenant for
20 heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not
21 less than one hundred percent (100%) of the actual replacement value of such machinery and
22 equipment.

1 **22.01(d) Deductibles and Self-Insured Retentions**

2 Any deductibles or self-insured retentions in excess of \$25,000 must be declared to
3 and approved by City’s Risk Manager. At the option of City’s Risk Manager, either: the insurer
4 shall reduce or eliminate such deductibles or self-insured retentions with respect to the City and
5 County of San Francisco, and their respective commissioners, members, officers, agents, and
6 employees; or the Tenant shall procure a financial guarantee satisfactory to the City’s Risk
7 Manager guaranteeing payment of losses and related investigations, claim administration and
8 defense expenses.

9 **22.01(e) Other Insurance Provisions**

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

11 (1) General Liability and Automobile Liability Coverage: The “City and
12 County of San Francisco and their respective commissioners, members, officers, agents, and
13 employees” are to be covered as additional insured with respect to: liability arising out of
14 activities performed by or on behalf of the Tenant related to the Project; products and completed
15 operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project;
16 and automobiles owned, leased, hired or borrowed by the Tenant for the operations related to the
17 Project. The coverage shall contain no special limitations on the scope of protection afforded to
18 the City and its Commissioners, members, officers, agents or employees.

19 (2) Workers' Compensation and Property Insurance: The insured shall agree to
20 waive all rights of subrogation against the “City and County of San Francisco, and their respective
21 commissioners, members, officers, agents, and employees” for any losses in connection with this
22 Project.

1 (3) Claims-made Coverage: Should any of the required insurance be provided
2 under a claims-made form, Tenant shall maintain such coverage continuously throughout the term
3 of this Agreement and, without lapse, for a period of three years beyond the expiration of this
4 Agreement, to the effect that, should occurrences during the contract term give rise to claims made
5 after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6 (4) All Coverage: Each insurance policy required by this Article shall:

7 (a) Be endorsed to state that coverage shall not be suspended, voided, canceled
8 by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written
9 notice has been given to City, except in the event of suspension for nonpayment of premium, in
10 which case ten (10) days' notice shall be given.

11 (b) Contain a clause providing that the City and its officers, agents and
12 employees will not be liable for any required premium.

13 (c) For any claims related to this Ground Lease, the Tenant's insurance
14 coverage shall be primary insurance with respect to the City and its commissioners, members,
15 officers, agents, and employees. Any insurance or self-insurance maintained by the City or its
16 commissioners, members, officers, agents, or employees shall be in excess of the Tenant's
17 insurance and shall not contribute with it.

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

20 (e) Any failure to comply with reporting provisions of the policies shall not
21 affect coverage provided to the City and its commissioners, members, officers, agents, or
22 employees.

1 (f) Approval of Tenant's insurance by the City will not relieve or decrease the
2 liability of Tenant under this Ground Lease.

3 (g) The City reserves the right to require an increase in insurance coverage in
4 the event the City determines that conditions show cause for an increase, unless Tenant
5 demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable
6 and unavailable to Tenant.

7 **22.01(f) Acceptability of Insurers**

8 Insurance is to be placed with insurers with a Best's rating of no less than A-VIII
9 or as otherwise approved by the City's Risk Manager.

10 **22.01(g) Verification of Coverage**

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

17 **22.01(h) Contractor, Subcontractors and Consultants Insurance**

18 Tenant shall include all subcontractors and consultants as additional insureds under
19 its policies or shall furnish separate certificates and endorsements for each. Tenant shall require
20 the subcontractor(s) to provide all necessary insurance and to name the City and County of San
21 Francisco, its officers, agents and employees and the Tenant as additional insureds. All coverage

1 for subcontractors and consultants shall be subject to all of the requirements stated herein unless
2 otherwise approved by the City's Risk Manager.

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

4 **23.01 Compliance with Legal Requirements**

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

15 **23.02 Regulatory Approvals**

16 Tenant understands and agrees that the City is entering into this Ground Lease in its
17 capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency
18 with certain police powers. Tenant understands and agrees that neither entry by the City into this
19 Ground Lease nor any approvals given by the City under this Ground Lease will be deemed to
20 imply that Tenant will obtain any required approvals from City departments, boards or
21 commissions that have jurisdiction over the Premises. By entering into this Ground Lease, the

1 City is in no way modifying or limiting the obligations of Tenant to develop the Project in
2 accordance with all Laws, as provided in this Ground Lease.

3 Tenant understands that its rehabilitation of the Improvements on the Premises and
4 development of the Project will require approval, authorization or permit by governmental
5 agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning
6 Administrator and the Department of Building Inspection. Tenant must use good faith efforts to
7 obtain and will be solely responsible for obtaining any such approvals required for the Project in
8 the manner set forth in this Section. Tenant will not seek any regulatory approval without first
9 obtaining MOHCD's approval, which approval shall not be unreasonably withheld or delayed.
10 Throughout the permit process for any regulatory approval, Tenant will consult and coordinate
11 with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with
12 Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition
13 of conditions or restrictions in connection with its efforts to obtain a permit from any other
14 regulatory agency if the City is required to be a co-permittee under the permit or the conditions or
15 restrictions could create any financial or other material obligations on the part of the City whether
16 on or off of the Premises, unless in each instance MOHCD has approved the conditions
17 previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will
18 limit Tenant's obligation to pay all the costs of complying with conditions under this Section.
19 Tenant must bear all costs associated with applying for and obtaining any necessary regulatory
20 approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's
21 failure to comply with the terms and conditions of any regulatory approval.

1 With MOHCD's prior written consent, Tenant will have the right to appeal or contest any
2 condition in any manner permitted by law imposed upon any regulatory approval. In addition to
3 any other indemnification provisions of this Ground Lease, Tenant must indemnify the City and
4 its commissioners, officers, agents or employees from and against any and all losses that may
5 arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any
6 regulatory approval or with the appeal or contest of any conditions of any regulatory approval,
7 except to the extent damage arises out of the gross negligence or willful misconduct of the City or
8 its agents.

9 **ARTICLE 24: ENTRY**

10 (a) The City reserves for itself and its authorized representatives the right to enter the
11 Property at all reasonable times during normal business hours upon not less than forty-eight (48)
12 hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the
13 occupants, tenants and others lawfully permitted on the Property, for any of the following
14 purposes:

15 (i) to inspect the work being performed by Tenant in developing the Project.

16 (ii) to determine whether the Premises is in good condition and to inspect the
17 Premises (including soil borings or other Hazardous Material Investigations);

18 (iii) to determine whether Tenant is in compliance with its Ground Lease obligations
19 and to cure or attempt to cure any Tenant default;

20 (iv) to serve, post or keep posted any notices required or allowed under any of the
21 provisions of this Ground Lease;

1 (v) to do any maintenance or repairs to the Premises that the City has the right or the
2 obligation, if any, to perform hereunder; and

3 (vi) to show the Premises to any prospective purchasers, brokers, Lenders or public
4 officials, or, during the last year of the Term of this Lease if notice of extension has not been
5 delivered during the initial Term, exhibit the Premises to prospective tenants or other occupants,
6 and to post any reasonable "for sale" or "for lease" signs in connection therewith.

7 (b) In the event of any emergency, as reasonably determined by the City, at its sole option
8 and without notice, the City may enter the Premises and alter or remove any Improvements or
9 Tenant's personal property on or about the Premises as reasonably necessary, given the nature of
10 the emergency. The City will have the right to use any and all means the City considers
11 appropriate to gain access to any portion of the Premises in an emergency, in which case, the City
12 will not be responsible for any damage or injury to any property, nor for the replacement of any
13 property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a
14 detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or
15 any portion thereof.

16 (c) The City will not be liable in any manner for any inconvenience, disturbance, loss of
17 business, nuisance or other damage arising out of the City's entry onto the Premises, except to the
18 extent damage arises out of the gross negligence or willful misconduct of the City or its agents.
19 The City will be responsible for any losses resulting from its gross negligence or willful
20 misconduct and will repair any resulting damage promptly.

21 (d) Tenant will not be entitled to any abatement in Annual Rent if the City exercises any
22 rights reserved in this Section, subject to subsection (c) above.

1 (e) The City will use its reasonable good faith efforts to conduct any activities on the
2 Premises allowed under this Section in a manner that, to the extent practicable, will minimize any
3 disruption to Tenant's use hereunder.

4 **ARTICLE 25: MORTGAGE FINANCING**

5 **25.01 No Encumbrances Except for Development Purposes**

6 Notwithstanding any other provision of this Ground Lease and subject to the prior written
7 consent of the City in the form attached hereto as Attachment 3, which consent shall not be
8 unreasonably withheld, conditioned or delayed, Leasehold Mortgages are permitted to be placed
9 upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing
10 the acquisition, design, construction, renovation or reconstruction of the Improvements and any
11 other expenditures reasonably necessary and appropriate to acquire, own, develop, construct,
12 renovate, or reconstruct the Improvements under this Ground Lease and in connection with the
13 operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in
14 furtherance of the purposes of this Ground Lease.

15 **25.02 Holder Not Obligated to Construct**

16 The holder of any mortgage, deed of trust or other security interest authorized by Section
17 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated
18 to complete any construction of the Improvements or to guarantee such completion; nor shall any
19 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.
20 However, in the event the Holder does undertake to complete or guarantee the completion of the
21 construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease shall
22 be deemed or construed to permit or authorize any such Holder or its successors or assigns to

1 devote the Site or any portion thereof to any uses, or to construct any Improvements thereon,
2 other than those uses or Improvements authorized under Section 9.02 subject to any reasonable
3 modifications in plans proposed by any Holder or its successors in interest proposed for the
4 viability of the Project, subject to the approval of City which approval shall not be unreasonably
5 withheld. To the extent any Holder or its successors in interest wish to change such uses or
6 construct different improvements, subject to Section 26.06(ii), that Holder or its successors in
7 interest must obtain the written consent of the City; provided, however, in such event Holder or
8 any Subsequent Owner shall negotiate in good faith revisions to the approved plans,
9 specifications and Schedule of Performance to the extent necessary or desirable to preserve the
10 economic and practical feasibility of the Project.

11 **25.03 Failure of Holder to Complete Construction**

12 In any case where six months after assumption of obligations pursuant to Section 25.02
13 above, a Holder, having first exercised its option to complete the construction, has not proceeded
14 diligently with completion of the construction, the City shall be afforded the rights against such
15 Holder it would otherwise have against Tenant under this Ground Lease for events or failures
16 occurring after such assumption; provided, however, if Lender has proceeded diligently with
17 construction, the Schedule of Performance shall not apply to Lender if such Schedule of
18 Performance has been replaced by the new Schedule of Performance pursuant to Section 10.15 of
19 this Agreement, which new Schedule of Performance will apply to Lender.

20 **25.04 Default by Tenant and City's Rights**

21 **25.04(a) Right of City to Cure a Default or Breach by Tenant under a**
22 **Leasehold Mortgage**

1 In the event of a default or breach by Tenant in or of its obligations under any
2 Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of
3 such default or breach, the City may, at its option, cure such breach or default at any time prior to
4 one hundred ten (110) days after the date on which the Lender files a notice of default. In such
5 event, the City shall be entitled to reimbursement from Tenant of all costs and expenses
6 reasonably incurred by the City in curing the default or breach. The City shall also be entitled to
7 a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and
8 disbursements that are not reimbursed by Tenant. Any such lien shall be subject to the lien of any
9 then existing Leasehold Mortgage authorized by this Ground Lease, including any lien
10 contemplated because of advances yet to be made. After ninety (90) days following the date of
11 Lender filing a notice of default, the City shall also have the right to assign Tenant's interest in
12 the Ground Lease to another entity, subject to such Lender's and Permitted Limited Partner's
13 written consent, but which may be conditioned, among other things, upon the assumption by such
14 other entity of all obligations of the Tenant under the Leasehold Mortgage.

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

16 Tenant shall use its best efforts to require Lender to give the City prompt written
17 notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also
18 contain the City's right to cure as above set forth.

19 **25.05 Cost of Mortgage Loans to be Paid by Tenant**

20 Tenant covenants and affirms that it shall bear all of the costs and expenses in connection
21 with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any

1 instruments and documents and their filing and recording, if required, and (iii) all taxes and
2 charges payable in connection with any Leasehold Mortgage.

3 **ARTICLE 26: PROTECTION OF LENDER**

4 **26.01 Notification to City**

5 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the
6 existence of any of the rights set forth in this Article 26, each Lender shall give written notice to
7 the City of the Lender's address and of the existence and nature of its Leasehold Mortgage.
8 Execution of Attachment 3 shall constitute City's acknowledgement of Lender's having given
9 such notice as is required to obtain the rights and protections of a Lender under this Ground
10 Lease. The City hereby acknowledges that Wells Fargo, National Association has given such
11 notice as First Mortgage Lender.

12 **26.02 Lender's Rights to Prevent Termination**

13 Subject to Section 26.03, each Lender shall have the right, but not the obligation, at any
14 time prior to termination of this Ground Lease and without payment of any penalty other than the
15 interest on unpaid rent, to pay all of the rents due hereunder, to effect any insurance, to pay any
16 taxes and assessments, to make any repairs and improvements, to do any other act or thing
17 required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be
18 done in the performance and observance of the agreements, covenants and conditions hereof to
19 prevent a termination of this Ground Lease to the same effect as if the same had been made, done
20 and performed by Tenant instead of by Lender.

21 **26.03 Lender's Rights When Tenant Defaults**

1 Should any event of default under this Ground Lease occur and is continuing, and not be
2 cured within the applicable cure period, the City shall not terminate this Ground Lease nor
3 exercise any other remedy hereunder unless it first gives written notice of such event of default to
4 Lender and

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

8 (ii) If such event of default is not a failure to pay a monetary obligation of Tenant,
9 Lender shall have failed, within one hundred twenty (120) days of receipt of said written notice,
10 either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of
11 foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof
12 (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to
13 completion, in which case such event of default shall be remedied or deemed remedied in
14 accordance with Article 26.04 below.

15 All rights of the City to terminate this Ground Lease as the result of the occurrence of any
16 such event of default shall be subject to, and conditioned upon, the City having first given Lender
17 written notice of such event of default and Lender having failed to remedy such default or acquire
18 Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate
19 proceedings in the nature thereof as set forth in and within the time specified by this Section
20 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under
21 Sections 19.02(b) or 26.06(iv).

22 **26.04 Default Which Cannot be Remedied by Lender**

1 Any event of default under this Ground Lease which in the nature thereof cannot be
2 remedied by Lender shall be deemed to be remedied as it pertains to Lender or any Subsequent
3 Owner if (i) within one hundred twenty (120) days after receiving notice from the City setting
4 forth the nature of such event of default, or prior thereto, Lender shall have acquired Tenant's
5 Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate
6 proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to
7 completion, (iii) Lender shall have fully cured any event of default arising from failure to pay or
8 perform any monetary obligation in accordance with the terms of this Ground Lease, and (iv)
9 from and after gaining possession of the Improvements, Lender shall diligently proceed to
10 perform all other obligations of Tenant as and when the same are due in accordance with the
11 terms of this Ground Lease.

12 **26.05 Court Action Preventing Lender's Action**

13 If Lender is prohibited by any process or injunction issued by any court or by reason of
14 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving
15 Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the
16 nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or
17 prosecuting such foreclosure or other proceedings shall be extended for the period of such
18 prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the City
19 agrees to enter into a new ground lease with the Lender on the same terms set forth in this Ground
20 Lease.

21 **26.06 Lender's Rights to Record, Foreclose and Assign**

22 The City hereby agrees with respect to any Leasehold Mortgage, that:

1 (i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell
2 and assign the Leasehold Estate created hereby to an assignee from whom it may accept a
3 purchase price; subject, however, to Lender's first securing written approval from City, which
4 approval shall not be unreasonably withheld, and if the Subsequent Owner has elected to maintain
5 the use restrictions of Article 9, said Subsequent Owner shall be controlled by a California
6 nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal
7 Revenue Code such that the Premises receive an exemption from state property taxes as provided
8 under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may
9 acquire title to the Leasehold Estate in any lawful way, and if the Lender shall become the
10 assignee, may sell and assign said Leasehold Estate subject to City approval, which shall not be
11 unreasonably withheld, and to the City's rights under Article 25.04; and [NOTE: City will not
12 preapprove transfers; concept of Approved Assignee not acceptable]

13 (ii) each Subsequent Owner shall take said Leasehold Estate subject to all of the
14 provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of
15 such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of
16 Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section
17 26.07 below, the Subsequent Owner may operate and maintain the one hundred one (101)
18 Residential Units without any limitations on the rents charged or the income of the occupants
19 thereof.

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

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

5 **26.07 Ground Lease Rent after Lender Foreclosure or Assignment**

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

8 (a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the City,
9 and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner.
10 Subsequent to foreclosure or assignment of the Leasehold Estate to the Lender in lieu of
11 foreclosure, if the Lender continues to operate the Project subject to the use and occupancy
12 restrictions of Section 9.02, then Annual Rent otherwise due may, at the option of the Lender, be
13 deferred until the date of the Lender's sale or assignment of the Project to a Subsequent Owner
14 that does not agree to operate the Project subject to such restrictions or the date that is sixty (60)
15 days after Lender ceases to operate the Project in accordance with such restrictions. All deferred
16 Annual Rent shall accrue, with simple interest at six percent (6%) per annum until paid.

17 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the
18 Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market
19 rental value taking into account any affordability restrictions agreed to by the Subsequent Owner,
20 if any, and the Base Rent shall be increased to the new fair market rent pursuant to Section
21 26.07(b) and the provisions of Section 6.02(g) shall be suspended; provided, however, that the
22 City shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole

1 discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to
2 tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low
3 Income Households as the City and the Subsequent Owner shall agree. The fair market rental
4 value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by
5 the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that
6 will include a market land valuation, as well as a market land lease rent level. Absent a market
7 land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%)
8 of the then appraised market land value. If the parties cannot agree on the joint appraisal
9 instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair
10 market rent in accordance with the then-prevailing practice for resolving similar rent
11 determination disputes in San Francisco or, in the event that there is no then-prevailing practice,
12 in accordance with the rules of the American Arbitration Association. Provided, however, that
13 after the neutral third party process, the Lender, in its sole discretion may rescind its written
14 notification of intent to not comply with Section 9.02 of this Ground Lease.

15 **26.08 Permitted Uses After Lender Foreclosure**

16 Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent
17 Owner, the Premises shall be operated in accordance with the uses specified in the building
18 permit with all addenda, as approved by the City's Department of Building Inspection.

19 **26.09 Preservation of Leasehold Benefits**

20 Until such time as a Lender notifies the City in writing that the obligations of the Tenant
21 under its loan documents have been satisfied, the City agrees:

1 (a) Except for termination as a result of a default, subject to the notice and cure
2 provisions contained in this Article 26, the City shall not voluntarily cancel or surrender this
3 Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or
4 materially amend this Ground Lease to increase the obligations of the Tenant or the rights of the
5 City thereunder, without the prior written consent of the Lender (which will not be unreasonably
6 withheld or delayed);

7 (b) That the City shall not enforce against a Lender any waiver or election made by the
8 Tenant under this Ground Lease which has a material adverse effect on the value of the Leasehold
9 Estate under this Ground Lease without the prior written consent of the Lender (which will not be
10 unreasonably withheld or delayed);

11 (c) That, if a Lender makes written request for the same within 15 days after Lender
12 receives written notice of termination of this Ground Lease, the City will enter a new lease with
13 such Lender commencing on the date of termination of the Ground Lease and ending on the
14 normal expiration date of the Ground Lease, on substantially the same terms and conditions as the
15 Ground Lease and subject to the rent provisions set forth in Section 26.07, and with the same
16 priority as against any subleases or other interests in the Premises; provided that such Lender
17 cures all unpaid monetary defaults under the Ground Lease through the date of such termination;

18 (d) That the City shall provide reasonable prior notice to each Lender of any
19 proceedings for adjustment or adjudication of any insurance or condemnation claim involving the
20 Premises and will permit each Lender to participate therein as an interested party.

21 **26.10 No Merger**

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

4 **26.11 City Bankruptcy**

5 (a) If a bankruptcy proceeding is filed by or against the City, the City shall immediately
6 notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and
7 similar materials regarding the bankruptcy proceedings to each Lender.

8 (b) The City acknowledges that (i) the Tenant seeks to construct improvements on the
9 Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both
10 the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the
11 City waives its right to sell the City's fee interest in the Premises pursuant to section 363(f) of the
12 Bankruptcy Code, free and clear of the leasehold interest under this Ground Lease.

13 (c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as
14 follows: (i) the Tenant shall be presumed to have objected to any attempt by the City to sell the
15 fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so
16 object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant;
17 and (iii) in connection with any such sale, the Tenant shall not be deemed to have received
18 adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received
19 and paid over to each Lender outstanding balance of the obligations under its respective loan.

20 (d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote,
21 participate in or consent to any bankruptcy, insolvency, receivership or court proceeding
22 concerning the leasehold interest under this Ground Lease.

1 **ARTICLE 27: CONDEMNATION AND TAKINGS**

2 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

7 **27.02 Total Taking**

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

10 **27.03 Partial Taking**

11 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in
12 effect, except that Tenant may, with Lender's written consent, which consent shall not be
13 unreasonably withheld, conditioned or delayed, elect to terminate this Ground Lease if, in
14 Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable
15 for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant
16 must exercise its right to terminate pursuant to this paragraph by giving notice to the City within
17 thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. If Tenant
18 elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify
19 the City of the date of termination, which date shall not be earlier than thirty (30) days nor later
20 than six (6) months after Tenant has notified the City of its election to terminate; except that this
21 Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if
22 such date falls on a date before the date of termination as designated by Tenant. If Tenant does

1 not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall
2 continue in full force and effect.

3 **27.04 Effect on Rent**

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

8 **27.05 Restoration of Improvements**

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

12 **27.06 Award and Distribution**

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

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

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

20 **27.07 Payment to Lenders**

21 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
22 when any compensation resulting from a condemnation or threatened condemnation is to be paid

1 to Tenant, such award shall be disposed of as provided in the Leasehold Mortgage.

2 **ARTICLE 28: ESTOPPEL CERTIFICATE**

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

14 **ARTICLE 29: QUITCLAIM**

15 Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the
16 Site to the City and, at the City's request, shall execute, acknowledge, and deliver to the City a
17 good and sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the
18 Improvements shall be conveyed to the City as provided in Article 13 herein.

19 **ARTICLE 30: EQUAL OPPORTUNITY**

20 In the selection of all contractors and professional consultants for the Project, Tenant must
21 comply with the City's procurement requirements and procedures as described in the MOHCD
22 Contracting Manual and with the requirements of Chapter 14B of the San Francisco

1 Administrative Code (“LBE Ordinance”) according to the procedures established by the City’s
2 Human Rights Commission. The Project is subject to the requirements of Section 3 of the Housing
3 and Community Development Act of 1968 and of the San Francisco Section 3 program. Federal
4 Section 3 requirements state that contracts and opportunities for job training and employment be
5 given, to the greatest extent feasible, to local low-income residents. Local residents for this project
6 are San Francisco residents. In addition, this project will be required to comply with hiring
7 requirements as incorporated into the local Section 3 program and in conjunction with the City’s
8 low-income hiring requirements pursuant to San Francisco’s First Source Hiring Ordinance (San
9 Francisco Administrative Code Chapter 83). The goals for hiring of Section 3-eligible workers on the
10 project will be 20% of new hires, moving towards a goal of 20% of total work hours. The Contractor
11 shall also make a best faith effort to meet these goals.

12 **ARTICLE 31: CERTIFICATE OF PREFERENCE PROGRAM**

13 Tenant agrees to comply with the requirements of the Certificate of Preference Program,
14 as it may be amended from time to time, and as set forth on Attachment 4.

15 **ARTICLE 32: LABOR STANDARDS PROVISIONS**

16 Although the Parties acknowledge that the development of the Project is a private work of
17 improvement, Tenant agrees that any person performing labor in the construction of the Project
18 and any Change to the Premises, which Tenant provides under this Ground Lease, shall be paid
19 not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San
20 Francisco Administrative Code, shall be subject to the same hours and working conditions, and
21 shall receive the same benefits as in each case are provided for similar work performed in San
22 Francisco, California. Tenant shall include in any contract for construction or rehabilitation of the

1 Project a requirement that all persons performing labor under such contract shall be paid not less
2 than the highest prevailing rate of wages for the labor so performed. Tenant shall require any
3 contractor to provide, and shall deliver to City upon request, certified payroll reports with respect
4 to all persons performing labor in the construction of the Project or any Change to the Premises.

5 **ARTICLE 33: CONFLICT OF INTEREST**

6 No commissioner, official, or employee of the City shall have any personal or financial interest,
7 direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or employee
8 participate in any decision relating to this Ground Lease which affects his or her personal interests
9 or the interests of any corporation, partnership, or association in which he or she is directly or
10 indirectly interested.

11 **ARTICLE 34: NO PERSONAL LIABILITY**

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

16 **ARTICLE 35: ENERGY CONSERVATION**

17 Tenant agrees that it will use its best efforts to maximize provision of, and incorporation
18 of, both energy conservation techniques and systems and improved waste-handling methodology
19 in the construction of the Improvements.

20 **ARTICLE 36: WAIVER**

21 The waiver by the City or Tenant of any term, covenant, agreement or condition herein
22 contained shall not be deemed to be a waiver of any subsequent breach of the same or any other

1 term, covenant, agreement or condition herein contained, nor shall any custom or practice which
2 may grow up between the parties in the administration of the terms hereof be construed to waive
3 or to lessen the right of the City or Tenant to insist upon the performance by the other in strict
4 accordance with the said terms. The subsequent acceptance of rent or any other sum of money
5 hereunder by the City shall not be deemed to be a waiver of any preceding breach by Tenant of
6 any term, covenant, agreement or condition of this Ground Lease, other than the failure of Tenant
7 to pay the particular rent or other sum so accepted, regardless of the City's knowledge of such
8 preceding breach at the time of acceptance of such rent or other sum.

9 **ARTICLE 37: TENANT RECORDS**

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

18 **ARTICLE 38: NOTICES AND CONSENTS**

19 All notices, demands, consents or approvals which may be or are required to be given by
20 either party to the other hereunder shall be in writing and shall be deemed to have been fully
21 given when delivered in person to such representatives of Tenant and the City as shall from time
22 to time be designated by the parties for the receipt of notices, or when deposited in the United

1 States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and
2 addressed

3 if to Tenant at: O'Farrell Towers Associates, L.P.
4 201 Eddy Street
5 San Francisco, CA 94102
6 Attn: Executive Director
7

8 With a copy to the Permitted Limited Partner:
9

10
11
12 Wincopin Circle LLLP
13 c/o Enterprise Community
14 Asset Management, Inc.
15 70 Corporate Center
16 11000 Broken Land Parkway, Suite 700
17 Columbia, Maryland 21044
18 Telephone: (410) 964-0552
19 Facsimile: (410) 772-2630
20 Email: brothschild@enterprisecommunity.com
21 Attn: General Counsel
22

23
24 if to the City at: San Francisco Mayor's Office of Housing and Community
25 Development
26 One South Van Ness Avenue, 5th Floor
27 San Francisco, California 94103
28 Attn.: Director

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

33 **ARTICLE 39: HEADINGS**

34 Any titles of the several parts and sections of this Ground Lease are inserted for

1 convenience of reference only and shall be disregarded in construing or interpreting any of its
2 provisions. "Paragraph" and "section" may be used interchangeably.

3 **ARTICLE 40: SUCCESSORS AND ASSIGNS**

4 This Ground Lease shall be binding upon and inure to the benefit of the successors and
5 assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground
6 Lease, it shall mean and include their respective successors and assigns; provided, however, that
7 the City shall have no obligation under this Ground Lease to, nor shall any benefit of this Ground
8 Lease accrue to, any unapproved successor or assign of Tenant where City approval of a
9 successor or assign is required by this Ground Lease. At such time as City sells the Site to any
10 third party, City shall require such third party to assume all of the City's obligations hereunder
11 arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

12 **ARTICLE 41: TIME**

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

15 **ARTICLE 42: PARTIAL INVALIDITY**

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

19 **ARTICLE 43: APPLICABLE LAW**

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

1 **ARTICLE 44: ATTORNEYS' FEES**

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

5 **ARTICLE 45: EXECUTION IN COUNTERPARTS**

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

9 **ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE**

10 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall
11 be recorded in the form attached hereto as Attachment 5. The parties shall execute the
12 memorandum in form and substance as required by a title insurance company insuring Tenant's
13 leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive
14 notice of the Ground Lease to subsequent purchasers and mortgagees.

15 **ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT**

16 Neither the transfer of any limited partner of Tenant interests in the Tenant or the admission of a
17 successor limited partner or partners pursuant to the terms of the Tenant's partnership agreement
18 shall constitute an event of default under the Ground Lease nor require the City's consent. The
19 withdrawal or removal of a general partner of the Tenant pursuant to the terms of the Tenant's
20 partnership agreement shall not require City consent, and shall not constitute a default under the
21 Lease provided that any replacement general partner shall require the prior written consent of the
22 City which consent shall not be unreasonably withheld, conditioned or delayed.

1 **ARTICLE 48: CITY PROVISIONS**

2 **48.1 Non-Discrimination**

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

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

20 (c) Non-Discrimination in Benefits. Tenant does not as of the date of this
21 Ground Lease and will not during the Term, in any of its operations in San Francisco or with
22 respect to its operations under this Ground Lease elsewhere within the United States, discriminate.

1 in the provision of bereavement leave, family medical leave, health benefits, membership or
2 membership discounts, moving expenses, pension and retirement benefits or travel benefits
3 (collectively “Core Benefits”), as well as any benefits other than Core Benefits, between
4 employees with domestic partners and employees with spouses, and/or between the domestic
5 partners and spouses of such employees, where the domestic partnership has been registered with
6 a governmental entity pursuant to state or local law authorizing such registration, subject to the
7 conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

12 (e) Incorporation of Administrative Code Provisions by Reference. The
13 provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-
14 discrimination by Parties contracting for the lease of City property are incorporated in this Section
15 by reference and made a part of this Ground Lease as though fully set forth herein. Tenant shall
16 comply fully with and be bound by all of the provisions that apply to this Ground Lease under
17 such Chapters of the Administrative Code, including but not limited to the remedies provided in
18 such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Sections
19 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each
20 person for each calendar day during which such person was discriminated against in violation of
21 the provisions of this Lease may be assessed against Tenant and/or deducted from any payments
22 due Tenant.

1 **48.2 Reserved.**

2 **48.3 Conflicts of Interest.** Tenant states that it is familiar with the provisions of
3 Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and
4 Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the
5 Government Code of the State of California, certifies that it knows of no facts which would
6 constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact
7 during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies
8 that it has made a complete disclosure to the City of all facts bearing on any possible interests,
9 direct or indirect, which Tenant believes any officer or employee of the City presently has or will
10 have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful
11 failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination
12 and cancellation of this Ground Lease.

13 **48.4 Charter Provisions.** This Ground Lease is governed by and subject to the
14 provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant
15 acknowledges and agrees that no officer or employee of the City has authority to commit the City
16 to this Ground Lease unless and until an resolution of the City's Board of Supervisors has been
17 duly enacted approving this Ground Lease. Therefore, any obligations or liabilities of the City
18 under this Ground Lease are contingent upon enactment of an resolution, and this Ground Lease
19 will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground
20 Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws.
21 Approval of this Ground Lease by any City department, commission or agency may not be
22 deemed to imply that an resolution will be enacted or create any binding obligations on the City.

1 **48.5 Tropical Hardwood/Virgin Redwood Ban.** Pursuant to Section 804(b) of the
2 San Francisco Environment Code, the City and County of San Francisco urges companies not to
3 import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood
4 product, virgin redwood or virgin redwood wood product. Except as permitted by the application
5 of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any
6 items in the rehabilitation, development or operation of the Premises or otherwise in the
7 performance of this Lease which are tropical hardwoods, tropical hardwood wood products,
8 virgin redwood or virgin redwood wood products.

9 **48.6 Tobacco Product Advertising Ban.** Tenant acknowledges and agrees that no
10 advertising of cigarettes or tobacco products may be allowed on the Premises. The foregoing
11 prohibition will include the placement of the name of a company producing, selling or distributing
12 cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion
13 of any event or product, or on any sign. The foregoing prohibition will not apply to any
14 advertisement sponsored by a state, local or nonprofit entity designed to communicate the health
15 hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop
16 smoking.

17 **48.7 Pesticide Ordinance.**
18 Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program
19 Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be
20 implemented by all City departments. Tenant shall not use or apply or allow the use or
21 application of any pesticides on the Premises or contract with any party to provide pest abatement
22 or control services to the Premises without first receiving City’s written approval of an IPM plan

1 that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that
2 Tenant may need to apply to the Premises during the term of this Ground Lease, (ii) describes the
3 steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM
4 Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act
5 as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require
6 all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply
7 with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM
8 Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM
9 Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or
10 application of pesticides on property owned by the City, except for pesticides granted an
11 exemption under Section 303 of the IPM Ordinance (including pesticides included on the most
12 current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c)
13 impose certain notice requirements, and (d) require Tenant to keep certain records and to report to
14 City all pesticide use at the Premises by Tenant's staff or contractors.

15 If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises,
16 Tenant must first obtain a written recommendation from a person holding a valid Agricultural
17 Pest Control Advisor license issued by the California Department of Pesticide Regulation
18 ("CDPR") and any such pesticide application shall be made only by or under the supervision of a
19 person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator
20 license. City's current Reduced Risk Pesticide List and additional details about pest management
21 on City property can be found at the San Francisco Department of the Environment website,
22 <http://sfenvironment.org/ipm>.

1 **48.8 Compliance with City's Sunshine Ordinance.** Tenant understands and agrees
2 that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public
3 Records Law (Cal. Gov. Code §§ 6250 et seq.), this Agreement and any and all records,
4 information and materials submitted to the City hereunder are public records subject to public
5 disclosure. Tenant hereby authorizes the City to disclose any records, information and materials
6 submitted to the City in connection with this Ground Lease as required by Law. Further, Tenant
7 specifically agrees to conduct any meeting of its governing board that addresses any matter
8 relating to the Project or to Tenant's performance under this Ground Lease as a passive meeting.

9 **48.9 Notification of Limitations on Contributions.** Through its execution of this
10 Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco
11 Campaign and Governmental Conduct Code, which prohibits any person who contracts with the
12 City for the selling or leasing of any land or building to or from the City whenever such
13 transaction would require approval by a City elective officer, the board on which that City
14 elective officer serves, or a board on which an appointee of that individual serves, from making
15 any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by
16 such individual, or (c) a committee controlled by such individual or candidate, at any time from
17 the commencement of negotiations for the contract until the later of either the termination of
18 negotiations for such contract or six months after the date the contract is approved. Tenant
19 acknowledges that the foregoing restriction applies only if the contract or a combination or series
20 of contracts approved by the same individual or board in a fiscal year have a total anticipated or
21 actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on
22 contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's

1 chief executive officer, chief financial officer and chief operating officer; any person with an
2 ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and
3 any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that
4 Tenant must inform each of the persons described in the preceding sentence of the prohibitions
5 contained in Section 1.126. Tenant further agrees to provide to City the name of each person,
6 entity or committee described above.

7 **48.10 Requiring Health Benefits for Covered Employees.** Unless exempt, Tenant
8 agrees to comply fully with and be bound by all of the provisions of the Health Care
9 Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code
10 Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be
11 amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground
12 Lease by reference and made a part of this Ground Lease as though fully set forth. The text of
13 the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this
14 Section and not defined in this Lease have the meanings assigned to them in Chapter 12Q.
15 Notwithstanding this requirement, City recognizes that the residential housing component of the
16 Improvements is not subject to the HCAO.

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

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

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

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

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

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

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

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

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

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

12 (k) If Tenant is exempt from the HCAO when this Lease is executed because
13 its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement
14 or agreements that cause Tenant's aggregate amount of all agreements with the City to reach
15 \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the
16 effective date of the agreement that causes the cumulative amount of agreements between Tenant
17 and MOHCD to be equal to or greater than \$75,000 in the fiscal year.

18 **48.11 Public Access to Meetings and Records.** If Tenant receives a cumulative total
19 per year of at least \$250,000 in City funds or City-administered funds and is a non-profit
20 organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall
21 comply with and be bound by all the applicable provisions of that Chapter. By executing this
22 Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set

1 forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make
2 good-faith efforts to promote community membership on its Board of Directors in the manner set
3 forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure
4 to comply with any of the provisions of this paragraph shall constitute a material breach of this
5 Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be
6 grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

7 **48.12 Resource-Efficient Building Ordinance.** Tenant acknowledges that the City and
8 County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to
9 resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees it
10 shall comply with the applicable provisions of such code sections as such sections may apply to
11 the Premises.

12 **48.13 Drug Free Work Place.** Tenant acknowledges that pursuant to the Federal Drug-
13 Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a
14 controlled substance is prohibited on City premises. Tenant agrees that any violation of this
15 prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Ground
16 Lease.

17 **48.14 Preservative Treated Wood Containing Arsenic.** Tenant may not purchase
18 preservative-treated wood products containing arsenic in the performance of this Ground Lease
19 unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code
20 is obtained from the Department of the Environment under Section 1304 of the Code. The term
21 "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that
22 contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

1 to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or
2 ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood
3 products on the list of environmentally preferable alternatives prepared and adopted by the
4 Department of the Environment. This provision does not preclude Tenant from purchasing
5 preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater
6 immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities
7 that are partially or totally immersed in saltwater.

8 **48.15 Nondisclosure of Private Information.** Tenant agrees to comply fully with and
9 be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the
10 "Nondisclosure of Private Information Ordinance"), including the remedies provided. The
11 provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by
12 reference and made a part of this Agreement as though fully set forth. Capitalized terms used in
13 this section and not defined in this Agreement shall have the meanings assigned to such terms in
14 the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the
15 Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- 16 (a) Neither Tenant nor any of its subcontractors shall disclose Private
17 Information, unless one of the following is true:
- 18 (i) The disclosure is authorized by this Ground Lease;
 - 19 (ii) Tenant received advance written approval from the Contracting
20 Department to disclose the information; or
 - 21 (iii) The disclosure is required by law or judicial order.

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

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

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

13 **48.16 Graffiti.** Graffiti is detrimental to the health, safety and welfare of the community
14 in that it promotes a perception in the community that the laws protecting public and private
15 property can be disregarded with impunity. This perception fosters a sense of disrespect of the
16 law that results in an increase in crime; degrades the community and leads to urban blight; is
17 detrimental to property values, business opportunities and the enjoyment of life; is inconsistent
18 with City's property maintenance goals and aesthetic standards; and results in additional graffiti
19 and in other properties becoming the target of graffiti unless it is quickly removed from public
20 and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be
21 abated as quickly as possible to avoid detrimental impacts on the City and County and its
22 residents, and to prevent the further spread of graffiti.

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

19 **48.17 Incorporation.** Each and every provision of the San Francisco Administrative
20 Code described or referenced in this Ground Lease is hereby incorporated by reference as though
21 fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease
22 relating to any such code provision shall be governed by Article 19 of this Ground Lease, unless

1 (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is
2 specifically addressed by the applicable code section.

3 **48.18 Food Service Waste Reduction.** Tenant agrees to comply fully with and be
4 bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the
5 San Francisco Environment Code, Chapter 16, including the remedies provided therein, and
6 implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by
7 reference and made a part of this Ground Lease as though fully set forth herein. This provision is
8 a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it
9 breaches this provision, City will suffer actual damages that will be impractical or extremely
10 difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the
11 sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred
12 Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred
13 Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable
14 estimate of the damage that City will incur based on the violation, established in light of the
15 circumstances existing at the time this Ground Lease was made. Such amounts shall not be
16 considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's
17 failure to comply with this provision.

18 **48.19 Bottled Drinking Water.** Unless exempt, Tenant agrees to comply fully with and
19 be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in
20 San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and
21 implementing regulations provided therein, as the same may be amended from time to time. The

1 provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as
2 though fully set forth.

3 **48.20 Criminal History in Hiring and Employment Decisions.**

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

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

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

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

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

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

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

1 (h) If Tenant has any questions about the applicability of Chapter 12T, it may contact
2 the City's Real Estate Division for additional information. City's Real Estate Division may
3 consult with the Director of the City's Office of Contract Administration who may also grant a
4 waiver, as set forth in Section 12T.8. **48.21 Public Transit Information.** Tenant shall establish
5 and carry on during the Term a program to encourage maximum use of public transportation by
6 personnel of Tenant employed on the Premises, including, without limitation, the distribution to
7 such employees of written materials explaining the convenience and availability of public
8 transportation facilities adjacent or proximate to the Commercial Parcels and encouraging use of
9 such facilities, all at Tenant's sole expense.

10 **48.22 Local Hiring Policy.**

11 Any undefined, initially-capitalized term used in this Section shall have the meaning given
12 to such term in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy").
13 The Improvements and any rehabilitation and alterations are subject to the Local Hiring Policy
14 unless the cost for such rehabilitation or alteration is (i) estimated to be less than \$750,000 per
15 building permit or (ii) meets any of the other exemptions in the Local Hiring Policy.
16 Accordingly, as a condition of this Lease, Tenant agrees that it shall comply with the
17 requirements of the Local Hiring Policy applicable to the Improvements or any rehabilitation or
18 alteration and shall require its subtenants to comply with those requirements to the extent
19 applicable. Before starting any rehabilitation or alteration, Tenant shall contact City's Office of
20 Economic Workforce and Development ("OEWD") to verify if any Local Hiring Ordinance
21 requirements apply to such rehabilitation or alteration. Tenant shall comply with all such
22 applicable requirements. Tenant's failure to comply with its obligations under this Section shall

1 constitute a material breach of this Lease and may subject Tenant and its subtenants to the
2 consequences of noncompliance specified in the Local Hiring Policy, including but not limited to
3 penalties. Without limiting the foregoing:

4 (a) For a Covered Project estimated to cost more than \$750,000, Tenant and its
5 subtenants shall comply with the applicable mandatory participation levels for Project Work
6 Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in San
7 Francisco Administrative Code Section 6.22(G)(4).

8 (b) For a Covered Project estimated to cost more than \$1,000,000, Tenant and its
9 subtenants shall prepare and submit a local hiring plan to OEWD for approval as set forth in San
10 Francisco Administrative Code Section 6.22(G)(6) prior to commencing any of the work subject
11 to the Local Hiring Policy.

12 (c) Tenant and its subtenants shall comply with the applicable record keeping and
13 reporting requirements and shall cooperate in City inspections and audits for compliance with the
14 Local Hiring Policy, including access to employees of its contractors and subcontractors and other
15 witnesses at the Premises.

16 (d) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the
17 Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable
18 by Tenant and its subtenants; and (iii) Tenant has had, and its subtenants will have prior to
19 signing their subleases for the Premises, a full and fair opportunity to review and understand the
20 terms of the Local Hiring Policy.

21 **ARTICLE 49: COMPLETE AGREEMENT**

22 There are no oral agreements between Tenant and the City affecting this Ground Lease,

1 and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,
2 agreements and understandings between Tenant and the City with respect to the lease of the Site.

3 **ARTICLE 50: ATTACHMENTS**

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

5

6

1. Legal Description of Site

7

2. Schedule of Performance

8

3. City Consent of Leasehold Mortgage

9

4. Operational Rules for Certificate Holders' Priority

10

5. Memorandum of Ground Lease

11

6. Income Certification Form

12

13

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

3 TENANT:

4 O'FARRELL TOWERS ASSOCIATES, L.P.
5 a California limited partnership

6
7 By: O'Farrell Towers GP, LLC
8 Its: General Partner

9
10 By: Turk Street, Inc.
11 Its: Sole Member and Manager

12
13 By: _____
14 Name: Donald S. Falk
15 Title: Executive Director
16

17 CITY AS LANDLORD:

18 CITY
19 AND COUNTY OF SAN FRANCISCO,
20 a municipal corporation
21

22 By: _____
23 Olson Lee
24 Director, Mayor's Office of Housing and Community Development
25
26

27 APPROVED AS TO FORM:

28 DENNIS J. HERRERA
29 City Attorney

30
31 By: _____
32 Beth Anderson
33 Deputy City Attorney
34

35 Authorized by Board of Supervisors Resolution No. _____, adopted, _____, 2015

1

2 **ATTACHMENT 1**

3 **Legal Description of the Site**

4 The Property referred to in this Agreement is the property situated in the City and County
5 of San Francisco, State of California, described as follows:

6

7

8

9

1
2
3
4
5
6

ATTACHMENT 2
SCHEDULE OF PERFORMANCE

ATTACHMENT 3
City Consent of Leasehold Mortgage

Date:

Mayor's Office of Housing and Community Development
City and County of San Francisco
Attn: Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: 477 O'Farrell Street, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 25.01 of the 477 O'Farrell Street Ground Lease, dated _____, 2015, between the City and County of San Francisco ("City") and O'Farrell Towers Associates, L.P., a California limited partnership, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender: _____
Principal Amount: _____
Interest: _____
Term: _____

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to the review and approval by the City. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which the City deems necessary.

Sincerely,

Printed Name and Title
enc.

By signing this letter, the City consents to the leasehold mortgage, pursuant to the terms and conditions of Section 25.01 of the 477 O'Farrell Street Ground Lease, dated _____, 2015.

Mayor's Office of Housing and Community Development

Printed Name and Title

ATTACHMENT 4
OPERATIONAL RULES FOR
CERTIFICATE HOLDERS' PRIORITY

The Owner hereby agrees that priority for units designated for Low Income Households will be given to persons displaced or to be displaced from their homes by the former Redevelopment Agency of the City and County of San Francisco's redevelopment activities and who have been issued a form described as the "Certificate of Preference" ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order of priority in paragraph D of this Attachment 4. Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the City and applicant in writing of the reason for rejection. In order to implement this Attachment 4:

A. The City agrees to furnish the following:

1. Written and/or printed notices to Certificate Holders advising them that such units will soon be available;
2. Assistance to Certificate Holders in filing applications; and
3. Verification to the Owner that applicant has been displaced.

B. The Owner agrees to the following:

1. To supply the City ninety (90) days prior to accepting lease applications with the information listed below. This information shall not be changed without providing the Agency with ten (10) days written notice.
 - a. A master unit list with the following information:
 - (1) Apartment number;
 - (2) Number of bedrooms and baths;
 - (3) Square footage; and
 - (4) Initial rent to be charged.
 - b. Estimated itemized cost of utilities and services to be paid by tenant by unit size.
 - c. Detailed description of Owner's rules for tenants, which must include:
 - (1) Minimum and maximum income
 - (2) Pet policy
 - (3) Selection process: To insure no discrimination against Low Income Households and Certificate Holders all criteria and the relative weight to be given to each criterion indicated. The City shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the City.
 - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.

- (5) Occupancy requirements must be described in full and found reasonable by the City
- (6) Duration of rental agreement or lease.
- (7) Copy of rental agreement or lease.
- (8) The Owner's rules for tenants shall be acceptable for purposes of this sub-paragraph.
- d. Amount of charge for processing applications, if any.
- e. Description of application process and length of time needed by Owner.
- f. Copy of rental application and copy of all forms to be used for income verification.
- g. Periodic notification to the City of the Owner's office hours for accepting applications and showing model unit(s).

2. The Owner further agrees that some applicants who apply directly to the Owner may be entitled to priority because of previous displacement. The Owner will, therefore, ask the following questions on all applications for occupancy:

“Have you been displaced or do you expect to be displaced by the San Francisco Redevelopment Agency?”

If the applicant answers affirmatively, the address from which displacement occurred is required. Copies of all applications indicating that such displacement either has taken place or will take place must be forwarded to the City within five (5) working days of receipt of such application by the Owner. It is agreed that information received on the application will be considered confidential. The City will, in turn, determine within ten (10) working days which such applicants are then qualified or will qualify as Certificate Holders, and will establish current Certificate of Preference priority.

During initial lease-up of Low Income Units, the City may supply the Owner with a “status report” listing names, addresses and certificate numbers of Certificate Holders for all open applications. The Owner will return the same form within five (5) working days, indicating:

- (1) status of each application as of that date, and
- (2) in case of rejection for any cause, the exact reason thereof.

2. If material supplied in any application by a Certificate Holder indicates ineligibility on its face because of the Owner's rules and regulations, such applicant will be notified within one week, with a copy of the Agency. Any fee charged for processing such application will be refunded in full, notwithstanding, however, that such applicant shall be listed on status report showing application is closed and fee has been returned. If ineligibility can be determined only after a follow-up investigation, the applicant will be notified within one week after such

1 determination is made, with a copy to the City. Any fee charged for processing
2 such applications may be retained by the Owner. These applications will also
3 appear on the status report.
4

5 3. Within ten (10) working days after execution of a lease, the Owner will supply the
6 City with a signed copy of the following for all Certificate Holder tenants:
7

- 8 (1) signed copy of lease;
- 9 (2) copy of complete application; and
- 10 (3) copies of all verification forms used to ascertain income eligibility.
11

12 D. In order to expedite occupancy of housing units nearing completion, the Owner further
13 agrees:
14

15 1. To select as prospective tenants eligible Certificate Holders who meet the
16 occupancy requirements of the Owner. Selection will be based on the following
17 descending order of priorities:
18

- 19 a. Families or individuals who reside on City property in redevelopment
20 areas.
- 21 b. Families or individuals who were relocated from City property and still
22 have a valid Certificate of Preference.
- 23 c. Families or individuals displaced by the Department of Health, Public
24 Works, etc. and referred by the City.
25

26 2. Applicants who are Certificate Holders who have been accepted and notified by
27 the Owner will have five (5) working days thereafter to accept or reject a unit. If
28 the Certificate Holder fails to affirmatively respond, the application may be closed.
29 Rejection of the unit by a Certificate holder must be shown on current status
30 report.
31

32 3. All Certificate Holders found acceptable by the Owner shall have the opportunity
33 to inspect a model or other available completed unit, and be assigned an
34 appropriate unit for future occupancy. Units may be offered to non-Certificate
35 Holders at any time as long as the current status report shows that there are
36 sufficient units available to satisfy applications from Certificate Holders for units
37 of appropriate size in any stage of processing. ALL OBLIGATIONS TO SHOW
38 MODELS OR OTHER AVAILABLE COMPLETED UNITS SHALL REMAIN
39 IN EFFECT DURING INITIAL OCCUPANCY PERIOD. Initial Occupancy is
40 defined for all purposes of this Attachment 4 as the earlier of ninety (90) calendar
41 days following the City's receipt of a certified copy of a Certificate (or
42 Certificates) of Occupancy issued by the City and County of San Francisco for the

1 respective unit (or units) to be so approved for occupancy, or the date when all
2 units have been rented to the first occupants thereof. Upon Initial Occupancy the
3 City will certify compliance with this Attachment 4 with a written notice provided
4 ten (10) days after Initial Occupancy. Such certification in no way negates the
5 Owner's continued obligations to provide housing to persons displaced or to be
6 displaced by the Agency's redevelopment activities as vacancies occur amount the
7 units designated for Low Income Households.
8

9 E. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if
10 available to the Owner from its leasing agent, a rent-up report for all Development units
11 listing the following:

- 12 1. Unit number rented;
- 13 2. Tenant name;
- 14 3. Date of move-in; and
- 15 4. Rent rate.
- 16
- 17

18 F. The Owner agrees that any contract entered into for the management of the residential
19 portions of the Development, both before and after Initial Occupancy, shall be furnished to
20 the City, shall incorporate the provisions of this Attachment 4, and shall bind the
21 management agent to comply with its requirements.
22

23 G. After Initial Occupancy (without regard to whether the City has certified compliance with
24 the obligation of the Owner respecting the period prior to Initial Occupancy), the Owner
25 agrees to notify the City as far as practicable in advance of vacancies, which may occur in
26 Low Income Housing units. The City and the Owner agree to follow the steps set forth in
27 paragraph (D) above with respect to such units. In the event no appropriate Certificate
28 Holder can be found within five (5) working days after receipt of notification by the
29 Owner to the City of availability of a unit, the City agrees that the Owner may lease the
30 unit to Low Income Households, as appropriate, which do not hold a Certificate of
31 Preference.
32

33 H. The City reserves the right to waive any of the foregoing conditions, provided however
34 that any such waiver shall not be deemed to have waived any other conditions, nor the
35 same condition subsequently.
36
37

ATTACHMENT 5

Form of Memorandum of Lease

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
Mayor's Office of Housing of the
City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attn: Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of _____, 2015, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and FRANCISCAN TOWERS ASSOCIATES, L.P., a California limited partnership ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated _____, 2015, between City and Tenant.

Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease shall commence on the date set forth above and shall end on the date which is 65 years from the date set forth above, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease shall create a constructive notice of severance of the Improvements (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements are and shall remain real property.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Memorandum.

Executed as of _____, 2015 in San Francisco, California.

TENANT:

O'FARRELL TOWERS ASSOCIATES, L.P.,
a California limited partnership

By: O'Farrell Towers GP, LLC
Its: General Partner

By: Turk Street, Inc.
Its: Sole Member and Manager

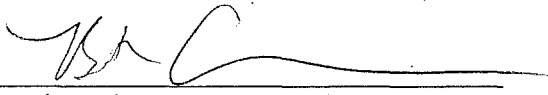
By: _____
Name: Donald S. Falk
Title: Executive Director

CITY:
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Olson Lee
Director, Mayor's Office of Housing and Community Development

By: _____
John Updike
Director of Property

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Beth Anderson, Deputy City Attorney

1
2
3
4
5

ATTACHMENT 6
FORM OF TENANT INCOME CERTIFICATION

BN 14942119v1


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Updike, Director, Real Estate Division
Olson Lee, Director, Mayor's Office of Housing and Community
Development

FROM:  Alisa Somera, Assistant Clerk
Land Use and Transportation Committee

DATE: November 10, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Kim on November 3, 2015:

File No. 151150

Resolution authorizing the execution and performance of an Amended and Restated Ground Lease, with a term of 99 years, between the City and County of San Francisco and O'Farrell Towers Associates, L.P., a California limited partnership, of real property located at 477 O'Farrell Street, for the rehabilitation of 101 units of affordable housing for low and very low income seniors.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Sophie Hayward, Mayor's Office of Housing and Community Development

1 **FREE RECORDING REQUESTED PURSUANT TO**
2 **GOVERNMENT CODE SECTION 27383**

3
4 **When Recorded Please Return to:**

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

10
11
12
13
14
15
16
17 **O'FARRELL TOWERS GROUND LEASE**

18
19
20 **by and between the**

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

26
27 **and**

28
29 **CITIZENS HOUSING CORPORATION,**
30 **a California nonprofit public benefit corporation**
31 **as Tenant**

32
33
34
35
36
37 **Dated as of August 4, 2000**
38

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

ARTICLE 1: DEFINITIONS 3

ARTICLE 2: TERM 5

ARTICLE 3: FINANCING 6

ARTICLE 4: RENT 6

 4.01 Annual Rent 6

 4.02 Net Lease 8

ARTICLE 5: AGENCY COVENANTS 8

ARTICLE 6: DEVELOPER COVENANTS 9

 6.01 Nonprofit Corporation/Authority 9

 6.02 Use of Site 9

 6.03 [INTENTIONALLY OMITTED] 11

ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION 11

ARTICLE 8: CONDITION OF SITE - "AS IS" 11

ARTICLE 9: IMPROVEMENTS AND PERMITTED USES 12

 9.01 Scope of Development and Schedule of Performance 12

 9.02 Permitted Uses and Occupancy Restrictions 12

 9.03 [INTENTIONALLY OMITTED] 13

ARTICLE 10: [INTENTIONALLY OMITTED] 13

ARTICLE 11: [INTENTIONALLY OMITTED] 13

ARTICLE 12: CHANGES TO THE IMPROVEMENTS 13

 12.01 Post Acquisition Changes 13

 12.02 Definition of Change 14

 12.03 Enforcement 14

ARTICLE 13: TITLE TO IMPROVEMENTS 14

1	ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE	15
2	14.01 Assignment, Sublease or Other Conveyance by Developer	15
3	14.02 Assignment, Sublease or Other Conveyance by Agency	15
4		
5	ARTICLE 15: TAXES	16
6		
7	ARTICLE 16: UTILITIES	17
8		
9	ARTICLE 17: MAINTENANCE	17
10		
11	ARTICLE 18: LIENS	17
12		
13	ARTICLE 19: GENERAL REMEDIES	18
14	19.01 Application of Remedies	18
15	19.02 [INTENTIONALLY OMITTED]	18
16	19.03 Breach by Agency	18
17	19.04 Breach by Developer	19
18		
19	ARTICLE 20: DAMAGE AND DESTRUCTION	21
20	20.01 Insured Casualty	21
21	20.02 Uninsured Casualty	22
22	20.03 Distribution of the Insurance Proceeds	22
23	20.04 Clean Up of Housing Site	23
24		
25	ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; INDEMNIFICATION	23
26		
27	ARTICLE 22: INSURANCE AND FIDELITY BOND	24
28	22.01 Insurance	24
29	22.02 [INTENTIONALLY OMITTED]	29
30		
31	ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS	29
32		
33	ARTICLE 24: ENTRY	29
34		
35	ARTICLE 25: MORTGAGE FINANCING	30
36	25.01 No Encumbrances Except for Development Purposes	30
37	25.02 Holder Not Obligated to Construct	30
38	25.03 Failure of Holder to Complete Improvements	31
39	25.04 Default by Developer and Agency's Rights	31
40	25.05 Subordination of Ground Lease	32

1	ARTICLE 26: PROTECTION OF LENDER	32
2	26.01 Notification to Agency	32
3	26.02 Lender's Rights to Prevent Termination	32
4	26.03 Lender's Rights When Developer Defaults	33
5	26.04 Default Which Cannot be Remedied by Lender	34
6	26.05 Court Action Preventing Lender's Action	34
7	26.06 Lender's Rights to Record, Foreclose and Assign	35
8	26.07 Ground Lease Rent After Lender Foreclosure or Assignment	36
9		
10	ARTICLE 27: CONDEMNATION	37
11	27.01 Parties' Rights and Obligations to be Governed by Agreement	37
12	27.02 Total Taking	37
13	27.03 Partial Taking	37
14	27.04 Effect on Rent	38
15	27.05 Restoration of Improvements	38
16	27.06 Award and Distribution	39
17	27.07 Payment to Lenders	39
18		
19	ARTICLE 28: ESTOPPEL CERTIFICATE	39
20		
21	ARTICLE 29: QUITCLAIM	40
22		
23	ARTICLE 30: EQUAL OPPORTUNITY	40
24		
25	ARTICLE 31: CERTIFICATE AND BUSINESS PREFERENCE PROGRAM	40
26		
27	ARTICLE 32: AGENCY LABOR STANDARDS PROVISIONS	40
28		
29	ARTICLE 33: CONFLICT OF INTEREST	40
30		
31	ARTICLE 34: NO PERSONAL LIABILITY	41
32		
33	ARTICLE 35: [INTENTIONALLY OMITTED]	41
34		
35	ARTICLE 36: WAIVER	41
36		
37	ARTICLE 37: DEVELOPER RECORDS	42
38		
39	ARTICLE 38: NOTICES AND CONSENTS	42
40		
41	ARTICLE 39: COMPLETE AGREEMENT	43
42		
43	ARTICLE 40: HEADINGS	43
44		

1 ARTICLE 41: SUCCESSORS AND ASSIGNS 43
2
3 ARTICLE 42: TIME 44
4
5 ARTICLE 43: PARTIAL INVALIDITY 44
6
7 ARTICLE 44: APPLICABLE LAW 44
8
9 ARTICLE 45: ATTORNEYS' FEES 44
10
11 ARTICLE 46: EXECUTION IN COUNTERPARTS 44
12
13 ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE 44
14

15 Attachments to Ground Lease

- 16
17 1. Site Plan
18 2. Legal Description of Site
19 3. (not used)
20 4. Schedule of Performance
21 5. (not used)
22 6. Operational Rules for Certificate Holder's Priority
23 7. Equal Opportunity Program
24 8. Prevailing Wage Provisions
25 9. Income Computation and Certification
26 10. Additional Provisions
27 11. Mayor's Office of Housing Policy on Developer Fees for Non-Tax Credit
28 Projects
29 12. Mayor's Office of Housing Policy on Use of Residual Receipts
30 13. CHFA "Side Letter" on Surplus Cash

1 GROUND LEASE

2 This GROUND LEASE is entered into as of August 4, 2000, by and
3 between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN
4 FRANCISCO, a public body, corporate and politic (the "Agency") as Landlord, and Citizens
5 Housing Corporation, a California nonprofit public benefit corporation (the "Developer"), as
6 Tenant under this Ground Lease.

7 RECITALS

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

12 B. The Agency is authorized pursuant to the Law to distribute monies to nonprofit
13 developers and sponsors for the specific and special purpose of increasing and maintaining the
14 housing stock in the City and County of San Francisco for very low-, low- and moderate-income
15 households.

16 C. The expiration of project-based Section 8 contracts poses a serious threat to San
17 Francisco's affordable housing stock. The Agency desires to preserve developments with Section
18 8 contracts as affordable housing by, among other things, expending tax increment housing funds.

19 D. Developer is a nonprofit corporation committed to acquiring and owning housing
20 units for low-income senior residents (the "Project") on the real property located at 477 O'Farrell
21 Street, San Francisco, California (the "Site").

1 E. The Project is currently financed with the California Housing Finance Agency
2 ("CHFA") mortgages which are subject to prepayment by the current private owner ("Seller"),
3 with the potential effect of terminating the existing low income rent restrictions placed on the
4 Project.

5 F. The Developer has entered into a purchase and sale agreement to purchase the Site,
6 including the improvements on the Site (the "Improvements"), and has agreed to assign the right
7 to purchase the Site to the Agency. Through escrow the Agency intends to acquire fee title to the
8 Site and the Developer will acquire fee title to the Improvements. Developer intends to finance
9 the acquisition of the Improvements with a new loan from CHFA funded by issuance of tax
10 exempt 501(c)(3) multifamily bonds. The Agency will use tax increment funds to pay the
11 purchase price for the Site, not including the Improvements.

12 G. The Agency wishes to lease the Site to the Developer pursuant to this Ground
13 Lease.

14 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
15 Agency hereby leases to Developer, and Developer hereby leases from the Agency, the Site, for
16 the term, and subject to the terms, covenants, agreements and conditions hereinafter set forth, to
17 each and all of which the Agency and Developer hereby mutually agree.

1 **ARTICLE 1: DEFINITIONS**

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

4 **1.01 Agency** means the Redevelopment Agency of the City and County of San
5 Francisco, a public body, corporate and politic, exercising its functions and powers and organized
6 and existing under the Community Redevelopment Law of the State of California and includes
7 any successor public Agency designated by or pursuant to law. The Agency is the owner of the
8 Site.

9 **1.02 Agreement Date** means the date that this Ground Lease is deemed to be entered
10 into and effective, as set forth on the cover page.

11 **1.03 Area Median Income** means the median household or family income for San
12 Francisco as determined pursuant to Section 50093 of the California Health and Safety Code.

13 **1.04 Developer** means Citizens Housing Corporation, a California nonprofit public benefit
14 corporation.

15 **1.05 Ground Lease** means this Ground Lease of the Site to the Developer from the
16 Agency, as amended from time to time.

17 **1.06 Improvements** means all physical construction, including all structures, fixtures
18 and other improvements on the Site.

19 **1.07 Lender** means the holder of any Leasehold Mortgage consented to by the Agency
20 as required by Article 25.01.

1 **1.08 Lease Year** means each calendar year during the term hereof, beginning on
2 January 1 and ending on December 31, provided that the first Lease Year shall commence upon
3 the Agreement Date and shall end on the next succeeding December 31, and the last Lease Year
4 shall end upon the expiration of the term hereof.

5 **1.09 Leasehold Estate** means the estate held by the Developer pursuant to and created
6 by this Ground Lease.

7 **1.10 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture or other
8 security instrument, including the deeds of trust securing the loans from CHFA, and any
9 assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a
10 lien on the Leasehold Estate created by this Ground Lease.

11 **1.11 Low Income Households** shall have the same meaning as specified in Section
12 33334.2 of the California Health and Safety Code.

13 **1.12 Occupant** means any person or entity authorized by Developer to occupy a
14 residential unit on the Site, or any portion thereof.

15 **1.13 Premises** means the Site together with any Improvements thereon.

16 **1.14 Site** means the real property shown on the Site Plan, Attachment 1, and described
17 in the Site Legal Description, Attachment 2.

18 **1.15 Very Low Income Households** shall have the same meaning as specified in
19 Section 50105 of the California Health and Safety Code.

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

4 **ARTICLE 2: TERM**

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

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

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

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

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

1 **ARTICLE 3: FINANCING**

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

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

11 **ARTICLE 4: RENT**

12 **4.01 Annual Rent**

13 (a) Developer shall pay the Agency two hundred ten thousand dollars (\$210,000) per
14 year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Section 4.01.5
15 below, without offset of any kind and without necessity of demand, notice or invoice from the
16 Agency (together, "Annual Rent"). Base Rent shall be due and payable in arrears on January 31st
17 of each Lease Year; provided, however, Base Rent for the first Lease Year shall be due on April
18 15, 2001, and shall be equal to \$15,000 times the number of days in the first Lease Year, divided
19 by 365. Residual Rent shall be due in arrears on April 1st of each Lease Year, but shall be
20 payable only from and to the extent that the Project has Surplus Cash, as defined in Section 4.01.5
21 below, available in such Lease Year.

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

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

18 **4.01.5 Rent Definitions**

19 (a) "Base Rent" means, in any given Lease Year, fifteen thousand dollars (\$15,000).

20 (b) "Residual Rent" means the difference between the Annual Rent (\$210,000 during
21 the initial term) and the Base Rent in any given Lease Year.

1 (c) "Surplus Cash" means the net rental income remaining in any given Lease Year
2 after deduction of all operating expenses, debt service, reserve deposits, payment of Developer's
3 fees deferred at the time of acquisition and payment of the asset management fee.

4 **4.02 Net Lease**

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

10 **ARTICLE 5: AGENCY COVENANTS**

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

1 **ARTICLE 6: DEVELOPER COVENANTS**

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

4 **6.01 Nonprofit Corporation/Authority**

5 Developer is a California nonprofit public benefit corporation and has full rights, power
6 and authority to enter into and perform its obligations under this Ground Lease.

7 **6.02 Use of Site**

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

10 **6.02a. Permitted Uses**

11 Devote the Site to, and only to and in accordance with, the uses specified in this
12 Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground
13 Lease.

14 **6.02b. Non-Discrimination**

15 Not discriminate against or segregate any person or group of persons on account of
16 race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic
17 partner status, sexual orientation or disability (including HIV or AIDS status) in the sale, lease,
18 rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Improvements, or
19 any part thereof, nor shall Developer itself or any person claiming under or through it establish or
20 permit any such practice or practices of discrimination or segregation with reference to the
21 selection, location, number, use or occupancy, of Occupants, subtenants or vendees on the Site or

1 Improvements, or any part thereof.

2 **6.02c. Acceptance of Tenants with Section 8 Subsidy**

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

5 **6.02d. Non-Discriminatory Advertising**

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

9 **6.02e. Access for Disabled Persons**

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

13 **6.02f. Equal Opportunity Marketing Plan**

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

17 **6.02g. Lead Based Paint**

18 Comply with the regulations issued by the Secretary of Housing and Urban
19 Development set forth in 37 F.R. 22732-3 and all applicable rules and orders issued thereunder
20 which prohibit the use of lead-based paint in residential structures undergoing federally assisted
21 construction or rehabilitation and require the elimination of lead-based paint hazards.

1 **6.02h. Renewal of Section 8 Contracts**

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

6 **6.03 INTENTIONALLY OMITTED**

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

8 Forty-five days after the Agreement Date, and on January 15th of each year thereafter,
9 Developer will furnish to the Agency a list of all of the names of the persons who are Occupants
10 of the Improvements on the Site, the specific unit which each person occupies, the household
11 income of the Occupants of each unit, the household size and the rent being charged to the
12 Occupants of each unit. If any state or federal agency requires an income certification for
13 Occupants of the Site containing the above-referenced information, the Agency agrees to accept
14 such certification in lieu of Attachment 9 as meeting the requirements of this Ground Lease. In
15 addition to such initial and annual list and certification, Developer agrees to provide the same
16 information and certification to the Agency regarding each Occupant of the Improvements not
17 later than ten (10) business days after such Occupant commences occupancy.

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

19 Neither the Agency, nor any employee, agent or representative of the Agency has made
20 any representation, warranty or covenant, expressed or implied, with respect to the Site, its
21 physical condition, the condition of any improvements, any environmental laws or regulations, or

1 any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set
2 forth explicitly in this Ground Lease, and the Developer understands and agrees that the Agency is
3 making no such representation, warranty or covenant, expressed or implied; it being expressly
4 understood that the Site is being leased in an "AS IS" condition with respect to all matters.

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

6 **9.01 Scope of Development and Schedule of Performance**

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

9 **9.02 Permitted Uses and Occupancy Restrictions**

10 | (a) The permitted uses of the Project are limited to 101 dwelling units, including 1
11 manager's unit and 100 residential units, a community room, a laundry room, a commercial
12 space/unit and related parking. Following the execution date of this Agreement, at least 100 of
13 the 101 units in the Project shall be occupied or held vacant and available for rental by households
14 of Low Income. One of the 101 units in the Project shall be occupied by the on-site property
15 manager.

16 (b) All dwelling units (with the exception of the on-site property manager unit) shall
17 be occupied and rented through the HUD Project-Based Section 8 Rental Assistance Program, or
18 its successor program, for as long as the Project receives Project-Based Section 8 assistance, in
19 accordance with HUD requirements. Developer shall accept Project-Based Section 8 assistance
20 from HUD for as long as it is offered by HUD.

1 (c) Upon vacancy of any of the dwelling units (with the exception of the on-site
2 property manager unit), that vacant unit shall be rented to a tenant who qualifies under the HUD
3 Project-Based Section 8 Rental Assistance Program. In the event HUD no longer provides
4 Section 8 assistance, rent for that dwelling unit, including utility allowance, shall not exceed 30%
5 of 60% of AMI, or 30% of the tenant's actual income, whichever is greater, as determined by the
6 California Tax Credit Allocation Committee for the unit size in question.

7 **9.03 [INTENTIONALLY OMITTED]**

8 **ARTICLE 10: [INTENTIONALLY OMITTED]**

9 **ARTICLE 11: [INTENTIONALLY OMITTED]**

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

11 **12.01 Post Acquisition Changes**

12 The requirements of any zoning or land use controls shall control changes to the
13 Improvements after the acquisition has been completed. However, because of the location of the
14 Site, the nature of the Improvements, the Permitted Uses and their relationship to surrounding
15 developments, the Agency has a particular interest in the Site and in the nature and extent of the
16 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the
17 following particular controls on the Site and on the Improvements: during the term of this
18 Ground Lease, neither Developer, nor any voluntary or involuntary successor or assign, shall
19 make or permit any change in the Improvements, as change is hereinafter defined, unless the
20 express prior written consent for any change shall have been requested in writing from the
21 Agency and obtained, and, if obtained, upon such terms and conditions as the Agency may

1 require. The Agency agrees not to withhold or delay its response to such a request unreasonably.

2 **12.02 Definition of Change**

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

10 **12.03 Enforcement**

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

15 **ARTICLE 13: TITLE TO IMPROVEMENTS**

16 Fee title to any Improvements, including those Improvements conveyed to Developer by
17 that certain Improvement Grant Deed of even date herewith, vested in Developer shall remain
18 vested in Developer during the term of this Ground Lease, subject to Article 14.01 below. Subject
19 to the rights of any Lenders and as further consideration for the Agency entering into this Ground
20 Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the
21 Improvements shall vest in the Agency without further action of any party, without any obligation

1 by the Agency to pay any compensation therefor to Developer and without the necessity of a deed
2 from Developer to the Agency.

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

4 **14.01 Assignment, Sublease or Other Conveyance by Developer**

5 Developer may not sell, assign, convey, sublease, or transfer in any other mode or form all
6 or any part of its interest in this Ground Lease or in the Improvements or any portion thereof,
7 other than to Lenders, or allow any person or entity to occupy or use all or any part of the Site
8 other than leases to tenants in the ordinary course of business, nor may it contract or agree to do
9 any of the same, without the prior written approval of the Agency, which approval shall not be
10 unreasonably withheld or delayed; provided, however, that the Developer may sell, assign,
11 convey, sublease or transfer its interests to a nonprofit public benefit corporation under common
12 control with Developer, without the consent of the Agency.

13 **14.02 Assignment, Sublease or Other Conveyance by Agency**

14 The Agency acknowledges that any sale, assignment, transfer or conveyance of all or any
15 part of the Agency's interest in the Site, the Improvements, or this Ground Lease, are subject to
16 this Ground Lease. The Agency will require that any purchaser, assignee or transferee will
17 expressly assume all of the obligations of the Agency under this Ground Lease by a written
18 instrument recordable in the Official Records of the City. This Ground Lease shall not be affected
19 by any such sale, and Developer shall attorn to any such purchaser or assignee. In the event that
20 the Agency intends to sell all or any part of the Site, other than as provided in Section 2(b), the
21 Agency shall notify Developer of the proposed terms of such sale not later than ninety (90) days

1 before the anticipated close of escrow. Developer shall have sixty (60) days from the giving of
2 such notice to exercise a right of first refusal to purchase the Site on the same terms and
3 conditions of such proposed sale.

4 **ARTICLE 15: TAXES**

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

1 **ARTICLE 16: UTILITIES**

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

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

8 **ARTICLE 17: MAINTENANCE**

9 Developer, at all times during the term hereof, shall maintain or cause to be maintained the
10 Premises in good condition and repair to the reasonable satisfaction of the Agency, taking into
11 account the age of the building, including the exterior, interior, substructure and foundation of the
12 Improvements and all fixtures, equipment and landscaping from time to time located on the Site
13 or any part thereof. The Agency shall not be obligated to make any repairs, replacements or
14 renewals of any kind, nature or description whatsoever to the Site or any buildings or
15 improvements now or hereafter located thereon.

16 **ARTICLE 18: LIENS**

17 Developer shall use its best efforts to keep the Site free from any liens arising out of any
18 work performed or materials furnished by itself or its subtenants. In the event that Developer
19 shall not cause the same to be released of record within twenty (20) days following written notice
20 from the Agency of the imposition of any such lien, the Agency shall have, in addition to all other
21 remedies provided herein and by law, the right but not the obligation to cause the same to be

1 released by such means as it shall deem proper, including payment of the claim giving rise to such
2 lien. All sums paid by the Agency for such purpose, and all reasonable expenses incurred by it in
3 connection therewith, shall be payable to the Agency by Developer on demand; provided
4 however, Developer shall have the right, upon posting of an adequate bond or other security, to
5 contest any such lien, and the Agency shall not seek to satisfy or discharge any such lien unless
6 Developer has failed so to do within ten (10) days after the final determination of the validity
7 thereof. In the event of any such contest, Developer shall protect, defend, and indemnify the
8 Agency against all loss, cost, expense or damage resulting therefrom.

9 **ARTICLE 19: GENERAL REMEDIES**

10 **19.01 Application of Remedies**

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

12 **19.02 [INTENTIONALLY OMITTED]**

13 **19.03 Breach by Agency**

14 If Developer believes a material breach of this Ground Lease has occurred, Developer
15 shall first notify the Agency in writing of the purported breach, giving the Agency sixty (60) days
16 from receipt of such notice to cure such breach. In the event Agency does not then cure or, if the
17 breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within
18 sixty (60) days and thereafter diligently prosecute such cure to completion, then Developer shall
19 be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i)
20 terminating in writing this entire Ground Lease; (ii) prosecuting an action for damages;

1 (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law
2 or equity.

3 **19.04 Breach by Developer**

4 **19.04a. Default by Developer**

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

7 (1) Developer fails to comply with the Permitted Uses and Occupancy
8 Restrictions set forth in Article 9.02;

9 (2) Developer voluntarily or involuntarily assigns, transfers or attempts to
10 transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements,
11 except as permitted by this Ground Lease;

12 (3) Developer, or its successor in interest, shall fail to pay real estate taxes or
13 assessments on the Premises or any part thereof when due, or shall place thereon any
14 encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to
15 be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or
16 lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien
17 removed or discharged; provided, however, that Developer shall have the right to contest any tax
18 or assessment pursuant to Article 15 and, upon the posting of an adequate bond or other security,
19 to contest any such lien or encumbrance. In the event of any such contest, Developer shall
20 protect, indemnify and hold Agency harmless against all losses and damages, including
21 reasonable attorneys' fees and costs resulting therefrom;

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

8 (5) Developer breaches any provision of any financing provided by the
9 Agency, or by any other source for the acquisition or rehabilitation of the Site or the
10 Improvements, and fails to cure the breach following any required written notice and within any
11 applicable cure periods;

12 (6) Developer breaches any other material provision of this Ground Lease; or

13 (7) Developer fails to pay Rent when due.

14 **19.04b. Notification, Cure and Remedies**

15 Upon the happening of any of the events described in Article 19.04a above, the Agency
16 shall notify Developer in writing of its purported breach, failure or act, giving Developer sixty
17 (60) days from receipt of such notice to cure such breach, failure or act. In the event Developer
18 does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty
19 (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure
20 to completion, then, subject to the rights of any Lender and subject to Article 19.02, the Agency
21 thereafter shall be afforded all of its rights at law or in equity, including any or all of the following

1 remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for damages; or
2 (3) seeking specific performance of this Ground Lease.

3 **ARTICLE 20: DAMAGE AND DESTRUCTION**

4 **20.01 Insured Casualty**

5 If the Improvements or any part thereof are damaged or destroyed by any cause covered by
6 any policy of insurance required to be maintained by Developer hereunder, Developer shall
7 promptly commence and diligently complete the restoration of the Improvements as nearly as
8 possible to the condition thereof prior to such damage or destruction; provided, however, that if
9 more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or
10 other casualty, or if the insurance proceeds do not provide at least ninety percent (90%) of the
11 funds necessary to accomplish the restoration, Developer may terminate this Ground Lease within
12 thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on
13 which Developer is notified of the amount of insurance proceeds available for restoration. In the
14 event Developer is required or elects to restore the Improvements, all proceeds of any policy of
15 insurance required to be maintained by Developer under this Ground Lease shall be used by
16 Developer for that purpose and Developer shall make up from its own funds any deficiency
17 between the amount of insurance proceeds available for the work of restoration and the actual cost
18 thereof. In the event Developer elects to terminate this Ground Lease pursuant to its right to do so
19 under this Article 20.01, or elects not to restore the Improvements, the insurance proceeds shall be
20 divided among the Agency, Developer and any Lender in accordance with the provisions of
21 Article 20.03.

1 **20.02 Uninsured Casualty**

2 If (i) a substantial portion of the Improvements are damaged or destroyed and ten percent
3 (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii)
4 in the reasonable opinion of Developer, the undamaged portion of the Improvements cannot be
5 completed or operated on an economically feasible basis; and (iii) there is not available to
6 Developer any feasible source of third party financing for restoration reasonably acceptable to
7 Developer; then Developer may terminate this Ground Lease upon ninety (90) days written notice
8 to the Agency. If it appears that the provisions of this Article 20.02 may apply to a particular
9 event of damage or destruction, Developer shall notify the Agency promptly and not consent to
10 any settlement or adjustment of an insurance award without the Agency's written approval, which
11 approval shall not be unreasonably withheld or delayed. In the event that Developer terminates
12 this Ground Lease pursuant to this Article 20.02, all insurance proceeds and damages payable by
13 reason of the casualty shall be divided among Agency, Developer and Lender in accordance with
14 the provisions of Article 20.03. If Developer does not have the right, or elects not to exercise the
15 right, to terminate this Ground Lease as a result of an uninsured casualty, Developer shall
16 promptly commence and diligently complete the restoration of the Improvements as nearly as
17 possible to their condition prior to such damage or destruction in accordance with the provisions
18 of Article 20.01.

19 **20.03 Distribution of the Insurance Proceeds**

20 In the event of an election by Developer to terminate and surrender as provided in either
21 Article 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance

1 policy required to be maintained by Developer hereunder shall be as follows:

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

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

10 (c) The remainder to Developer.

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

13 **20.04 Clean Up of Housing Site**

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

18 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; INDEMNIFICATION**

19 Agency shall not in any event whatsoever be liable for any injury or damage to any person
20 happening on or about the Site, for any injury or damage to the Premises, or to any property of
21 Developer, or to any property of any other person, entity or association on or about the Site.

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

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

11 **22.01 Insurance**

12 The Developer shall maintain insurance meeting the requirements of this Article.

13 **22.01a. Insurance Requirements for Developer**

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

19 **22.01b. Minimum Scope of Insurance**

20 Coverage shall be at least as broad as:

- 21 (1) Insurance Services Office Commercial General Liability coverage

1 ("occurrence" form CG 00010196).

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

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

6 (4) Whenever an architect or engineer is employed, Professional Liability
7 Insurance covering all negligent acts, errors and omissions in Developer's Architectural and
8 Engineering Professional Design Services. As an alternative to Developer providing said
9 Professional liability insurance, Developer shall require that all architectural and engineering
10 professional consultants for the project have liability insurance covering negligent acts, errors and
11 omissions. Developer shall provide the Agency with copies of consultants' insurance certificates
12 showing such coverage.

13 (5) Property Liability Insurance against all risks of direct physical loss to the
14 Project.

15 **22.01c. Minimum Limits of Insurance**

16 Coverage shall maintain limits no less than:

17 (1) General Liability: \$1,000,000 combined single limit per occurrence for
18 bodily injury, personal injury and property damage. If Commercial General Liability Insurance or
19 other form with a general aggregate limit shall apply separately to this project/location, the
20 general aggregate limit shall be twice the required occurrence limit.

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

3 (3) Workers' Compensation and Employers Liability: Workers' Compensation
4 limits as required by the Labor Code of the State of California and Employers Liability limits of
5 \$1,000,000 per accident.

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

8 (5) Property Insurance:

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

12 (b) During the course of construction, Full Completed Value of the
13 Project.

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

16 (6) Review of Minimum Limits: At no less than every five years during the
17 Term, Agency may reasonably adjust the Minimum Limits of coverage required in this Article
18 22.01c.

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

20 Any deductibles or self-insured retentions must be declared to and approved by Agency.

21 At the option of Agency, either: the insurer shall reduce or eliminate such deductibles or self-

1 insured retentions as respects the Agency, its officers, employees and volunteers; or the Developer
2 shall procure a bond guaranteeing payment of losses and related investigation, claim
3 administration and defense expenses.

4 **22.01e. Other Insurance Provisions**

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

6 (1) General Liability and Automobile Liability Coverage:

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

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

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

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

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

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

11 **22.01f. Acceptability of Insurers**

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

13 **22.01g. Verification of Coverage**

14 Developer shall furnish Agency with certificates of insurance and with original
15 endorsements effecting coverage required by this clause at the commencement of this Lease and
16 annually thereafter. The certificates and endorsements for each insurance policy are to be signed
17 by a person authorized by that insurer to bind coverage on its behalf. Agency reserves the right to
18 require complete, certified copies of all required insurance policies, at any time.

19 **22.01h. Subcontractors**

20 Developer shall include all subcontractors as additional insured under its policies or shall
21 furnish separate certificates and endorsements for each subcontractor. All coverage for

1 subcontractors shall be subject to all of the requirements stated herein.

2 **22.02 [INTENTIONALLY OMITTED]**

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

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

14 **ARTICLE 24: ENTRY**

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

1 **ARTICLE 25: MORTGAGE FINANCING**

2 **25.01 No Encumbrances Except for Development Purposes**

3 Notwithstanding any other provision of this Ground Lease and subject to the prior written
4 consent of the Agency, which consent shall not be unreasonably withheld or delayed, Leasehold
5 Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing
6 loans of funds to be used for financing the acquisition, design, rehabilitation or future renovation
7 or reconstruction of the Improvements and any other expenditures reasonably necessary and
8 appropriate to acquire, own, develop, rehabilitate, renovate, construct or reconstruct the
9 Improvements under this Ground Lease and the operation of the Improvements, and costs and
10 expenses incurred or to be incurred by Developer in furtherance of the purposes of this Ground
11 Lease. The mortgage loans being made by CHFA and the outstanding loans from CHFA, the City
12 and County of San Francisco, and the San Francisco Senior Center are approved Leasehold
13 Mortgages for all purposes under this Ground Lease.

14 **25.02 Holder Not Obligated to Construct**

15 The holder of any mortgage, deed of trust or other security interest authorized by Article
16 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated
17 to complete any rehabilitation of the Improvements or to guarantee such completion; nor shall any
18 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.
19 However, in the event the Holder does undertake to complete or guarantee the completion of the
20 rehabilitation of the Improvements, nothing in this Ground Lease shall be deemed or construed to
21 permit or authorize any such Holder or its successors or assigns to devote the Site or any portion

1 thereof to any uses, or to construct or rehabilitate any Improvements thereon, other than those
2 uses or Improvements authorized under Article 9.02. To the extent any Holder or its successors in
3 interest wish to change such uses or construct different improvements, that Holder or its
4 successors in interest must obtain the written consent of the Agency.

5 **25.03 Failure of Holder to Complete Improvements**

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

10 **25.04 Default by Developer and Agency's Rights**

11 **25.04a. Right of Agency to Cure**

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

1 **25.04b. Notice of Default to Agency**

2 The Lender shall give the Agency prompt written notice of any such default or
3 breach, and every Leasehold Mortgage other than the deeds of trust securing: (i) a loan in the
4 original principal amount of \$473,629.90, payable to the San Francisco Senior Center; (ii) a loan
5 in the original principal amount of \$473,629.90, payable to the City and County of San Francisco;
6 and (iii) a loan in the original principal amount of \$500,000, payable to Three Embarcadero West
7 (the "Existing Loans"), shall so provide and shall also contain the Agency's right to cure as above
8 set forth.

9 **25.05 Subordination of Ground Lease**

10 This Ground Lease is subordinate to the CHFA Regulatory Agreement between CHFA
11 and the Developer.

12 **ARTICLE 26: PROTECTION OF LENDER**

13 **26.01 Notification to Agency**

14 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the
15 existence of any of the rights set forth in this Article 26, each and every Lender shall give written
16 notice to the Agency of the Lender's address and of the existence and nature of its Leasehold
17 Mortgage. CHFA is deemed to have given such notice as is required to obtain the rights and
18 protections of a Lender under this Ground Lease.

19 **26.02 Lender's Rights to Prevent Termination**

20 Lender shall have the right, but not the obligation, at any time prior to termination of this
21 Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay
22 all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make

1 all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make
2 any repairs and improvements, to do any other act or thing required of Developer hereunder, and
3 to do any act or thing which may be necessary and proper to be done in the performance and
4 observance of the agreements, covenants and conditions hereof to prevent a termination of this
5 Ground Lease as the same would have been if made, done and performed by Developer instead of
6 by Lender.

7 **26.03 Lender's Rights When Developer Defaults**

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

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

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

20 All rights of the Agency to terminate this Ground Lease as the result of the occurrence of any such
21 event of default shall be subject to, and conditioned upon, the Agency having first given Lender

1 notice of such event of default and Lender having failed to remedy such default or acquire
2 Developer's Leasehold Estate created hereby or commence foreclosure or other appropriate
3 proceedings in the nature thereof as set forth in and within the time specified by this Article 26.03.

4 **26.04 Default Which Cannot be Remedied by Lender**

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

15 **26.05 Court Action Preventing Lender's Action**

16 If Lender is prohibited by any process or injunction issued by any court or by reason of
17 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving
18 Developer from commencing or prosecuting foreclosure or other appropriate proceedings in the
19 nature thereof, the times specified in Articles 26.03 and 26.04 above for commencing or
20 prosecuting such foreclosure or other proceedings shall be extended for the period of such
21 prohibition; provided that Lender shall have fully cured any default in the payment of any

1 monetary obligations of Developer under this Ground Lease and shall continue to pay currently
2 such monetary obligations as and when the same fall due.

3 **26.06 Lender's Rights to Record, Foreclose and Assign**

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

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

16 (ii) that should the Lender acquire the Leasehold Estate hereunder by
17 foreclosure or other appropriate proceedings in the nature of foreclosure or as the result of any
18 other action or remedy provided for by any Leasehold Mortgage, or should Lender sell or assign
19 the same to an Agency approved purchaser or assignee, Lender or its purchaser or assignee shall
20 take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so long
21 as and only so long as it shall be the owner of such estate, except as provided elsewhere in this

1 Ground Lease, assume all of the obligations of Developer under this Ground Lease; the Lender or
2 its purchaser or assignee may operate and maintain the 101 dwelling units without any limitations
3 on the rents charged or the income of the occupants thereof.

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

7 (iv) any limited partners of Developer shall have the same rights as any Lender
8 under Articles 26.02, 26.03, and 26.06 (iii), and any reference to a Lender in said section shall be
9 deemed to include such limited partners; provided, however, that the rights of such limited
10 partners shall be subordinate to the rights of any Lender.

11 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

12 From and after the time that the Lender or any assignee of Lender, including any purchaser
13 at a foreclosure sale ("Subsequent Owner"), acquires title to the Leasehold Estate, Annual Rent
14 shall be set as follows:

15 (a) If the Lender continues to operate the Project subject to the use and
16 occupancy restrictions of Article 9.02, then Annual Rent otherwise due shall be deferred until
17 such time as the Project is no longer operated by the Lender subject to such restrictions. All
18 deferred Annual Rent shall accrue, with simple interest at three percent (3%) per annum until
19 paid, and shall be due and payable upon sale or assignment of the Project by Lender or within
20 sixty (60) days after Lender ceases to operate the Project in accordance with such restrictions.

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

8 **ARTICLE 27: CONDEMNATION**

9 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

14 **27.02 Total Taking**

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

17 **27.03 Partial Taking**

18 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in
19 effect, except that Developer may elect to terminate this Ground Lease if, in Developer's
20 reasonable judgment, the remaining portion of the Improvements are rendered unsuitable for
21 Developer's continued use of the Site. If Developer elects to terminate this Ground Lease,

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

10 **27.04 Effect on Rent**

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

16 **27.05 Restoration of Improvements**

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

1 **27.06 Award and Distribution**

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

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

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

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

9 **27.07 Payment to Lenders**

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

13 **ARTICLE 28: ESTOPPEL CERTIFICATE**

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

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

4 **ARTICLE 29: QUITCLAIM**

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

9 **ARTICLE 30: EQUAL OPPORTUNITY**

10 Developer agrees to comply with all of the Equal Opportunity and related requirements
11 attached hereto as Attachment 7.

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

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

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

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

18 **ARTICLE 33: CONFLICT OF INTEREST**

19 No commissioner, official, or employee of the Agency shall have any personal or financial
20 interest, direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or
21 employee participate in any decision relating to this Ground Lease which affects his or her

1 personal interests or the interests of any corporation, partnership, or association in which he or she
2 is directly or indirectly interested.

3 **ARTICLE 34: NO PERSONAL LIABILITY**

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

8 **ARTICLE 35: [INTENTIONALLY OMITTED]**

9 **ARTICLE 36: WAIVER**

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

1 **ARTICLE 37: DEVELOPER RECORDS**

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

10 **ARTICLE 38: NOTICES AND CONSENTS**

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

17 if to Developer at: Citizens Housing Corporation
18 26 O'Farrell Street, Suite 506
19 San Francisco, CA 94108
20 Attn.: Executive Director
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
26

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

5 **ARTICLE 39: COMPLETE AGREEMENT**

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

10 **ARTICLE 40: HEADINGS**

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

14 **ARTICLE 41: SUCCESSORS AND ASSIGNS**

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

1 **ARTICLE 42: TIME**

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

4 **ARTICLE 43: PARTIAL INVALIDITY**

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

8 **ARTICLE 44: APPLICABLE LAW**

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

11 **ARTICLE 45: ATTORNEYS' FEES**

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

15 **ARTICLE 46: EXECUTION IN COUNTERPARTS**

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

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

20 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall
21 be recorded. The parties shall execute the memorandum in form and substance as required by a

1 title insurance company insuring Developer's leasehold estate or the interest of any Leasehold
2 Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent
3 purchasers and mortgagees.

4 **ARTICLE 48: ATTACHMENTS**

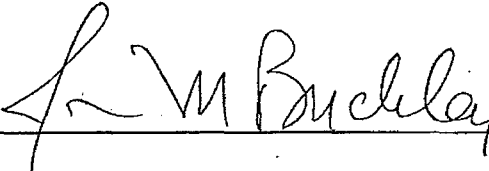
5 The following are attached to this Ground Lease and by this reference made a part hereof:

- 6 1. Site Plan
- 7 2. Legal Description of Site
- 8 3. (not used)
- 9 4. Schedule of Performance
- 10 5. (not used)
- 11 6. Operational Rules for Certificate Holder's Priority
- 12 7. Equal Opportunity Program
- 13 8. Prevailing Wage Provisions
- 14 9. Income Computation and Certification
- 15 10. Additional Developer Covenants
- 16 11. Mayor's Office of Housing Policy on Developer Fees for Non-Tax Credit
17 Projects
- 18 12. Mayor's Office of Housing Policy on Use of Residual Receipts
- 19
- 20

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

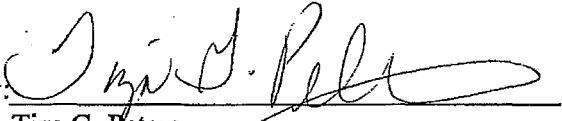
3
4 **DEVELOPER AS TENANT:**

5
6 **CITIZENS HOUSING CORPORATION,**
7 a California nonprofit public benefit corporation

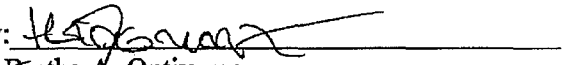
8
9
10
11 By: 
12
13 Its Executive Director

14
15
16 **AGENCY AS LANDLORD:**

17
18 **REDEVELOPMENT AGENCY OF THE CITY**
19 **AND COUNTY OF SAN FRANCISCO,**
20 a public body, corporate and politic

21
22
23 By: 
24 Tiza G. Peterson
25 Its Deputy Executive Director, Finance
26 and Administration

27
28
29
30 **APPROVED AS TO FORM:**

31
32
33 By: 
34 *for* Bertha A. Ontiveros
35 Agency General Counsel

36
37
38 Authorized by Agency Resolution No. 61 -2000, adopted APRIL 25, 2000, and
39 Board of Supervisors Resolution, File No. 449-00 , adopted MAY 15 , 2000.

ATTACHMENT 1

Site Plan

- 324

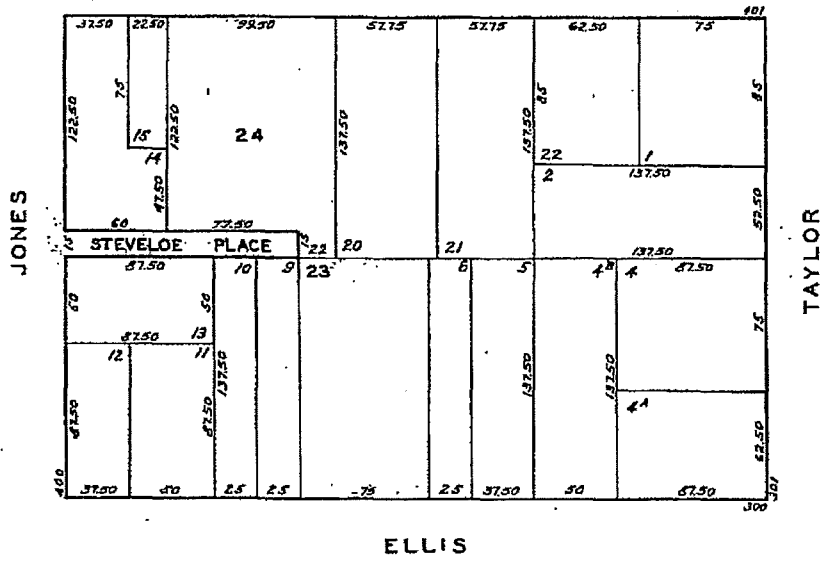
50 VARA BLK. 225

REVISED 1971
" " '84

LOTS MERGED
MAY 21 1972
15/16 3 19/16



O' FARRELL



NOTICE This is neither a plat nor a survey. It is furnished merely as a convenience to aid you in locating the land indicated hereon with reference to streets and other land. No liability is assumed by reason of any reliance hereon.

ASSESSED 111,375
BLK. TOTAL 111,375 SQ. FT.

OLD REPUBLIC TITLE COMPANY

ATTACHMENT 2

Legal Description of Site

OLD REPUBLIC TITLE COMPANY

ORDER NO. 389869

UPDATE

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

BEGINNING at a point on the southerly line of O'Farrell Street, distant thereon 60 feet easterly from the easterly line of Jones Street; running thence easterly along said line of O'Farrell Street 99 feet and 6 inches; thence at a right angle southerly 137.50 feet; thence at a right angle westerly 22 feet to the easterly line of Steveloe Place; thence at a right angle northerly along said line of Steveloe Place 15 feet to the northerly line of Steveloe Place; thence at a right angle westerly along said line of Steveloe Place 77.50 feet; thence at a right angle northerly 122.50 feet to the point of beginning.

BEING part of 50 Vara Block No. 225.

Assessor's Lot 24; Block 324

ATTACHMENT 3

[NOT USED]

ATTACHMENT 4

Schedule of Performance

<u>MILESTONE</u>	<u>COMPLETION DATE</u>
Complete Acquisition	No later than five (5) business days from the Execution Date of this Lease

ATTACHMENT 5

[NOT USED]

ATTACHMENT 6

OPERATIONAL RULES FOR CERTIFICATE HOLDERS' PRIORITY

The Owner hereby agrees that priority for units designated for Low Income Households will be given to persons displaced or to be displaced from their homes by Agency redevelopment activities and who have been issued a form described as the "Certificate of Preference" ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order of priority in paragraph D of this Attachment "I". Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the Agency and applicant in writing of the reason for rejection. In order to implement this Attachment "I":

- A. The Agency agrees to furnish the following:
 - 1. Written and/or printed notices to Certificate Holders advising them that such units will soon be available;
 - 2. Assistance to Certificate Holders in filing applications; and
 - 3. Verification to the Owner that applicant has been displaced.

- B. The Owner agrees to the following:
 - 1. To supply the Agency ninety (90) days prior to accepting lease applications with the information listed below. This information shall not be changed without providing the Agency with ten (10) days written notice.
 - a. A master unit list with the following information:
 - (1) Apartment number;
 - (2) Number of bedrooms and baths;
 - (3) Square footage; and
 - (4) Initial rent to be charged.
 - b. Estimated itemized cost of utilities and services to be paid by tenant by unit size.
 - c. Detailed description of Owner's rules for tenants, which must include:
 - (1) Minimum and maximum income
 - (2) Pet policy
 - (3) Selection process: To insure no discrimination against Low Income Households and Certificate Holders all criteria and the relative weight to be given to each criterion indicated. The Agency shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the Agency.
 - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.
 - (5) Occupancy requirements must be described in full and found reasonable by the Agency
 - (6) Duration of rental agreement or lease.

3. Within ten (10) working days after execution of a lease, the Owner will supply the Agency with a signed copy of the following for all Certificate Holder tenants:
 - (1) signed copy of lease;
 - (2) copy of complete application; and
 - (3) copies of all verification forms used to ascertain income eligibility.
- D. In order to expedite occupancy of housing units nearing completion, the Owner further agrees:
1. To select as prospective tenants eligible Certificate Holders who meet the occupancy requirements of the Owner. Selection will be based on the following descending order of priorities:
 - a. Families or individuals who reside on Agency property in redevelopment areas.
 - b. Families or individuals who were relocated from Agency property and still have a valid Certificate of Preference.
 - c. Families or individuals displaced by the Department of Health, Public Works, etc. and referred by the Agency.
 2. Applicants who are Certificate Holders who have been accepted and notified by the Owner will have five (5) working days thereafter to accept or reject a unit. If the Certificate Holder fails to affirmatively respond, the application may be closed. Rejection of the unit by a Certificate holder must be shown on current status report.
 3. All Certificate Holders found acceptable by the Owner shall have the opportunity to inspect a model or other available completed unit, and be assigned an appropriate unit for future occupancy. Units may be offered to non-Certificate Holders at any time as long as the current status report shows that there are sufficient units available to satisfy applications from Certificate Holders for units of appropriate size in any stage of processing. **ALL OBLIGATIONS TO SHOW MODELS OR OTHER AVAILABLE COMPLETED UNITS SHALL REMAIN IN EFFECT DURING INITIAL OCCUPANCY PERIOD.** Initial Occupancy is defined for all purposes of this Attachment "I" as the earlier of ninety (90) calendar days following the Agency's receipt of a certified copy of a Certificate (or Certificates) of Occupancy issued by the City and County of San Francisco for the respective unit (or units) to be so approved for occupancy, or the date when all units have been rented to the first occupants thereof. Upon Initial Occupancy the Agency will certify compliance with this Attachment "I" with a written notice provided ten (10) days after Initial Occupancy. Such certification in no way negates the Owner's continued obligations to provide housing to persons displaced or to be displaced by the Agency's redevelopment activities as vacancies occur amount the units designated for Low Income Households.

E. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if available to the Owner from its leasing agent, a rent-up report for all Development units listing the following:

1. Unit number rented;
2. Tenant name;
3. Date of move-in; and
4. Rent rate.

F. The Owner agrees that any contract entered into for the management of the residential portions of the Development, both before and after Initial Occupancy, shall be furnished to the Agency, shall incorporate the provisions of this Attachment "I", and shall bind the management agent to comply with its requirements.

G. After Initial Occupancy (without regard to whether the Agency has certified compliance with the obligation of the Owner respecting the period prior to Initial Occupancy), the Owner agrees to notify the Agency as far as practicable in advance of vacancies which may occur in Low Income Housing units. The Agency and the Owner agree to follow the steps set forth in paragraph (D) above with respect to such units. In the event no appropriate Certificate Holder can be found within five (5) working days after receipt of notification by the Owner to the Agency of availability of a unit, the Agency agrees that the Owner may lease the unit to Low Income Households, as appropriate, which do not hold a Certificate of Preference.

H. The Agency reserves the right to waive any of the foregoing conditions, provided however that any such waiver shall not be deemed to have waived any other conditions, nor the same condition subsequently.

ATTACHMENT 7

Equal Opportunity Program

ATTACHMENT NO. 4

EQUAL OPPORTUNITY PROGRAM

This Attachment No. 4 sets forth the Borrower's equal opportunity obligations and requirements pursuant to the Loan Agreement.

The Borrower agrees to the following:

- I. PURPOSES.** The Agency and the Borrower agree that the purposes of this Attachment No. 4 and its accompanying Schedules and Exhibits are to ensure:
- A. that persons and businesses, that enter into Loan Agreements with the Agency, that plan, design or construct improvements on sites initially purchased and assembled with Agency funds, or that occupy a site after its completion, provide equal opportunities to and do not discriminate against minority group persons, women, or economically disadvantaged business enterprises owned by minority group persons or women.
 - B. that the Borrower, its Prime Contractor and all subcontractors of the Borrower recruit, employ and contract with all qualified individuals and businesses which are part of the work force and business community in San Francisco and the Bay Area.
- II. DEFINITIONS.** The following definitions apply to this Attachment No. 4 and its accompanying schedules:
- A. "Agency" means the staff of the Redevelopment Agency of the City and County of San Francisco responsible for insuring that these Equal Opportunity Provisions are implemented.
 - B. "Consultant" means a person or business which is a party to a professional service contract.
 - C. "Contract" means any agreement in excess of \$10,000 between the Borrower, the general contractor, any prime contractors or any subcontractor (regardless of tier) and a person to provide or procure labor, materials, supplies or services, including a purchase order that requires installation of materials upon the Site covered by the Agreement. A "contract" does not include a loan transaction.

- D. "Contractor" means the Borrower's general contractor, all prime contractors and all subcontractors (regardless of tier) having a contract or subcontract in excess of \$10,000 and who employ persons in a trade at the Site.
- E. "Controlled", for purposes of determining whether a business is an MBE or a WBE, means that the minority group person(s), the woman or a combination of minority group persons and women, as the context requires, shall (1) possess legal authority and power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and in directing the operations of the business.
- F. "Economically Disadvantaged" means that once a business reaches the three-year average size gross income threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible M/WBE and it will not be counted towards meeting M/WBE goals.

<u>Industry</u>	<u>Gross Income</u>
Construction	\$14,000,000
Professional or Personal Services	2,000,000
Suppliers	2,000,000

- G. "First Consideration" means to make a genuine effort to consider local M/WBEs before looking elsewhere. Non-Local M/WBEs should be used to satisfy participation goals only if Local M/WBEs are not available or qualified, or if their bids or fees are significantly higher than those of the non-local M/WBEs.
- H. "First consideration for employment" means to offer a permanent position to individuals who are qualified for that position and who live in San Francisco prior to offering the position to a qualified individual who does not live in San Francisco.
- I. "Job category" means a group of similar jobs such as food and beverage supervisors, room cleaners and related workers, etc.
- J. "Joint Venture" means two or more businesses acting as a contractor and performing or providing services on a contract, in which each joint venturer combines property, capital, skill and/or knowledge.
- K. "Local M/WBE" means an economically disadvantaged, independent and continuing minority or woman-owned business that: (a) has fixed offices located within the geographic boundaries of the City and County of San Francisco; (b) is listed in the Permits and License Tax Paid File with a San Francisco Business Street address; and (c) possesses a current Business Tax Registration Certificate. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local. To qualify as a local firm, the firm must have been located and doing business in San Francisco for at least six months prior to

the date that the Borrower enters into exclusive negotiations with the Agency.

- L. "Minority" or "minority group person" means:
1. *American Indian or Alaskan Native, which includes Alaskan Indians, Inuits and Aleuts*, (any person having origins in the indigenous peoples of North America and who is an enrolled member of a federally-recognized tribe);
 2. *Asian* (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or South East Asian origins);
 3. *Black* (any person having origins in any of the black racial groups of Africa); or
 4. *Latino* (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America or the Caribbean Islands).
- M. "Minority-owned Business Enterprise (MBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more minority group persons residing in the United States or its territories.
- N. "Owned", for purposes of determining if a business is an MBE or a WBE, means that the minority group persons or women as the context requires, possess an ownership interest of at least 51 percent of the business, possess incidents of ownership, such as an interest in profit and loss, equal at least to the required ownership interest percentage, and contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.
- O. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, and legal representatives.
- P. "Retail tenant" means a business at the Site, whether run by tenants, operators or concessioners, and which supplies commodities or services to customers on its premises, including, but not limited to, stores, shops, hotels and eating and drinking businesses such as restaurants and bars.
- Q. "San Francisco resident (other than a person previously employed by the Borrower)" means a person who establishes that she or he has lived in San Francisco for at least one week prior to submitting her or his initial application for employment with the Borrower.

- R. "San Francisco resident (a person employed by the Borrower or retail tenant prior to assignment to the Site)" means a person who had lived in San Francisco for at least six months prior to the date she or he applied for a transfer to a position at the Site or the date she or he was assigned to work at the Site, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that she or he lived in San Francisco prior to applying for or being considered for a position with the Borrower or retail tenant at the Site.
- S. "Trade" means all skilled construction trades, laborers and security guards.
- T. "Woman-owned Business Enterprise (WBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more women residing in the United States or its territories.
- U. "Woman/Minority-owned Business Enterprise (W/MBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more women and minority group persons residing in the United States or its territories.

III. AREAS COVERED. In addition to the matters directly addressed in this Attachment No. 4, the equal opportunity obligations and requirements established herein cover:

- A. The construction work force for the original buildings and improvements at the Site, any additions or changes thereto, and all tenant improvements performed by or at the behest of the Borrower. Training and employment obligations and requirements are set forth in Schedule A attached hereto and incorporated herein by reference.
- B. Minority and woman-owned business enterprises. These obligations and requirements are set forth in Schedule B attached hereto and incorporated herein by reference.

IV. OBLIGATION TO INCORPORATE IN OTHER CONTRACTS. Each contract between the Borrower and a consultant, a general contractor, a prime contractor or a subcontractor (regardless of tier) shall physically incorporate and make binding on the parties to the contract §§I, II, III, IX and XI of this Attachment No. 4 and Schedules A and B to this Exhibit.

V. BORROWER'S HIRING OBLIGATIONS.

- A. This §V applies to the Borrower's employees.
- B. The Borrower shall make a good faith effort to fill vacancies in each job category in its work force (whether filled by new hire or promotion) at a rate which reflects the ethnic and gender composition of the City and County of San Francisco.
- C. The Borrower shall give first consideration in employment to residents San Francisco; provided that if a conflict arises, the Borrower's obligation under paragraph B shall take precedence over its obligation to give first consideration in employment under this paragraph.
- D. During the period between the issuance of the Request for Proposals and the execution of the Agreement, the Borrower hired as follows:

<u>Job Category</u>	<u>Total</u>	<u>Amer- Ican Indian</u>	<u>Asian/ Pacific Islndr</u>	<u>La- tino Black</u>	<u>Wo- men</u>	<u>SF Res</u>
1.						
2.						
3.						
4.						

- E. The Borrower shall submit quarterly reports to the Agency which show, for each job category of its employees, the total new hires, the ethnicity (each minority group) of the new hires, the gender of the new hires, and the residence of new hires (San Francisco/non-San Francisco).
- F. The Agency or the Borrower may take any dispute concerning the interpretation, implementation or alleged breach of this section to arbitration pursuant to §IX of this Attachment No. 4.

VI. BORROWER'S DESIGN AND OTHER PROFESSIONAL SERVICES CONSULTANTS.

- A. Participation Goals. The Agency has made a finding that discrimination has occurred against businesses owned by women and minority group persons. Accordingly, the Borrower and all Professional and Personal Services Contractors with contracts in excess of \$10,000 shall make good faith efforts to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE 20 percent
WBE 18 percent

Only firms certified as MBEs, WBEs or W/MBEs (a combination of MBEs and WBEs) in accordance with §VI of Schedule B to this Attachment No. 4 will be counted toward meeting the above participation goals.

- B. The Borrower and its Contractors shall give first consideration to local M/WBEs and comply with the good faith effort steps set forth in §IV of said Schedule B to ensure that minority-owned and woman-owned business enterprises have an equal opportunity to compete for and participate in contracts for the planning and design of the buildings and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. This obligation covers all contracts involved in the improvements and such tenant improvements, including professional service contracts, consultant contracts and subcontracts. The prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.
- C. Borrower's total consultant costs are expected to amount to \$ _____.
- D. Prior to the execution of the Agreement, the Borrower has selected the following consultants:

<u>Firm & Address</u>	<u>Ethnicity & Gender of Owners</u>	<u>Telephone</u>	<u>Work Product</u>	<u>Contract Amount</u>
1.				
2.				
3.				
4.				
5.				

E. The following design and engineering consultants have agreed to employ Job Training Partnership Act-eligible trainees through a program under which the employer may receive tax credits:

	<u>Firm & Address</u>	<u>Contact Person</u>	<u>No. of Trainees</u>	<u>Dates for Hiring</u>
1.				
2.				
3.				
4.				

Consultant team is expected to employ the number of trainees indicated in the following schedule:

<u>Trainees</u>	<u>Consultant Fees</u>
0	\$ 0 249,999
1	250,000 399,999
2	400,000 599,999
3	600,000 999,999
4	1,000,000 1,999,999
5	2,000,000 or more

VII. BORROWER'S CONSTRUCTION CONTRACTS.

A. Participation Goals. The Agency has made a finding that discrimination has occurred against construction firms owned by women and minority group persons. Accordingly, the Borrower and all construction Contractors with contracts in excess of \$10,000 shall make good faith efforts to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE 31 percent
WBE 10 percent

Only firms certified as MBEs, WBEs or W/MBEs (a combination of MBEs and WBEs) in accordance with §VI of Schedule B to this Attachment No. 4 will be counted toward meeting the above participation goals.

- B. The Borrower and all such Contractors shall give First Consideration to local M/WBEs and comply with the good faith effort steps set forth in §IV of said Schedule B to ensure that minority-owned and woman-owned business enterprises have an equal opportunity to compete for and participate in contracts for the construction of the buildings and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. This obligation covers all construction contracts and subcontracts involved in the improvements and such tenant improvements, including ancillary professional service contracts, consultant contracts and subcontracts. The prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.
- C. Borrower's total cost of its construction contracts for improvements on the Site are expected to amount to \$ _____.
- D. Prior to the execution of the Agreement, the Borrower has selected the following construction contractors (including general contractors):

	<u>Firm & Address</u>	<u>Ethnicity & Gender of Owners</u>	<u>Telephone</u>	<u>Work Product</u>	<u>Contract Amount</u>
1.					
2.					
3.					
4.					
5.					

VIII. ARBITRATION OF DISPUTES.

- A. Agency's right of enforcement. For purposes of enforcement, the Agency is and shall be the beneficiary of the obligations, requirements and agreements established by this Exhibit I, Schedules A and B, and any equal opportunity plan created or developed pursuant to the Schedules. The Agency is the beneficiary for itself, in its own right, and also for purposes of protecting the interest of the community, and other parties, public or private, in whose favor and for whose benefit such obligations, requirements or agreements have been provided. Accordingly, the Agency shall have the right to enforce said obligations, requirements and agreements against the Borrower, the Prime Contractor, any consultant, any retail tenant, any subcontractor (regardless of tier), or any material supplier of the prime contractors or any subcontractor, as well as any party who by contract also has the responsibility for enforcement of said obligations, requirements or agreements, e.g., breaching sub-subcontractor against the subcontractor, the prime contractors and the Borrower.
- B. Initiating arbitration. Request for Arbitration. Arbitration, as provided for in this Attachment No. 4 and its accompanying Schedules, shall be the exclusive procedure for resolving any dispute concerning the interpretation, implementation or alleged breach of this Exhibit or its Schedules. The Agency, the Borrower, its consultant, prime contractor, any subcontractor (excluding all contractors or consultants who were not awarded a contract) or any retail tenant may take any such dispute to arbitration by filing a Request for Arbitration with any member of the panel of arbitrators attached hereto as Exhibit 1. Prior to filing the Request, the complaining party may determine by telephone if a particular arbitrator is available to hear the matter. Where the Agency is not the complaining party, the Request shall be served on the Agency. Where the Agency is the complaining party, the Request shall be served on the Borrower and the noncompliant party (if not the Borrower) if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute (e.g., the specific subcontractor), and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.
- C. Effect of Service on the Borrower. Service on the Borrower of the Request for Arbitration or any notice provided for by this Attachment No. 4 or any accompanying schedule shall constitute service of the Request or notice on all consultants, prime contractors, subcontractors, and retail tenants who are identified as being in alleged noncompliance in the Request for Arbitration. The Borrower shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such consultants, prime contractors, subcontractors or retail tenants.

- D. Parties' participation. The Borrower shall require, by contract, that each of its consultants, all prime contractors, all subcontractors, and all retail tenants participate in any arbitration proceedings in which it is identified in the Request for Arbitration, and that each shall be bound by the outcome, including the decision of the arbitrator.
- E. Arbitrator's ability to act. Except where a temporary restraining order is sought, the arbitrator with whom the Request was filed shall notify the Agency and Borrower by telephone within 48 hours if she or he is not available to act as arbitrator. Where a temporary restraining order is sought, such notice shall be provided within 24 hours. If the arbitrator is not available, she or he shall immediately designate one of the other members of the panel appearing on Exhibit 1 hereto to be the arbitrator.
- F. Negotiations prior to arbitration. Prior to the filing and service of a Request for Arbitration, the parties to any arbitrable dispute shall meet and confer in an attempt to resolve the dispute. After the filing and the service of a Request for Arbitration, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to arbitration, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction (temporary relief). Whether the facts reasonably supported the issuance of temporary relief shall be determined by the arbitrator and shall not, under any circumstances, be determined by a court.
- G. Setting of arbitration hearing. If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request for Arbitration, unless otherwise agreed by the parties or ordered by the arbitrator upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request for Arbitration, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the proscribed time periods by giving notice by hand delivery to the Agency and the Borrower; except, where a temporary restraining order is sought, the arbitrator may give notice of the hearing date, time and place to the Agency and the Borrower by telephone.
- H. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

I. Arbitration remedies and sanctions. Except as may otherwise be expressly provided in the Schedules incorporated herein, the arbitrator may impose only the remedies and sanctions set forth below and only against the noncompliant party(ies):

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the noncompliance and/or to bring the Borrower and/or its noncompliant consultants, prime contractors, subcontractors, or retail tenants into compliance.
2. Require the Borrower, consultants, prime contractors or subcontractors to refrain from entering into new contracts related to work covered by the Agreement, or from granting extensions or other modifications to existing contracts related to work covered by the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any noncompliant consultant, the prime contractors or subcontractor until such consultant, prime contractors or subcontractor provides assurances satisfactory to the Agency and the Borrower of future compliance with the applicable provisions of the Agreement.
3. Direct the Borrower, consultants, prime contractors, or subcontractors to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the consultants, prime contractors, subcontractors or retail tenant to comply with any of the equal opportunity provisions of the Agreement. Contracts or leases may be continued upon the condition that a program for future compliance is approved by the Agency.
4. Order conveyance of the Site where the Agency has refused to convey the Site pursuant to §X of this Attachment No. 4. The arbitrator may condition conveyance on the Borrower completing specific remedial actions or agreeing to take specific remedial actions after the conveyance.
5. Award back and front pay to those who were not hired or lost hours of work as a result of the failure of the Borrower, any consultant, prime contractors or any subcontractor to make the required good faith efforts to meet the employment goals established herein. No front pay award shall extend beyond the period that the noncompliant party performs work at the Site.

6. If the Borrower, a consultant, the general contractor, a prime contractor, a subcontractor or a retail tenant is found to be in willful breach of its obligations hereunder, impose financial penalties not to exceed \$50,000 or 10 percent of the base amount of the contract, whichever is less, for each such breach on the party responsible for the willful breach; provided that in determining the amount of any financial penalty to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No penalty shall be imposed pursuant to this paragraph for the first willful breach of this Attachment No. 4 or its Schedules unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Penalties may be imposed for subsequent willful breaches by the Borrower, consultant, contractor or retail tenant whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
7. Direct that the Borrower, consultants, general contractor, any prime contractors, any subcontractor, or retail tenant to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of the Borrower, consultant, prime contractors, any subcontractor, or retail tenant.
- J. Arbitrator's Decision. The arbitrator shall make his or her award within 20 days of the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than 24 hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to the Agency, the Borrower and the noncompliant consultant, prime contractors, subcontractor, or retail tenant, if any.
- K. Default award; no requirement to seek an order compelling arbitration. The arbitrator may enter a default award against any party (e.g., prime contractor, subcontractor) who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Borrower, the Borrower shall provide proof of service on the party as required by paragraph C of this §IX. If the Borrower fails to provide proof of service, the Borrower shall pay \$2,500, as liquidated damages, to the Agency, provided that no such damages shall be assessed if the Borrower demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

- L. Arbitrator lacks power to modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, this Attachment No. 4, the Schedules incorporated herein or any other agreement between the Agency and the Borrower, or to negotiate new agreements or provisions between the parties.
- M. Jurisdiction/entry of judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Request for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon the Agency, the Borrower, noncompliant consultants, prime contractors, subcontractors and retail tenants, if any, sent by mail to the Agency, the Borrower and the noncompliant consultant, prime contractors, subcontractor, or retail tenant, if any. The losing party shall pay the arbitrator's fees and related costs of arbitration. If a consultant, prime contractor or subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Borrower shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the Request for Arbitration was frivolous or that the arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- N. Delays due to enforcement. In the event that the Borrower does not timely perform its obligations under the Agreement because of an arbitrator's order against a party other than the Borrower, the time for any performance by the Borrower shall be extended for a period commensurate with the period of said cessation of work; provided, however, that the Borrower shall take all actions reasonably necessary to minimize any delays.
- O. Exculpatory clause. The Borrower, consultants, general contractor, prime contractors, subcontractors (regardless of tier), and retail tenants of the Borrower expressly waive any and all claims against the Agency for damages, direct or indirect, including, but not limited to claims relative to the commencement, continuance and completion of construction. The Borrower, consultants, prime contractors, all subcontractors (regardless of tier), and retail tenants acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Attachment No. 4 and the equal opportunity obligations of the Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the planning, design and construction of the improvements or Site, and in determining the times for commencement and completion of the planning, design and construction or related work.

- P. California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all arbitration proceedings.
- Q. Additional arbitration provisions in Schedules. The arbitration provisions contained in this Attachment No. 4 are subject to the specific arbitration provisions, if any, set forth in Schedules A through B.
- R. Designation of agent for service. Not later than five (5) days after the execution of the Agreement, the Borrower shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request for Arbitration and all notices provided for herein. If the Borrower has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on the Agency and shall include the address of the agent.
- S. **NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Borrower

IX. CONDITION PRECEDENT.

- A. If the Agency determines that the Borrower, its consultants, general contractor or any prime contractor is in breach of this Attachment No. 4 or any of its Schedules, the Agency may require, as a condition precedent to the Agency's obligation to convey the Site, that the Borrower cure the alleged breach.
- B. If the Borrower disagrees with the Agency's determination that it is in breach, the Borrower, as its exclusive remedy, may take the dispute to arbitration pursuant to §IX of this Attachment No. 4.

- X. SEVERABILITY.** The provisions of this Attachment No. 4 and each Schedule incorporated herein are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Exhibit or any Schedule, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the Exhibit and/or Schedule(s), or the validity of their application to other persons or circumstances.

ATTACHMENT 4

EXHIBIT 1

PANEL OF ARBITRATORS

Morris Davis, Esq.
8795 Mountain Boulevard
Oakland, CA 94605
510/635-4509

John Kagel, Esq.
Kagel and Kagel
544 Market Street, Suite 401
San Francisco, CA 94104
415/982-1438

William Bennett Turner
Rogers Joseph O'Donnell Quinn
311 California Street
San Francisco, CA 94104
415/956-2828

ATTACHMENT NO. 4

SCHEDULE A

CONSTRUCTION WORK FORCE

I. **PURPOSE.** The purpose of the Agency and the Borrower entering into this Schedule A is to ensure equal employment opportunities for minority group persons and women in the construction work force involved in building the original improvements or tenant improvements provided by the Borrower upon the Site covered by the Agreement. To achieve this purpose, the Agency and the Borrower adopt the standards and requirements set forth below, which are modeled on the standards and requirements of Executive Order 11246 and its implementing regulations including those contained in 41 Code of Federal Regulations ("CFR") 60-1.4, 60-4.2 and 60-4.3.

II. **WORK FORCE GOALS.**

A. The goals set forth below are expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goals represent the level of minority and female utilization each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Borrower agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ minority group persons and women to perform construction work upon the Site at a level at least consistent with said goals.

B. **Goals**

1. Goal for minority group participation in each trade: *25.6 percent* (current Office of Federal Contract Compliance Programs, hereinafter "OFCCP", goal) of the total hours worked in the trade.
2. Goal for female participation in each trade: *6.9 percent* (current OFCCP goal) of the total hours worked in the trade.
3. Goal for participation of San Francisco residents in each trade: *50 percent* of the total hours worked in the trade. Residents of San Francisco shall be given first consideration for hiring followed by other residents.

C. If a conflict arises, achieving the ethnic and gender goals shall take precedence over achieving the residency goal set forth in §II.B.3.

- D. The goals set forth in §II.B shall be amended to reflect either:
1. New goals issued by the Director of OFCCP pursuant to 41 CFR 60-4.6 as published periodically in the Federal Register in notice form; or
 2. New goals issued by the Agency. Goals issued by the Agency shall either reflect the availability of minority group persons and/or women in the relevant labor area to perform construction work generally or by trade, or, be designed to correct the effects of past discrimination in situations where the Agency concludes that the facts establish a prima facie case of discrimination against a minority group or women, or otherwise meet the current judicial standards for setting employment goals. A judicial finding of discrimination shall not be a prerequisite to the establishment of new goals by the Agency. If the Borrower believes that the new goals violate applicable legal standards, the Borrower may challenge the goals either through arbitration under Attachment No. 4 or in a de novo court action.
- E. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Borrower. New goals shall not be applied retroactively.
- F. Although paragraph B establishes a single goal for minority group persons and a separate, single goal for women, each Contractor is required to provide equal employment opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Schedule if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation if a specific ethnic group of women is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.
- G. Each Contractor is individually required to comply with its obligations under this Schedule A, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See §IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.
- H. The Contractor shall not use the goals or standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

- I. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

III. **INCORPORATION.** Whenever the Borrower, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of \$10,000 the provisions of Attachment No. 4 of the Agreement and this Schedule A, including the applicable goals for minority group and female participation in each trade.

IV. **EQUAL OPPORTUNITY REQUIREMENTS.**

- A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Schedule A shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:
1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention given to minority group persons or women working at the Site.
 2. Provide written notification to: Chinese for Affirmative Action, Ella Hill Hutch Community Center, Mission Hiring Hall, South of Market Employment Center and Young Community Developers, Inc. and any other organizations identified for the Contractor by the Agency when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each off-the-street, minority group, female or resident applicant and each minority, female and resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority group person, a woman or a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs which expressly include minority group persons and women, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under §IV.A.2 above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority group and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.
7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and obligations under the Agreement and this Schedule A with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.
11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
12. Conduct, at least annually, an inventory and evaluation of minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and obligations.

- B. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their equal opportunity obligations under §IV.A.1 through 15. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under §IV.A.1 through 15 provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

V. **ADDITIONAL PROVISIONS.**

- A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer either minority group persons or women shall not excuse the Contractor's obligations under this Schedule A.
- B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.
- C. No employee to whom the equal opportunity provisions of this Schedule A are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment No. 4 of the Agreement or this Schedule.
- D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. **DOCUMENTATION AND RECORDS.**

- A. Submission of certified payrolls to the Agency. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.

- B. Instructions for coding certified payrolls. In addition to maintaining the information required by §VI.C, each Contractor shall include, on the weekly payroll submissions, the code designating each employee's craft, skill level, protected class status and domicile in accordance with the following table:

**Table for Coding Crafts, Minority Group Persons,
Women and Residents on Certified Payrolls.**

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	22	Carpet, Linoleum, Vinyl Tile Layer
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Wrkr/Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper
7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo	30	Awning Installer
10	Hod Carrier	31	Drapery Hanger
11	Terrazzo Finisher	32	Low Voltage Electrician
12	Plasterer	33	Towboat Operator-Marine Engineer
13	Lather	34	Towboat Deckhand-Inland Boatworker
14	Carpenter or Drywall Hanger	35	Owner/Operator - Truck
15	Mill Worker or Cabinetmaker	36	Owner/Operator - Heavy Equipment
16	Millwright	37	Upholsterer
17	Roofer	38	Teamster, Construction
18	Pile Driver	39	Janitor
19	Surveyor/Operating Engineer	40	Environmental Control System Installer
20	Tile (Ceramic)/Marble Finisher	41	Window Cleaner
21	Tile (Ceramic)Setter	89	Security Guard

CODE	DESCRIPTION	CODE	DESCRIPTION
D	San Francisco-Domiciled	B	Black
R	Resident	I	American Indian
S	Latino	C	Caucasian/White
O	Asian/Pacific Islander	W	Woman

- C. Required records. For each employee, the Contractor's payroll or similar record shall contain the name, address, whether an employee lives in San Francisco, telephone numbers, construction trade, classification, union affiliation (if any), employee identification number, Social Security number, gender, race, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, the contractor shall not be required to maintain separate records.
- D. Additional information. The report required by §VI.B shall be accompanied by:
1. A statement of any problems encountered by the Contractor in obtaining minority, female or resident referrals from any union and
 2. A statement of the reasons why the Contractor failed to meet the ethnic and gender employment goals (if the goals were not met), the reasons why the contractor failed to meet the 50 percent San Francisco residency goal (if that goal was not met) and the reasons why the contractor was not able to perform any of the equal opportunity steps set forth in §IV.A.1 through 15 (if any of the steps were not taken).
- E. Inspection of records. The Contractor shall make the records required under this section available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job.
- F. Failure to submit reports. If a Contractor fails or refuses to provide the reports to the General Contractor as required by §VI.A, the Agency, upon notice from the General Contractor or the Borrower, shall consider but not be required to institute arbitration proceedings against the noncompliant Contractor.
- G. Submission of good faith effort documentation. If the Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts as required by §IV.A.

VII. ARBITRATION OF DISPUTES. The Agency, Borrower and any affected Contractor may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule to arbitration in accordance with the arbitration provisions of Attachment No. 4 of the Agreement.

VIII. PRECONSTRUCTION MEETING.

- A. Prior to close of escrow and commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective work force composition and any problems that may be anticipated in meeting the work force goals.
- B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

IX. TERM. The obligations of the Borrower and the Contractors with respect to their construction work forces, as set forth in Attachment No. 4 of this Agreement and this Schedule A, shall remain in effect until completion of all work to be performed by the Borrower in connection with the initial construction at the Site and all tenant improvements performed thereafter at the Site by or at the behest of the Borrower.

ATTACHMENT NO. 4

SCHEDULE B

**EQUAL OPPORTUNITY FOR
MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES**

- I. **PURPOSE.** The purpose of the Agency and the Borrower in entering into this Schedule B is to establish a set of MBE and WBE participation goals and good faith efforts designed to ensure that monies are spent in a manner which is nondiscriminatory and which provides MBEs and WBEs with an equal opportunity to compete for and participate in contracts for the planning, design and construction of the original improvements and all tenant improvements performed thereafter by or at the behest of the developer upon the site covered by the Agreement.
- II. **INCORPORATION.** Each contract between the Borrower, a consultant, the general contractor, a prime contractor or a subcontractor (at any tier) and any person shall physically incorporate and make binding on the parties to that contract §§ I, II, III, IX and X of Attachment No. 4 and this Schedule B.
- III. **MBE AND WBE PARTICIPATION GOALS.**
- The Agency has made a finding that discrimination has occurred against businesses owned by women and minority group persons. Accordingly, each contractor shall make good faith efforts to achieve the goals which have been designed to correct the effects of past discrimination and are set forth in Attachment No. 4.
- IV. **GOOD FAITH EFFORTS TO MEET GOALS WITH LOCAL MBEs AND WBEs.**
- A. The Borrower and all Contractors with contracts in excess of \$10,000 shall make good faith efforts to ensure that M/WBEs have an equal opportunity to compete for and participate in contracts for the planning, design and construction of the original building and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. A genuine effort will be made to consider local M/WBEs before looking outside of San Francisco. This obligation covers all contracts involved in the original improvements and such tenant improvements, including professional service contracts, consultant contracts and contracts and subcontracts for labor, materials, supplies and trucking. The general contractor and prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.

B. A Contractor's compliance with the following steps will be the basis for determining if the Contractor has made good faith efforts to meet the goals for MBEs and WBEs:

1. Not less than 30 days prior to the opening of bids or the selection of contractors, the Borrower or Contractor shall:
 - a. advertise for M/WBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the *Bid and Contract Opportunities* newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on minority or woman-owned businesses such as the *Small Business Exchange*, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.
 - b. search through available published lists of M/WBEs in the Bay Area which provide the service being sought including such Agency directories as *Minority-owned Construction Contractors and Truckers* and *Woman-owned Construction Contractors and Truckers*, in order to identify such M/WBEs and provide written notice to them, of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.
2. Hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors. The Agency shall be invited to attend as an observer.
3. The Borrower or Contractor shall follow up initial solicitations of interest by contacting the M/WBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work on the Site.
4. The Borrower and Contractor shall divide, to the greatest extent feasible, the contract work into small units to facilitate M/WBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.
5. The Borrower and Contractor shall provide all prospective contractors and subcontractors with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Borrower or Contractor to give M/WBEs any information not provided to other contractors. This paragraph does require the Borrower and the Contractor to answer carefully and completely all reasonable questions asked, and to

undertake every good faith effort to ensure that all prospective contractors and subcontractors understand the nature and the scope of the work.

6. The Borrower and Contractor, where feasible, shall negotiate with M/WBEs in good faith and demonstrate that M/WBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.
7. The Borrower and Contractor shall prohibit the shopping of the bids. Where the Borrower or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.
8. The Borrower or Contractor shall assist M/WBEs in their efforts to obtain bonds, lines of credit and insurance. The Borrower and Contractor shall require no more stringent bond or insurance standards of M/WBEs than required of other business enterprises.
9. The Borrower and Contractor shall establish delivery schedules, which encourage participation of M/WBEs.
10. The Borrower and its General Contractor shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize M/WBEs as lower tier subcontractors.
11. The Borrower and Contractor shall use the services of minority and woman contractor associations, federal, state and local M/WBE assistance offices and other organizations that provide assistance in the recruitment and placement of M/WBEs, including the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

V. PROCEDURES.

- A. Notice to Agency. The Borrower or Contractor shall provide the Agency with the following information within 10 days of awarding a contract or selecting a subcontractor:
 1. the nature of the contract, e.g. type and scope of work to be performed;
 2. the dollar amount of the contract; and
 3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded.

- B. Affidavit. If the Borrower or Contractor contend that the contract has been awarded to an MBE or WBE, the Borrower or Contractor shall, at the same time also submit to the Agency an M/WBE Application for Certification and its accompanying Affidavit (Exhibit 1 hereto) completed by the minority or woman owner; provided that an M/WBE that was previously recognized by the Agency may, instead, submit only the short M/WBE Eligibility Statement (Exhibit 2 hereto).
- C. Good Faith Documentation. If the contract is not awarded to an MBE or WBE, the Borrower or Contractor shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Borrower or Contractor's good faith efforts is not resolved at this meeting, the Borrower or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts:
1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from M/WBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Borrower or Contractor in response to each proposal or bid received from M/WBEs, including the reasons(s) for any rejections.
 2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-M/WBE contractor that was selected. If the non-M/WBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an M/WBE, the report shall also contain an explanation of these reasons.
 3. Documentation of advertising for and contacts with M/WBEs, minority or female contractor associations or development centers, or any other agency which disseminates bid and contract information to minority and woman-owned business enterprises.
 4. Copies of initial and follow-up correspondence with M/WBEs, minority or female contractor associations and other agencies which assist M/WBEs.
 5. A description of the assistance provided minority and woman-owned firms relative to obtaining and explaining plans, specifications and contract requirements.
 6. A description of the assistance provided to M/WBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with M/WBEs.
 8. A description of any divisions of work undertaken to facilitate M/WBE participation.
 9. Documentation of efforts undertaken to encourage subcontractors to obtain minority and woman-owned business enterprise participation at a lower tier.
 10. A report which shows for each private project and each public project (without an M/WBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to MBEs and the percentage of contract dollars awarded to WBEs.
 11. Documentation of any other efforts undertaken to encourage participation by minority and woman-owned business enterprises.
- D. Waiver of Submissions. The Agency may waive any of the submission requirements set forth in paragraph C (1) through (11) of this §IV if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that M/WBEs were not available, or that M/WBEs were attempting to exploit the program by charging an unreasonable price.
- E. Presumption of Good Faith Efforts. If the contractor achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.
- F. M/WBE Determination. Where the Borrower or Contractor makes a submission pursuant to paragraph B of this §V, the Agency shall make a determination, pursuant to the criteria set forth below in §VI.B of this Schedule B as to whether or not an enterprise which the Borrower or Contractor claims is minority or woman-owned is in fact owned and controlled by minority group persons or women. If the Agency determines that the enterprise is not an MBE or a WBE, the Agency shall give the Borrower or the Contractor a *Notice of Non-qualification* and provide the Borrower or the Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a submission, in accordance with paragraph C of this §V, concerning its good faith efforts. If the Borrower or Contractor disagrees with the Agency's *Notice of Non-qualification*, the Borrower or Contractor may request arbitration pursuant to §VII of this Schedule B.

- G. Where the Borrower or Contractor makes a submission pursuant to paragraph C of this §V and, as a result, the Agency has cause to believe that the Borrower or the Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Borrower or the Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency may recommend only the remedies and sanctions set forth in §IX.I of Attachment No. 4 of the Agreement. The Agency shall give the Borrower and Contractor a written *Notice of Non-compliance* setting forth its findings and recommendations. If the Borrower and Contractor disagree with the findings and recommendations of the Agency as set forth in the *Notice of Non-compliance*, the Borrower and Contractor may request arbitration pursuant to §VII of this Schedule B.

VI. CRITERIA FOR DETERMINING M/WBE ELIGIBILITY.

- A. Agency's Role. The Agency shall exercise its reasonable judgment in determining whether a firm, whose name is submitted by the Borrower or Contractor as an MBE or WBE, is owned and controlled by minority group persons and/or women. A firm's appearance in any of the Agency's current directories of Minority or Woman-Owned Construction Contractors and Truckers will be considered by the Agency as prima facie evidence that the firm is an MBE or a WBE.
- B. M/WBE Certification Criteria.
1. The Agency will accept the certifications or denials of the Human Rights Commission of the City and County of San Francisco unless the Agency has reasonable grounds to believe that the certification or denial is inappropriate or otherwise incorrect.
 2. In order to be certified as an MBE, WBE or W/MBE the business must meet the definition of MBE set forth in Attachment No. 4 §II.M or WBE set forth in §II.U or W/MBE set forth in §II.V.
 3. In order for the M/WBE component of a *joint venture* to be recognized the ownership interest must meet a 35 percent threshold; provided, that if the joint venture subcontracts to non-M/WBEs a percent of the work in excess of the percentage interest that the M/WBE has in the joint venture, the joint venture shall not be recognized as an M/WBE.
 4. The Agency will not recognize a *subcontractor* as an M/WBE if it subcontracts more than 50 percent of its subcontract amount to non-M/WBEs.
 5. A contractor may substitute the amount of a purchase order to a minority or woman-owned supplier for up to 15 percent of the M/WBE

subcontractor goals. The Agency will not recognize a supplier as an M/WBE if it is acting solely as a conduit or manufacturer's representative. In order to be recognized, a supplier must perform a commercially useful function in the supply process. However, if the supplier is acting as a mere conduit such as a manufacturer's representative or broker then only the amount of the commission or *three* percent, whichever is greater, will be credited towards meeting the M/WBE goals. If none of the work is to be subcontracted, minority and woman-owned suppliers may be counted without limitation.

6. An eligible MBE or WBE shall be an independent business. In determining whether a business is independent, the Agency shall examine the adequacy of the business' resources for the scope of work under a proposed contract, its financial independence, the extent of its equipment leasing and its relationships with non-minority firms; whether the firm:
 - a. is known in the industry or trade to be operated by a non-minority male;
 - b. is operated in tandem with a non-M/WBE;
 - c. has multiple licenses, some of which belong to non-M/WBEs;
 - d. itself owns the equipment or trucks that are to be used on the job;
 - e. is listed in the telephone book, preferably in the Yellow Pages under the class for which it is seeking Agency recognition;
 - f. subcontracts back to, leases from or is back-contracted by its prime contractor or subcontractor or joint venturer(s) in an amount unrelated to shared risks and profits. Back contracting includes any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefit of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor;
 - g. maintains a permanent office separate from that of its sources of vehicles, subcontractors, the general contractor or from any joint venturer(s); and
 - h. in the case of a supplier, carries the material being supplied as a regular part of its inventory.

7. A minority or woman-owned firm shall not have any formal or informal restrictions which limit the customary discretion of the minority or woman owner. The owner should have the authority to perform all of the below functions:
 - a. manage either the marketing or production aspects of the business;
 - b. be authorized to sign on all bank accounts, to draw against letters of credit, and to secure surety bonds and insurance; and
 - c. control the profit sharing, pensions or stock option plans.
8. The minority or woman owner must serve as the Chief Executive Officer of the firm, i.e. be the boss. If there are part-owners of the firm who are not minority group persons or women and who are disproportionately responsible (according to percent or degree of ownership) for the operation of the firm, then the firm shall be deemed not controlled by minority group persons or women and shall not be considered an eligible MBE or WBE. Where the actual day-to-day management of the firm is handled by individuals other than the owner, those persons who have the ultimate power to hire and fire the managers shall be considered as controlling the business. Among the factors considered in making a determination are whether the owner itself:
 - a. possesses sufficient working experience and knowledge to perform the contract; and
 - b. controls at least 51 percent of the *directors' votes* if the firm is incorporated.
9. All securities evidencing full or partial ownership and/or control of a business entity for purposes of establishing it as an MBE or WBE shall be held directly by minority group persons or women.
10. Minority and woman owners of firms shall make real and substantial contributions of capital and expertise to acquire their interests in the firm. Examples of insufficient contributions include a note payable to the firm or those of its part-owners who are neither minority group persons nor women, or the participation as an employee without management authority.

11. License Qualification Essential: An unregistered person who is used to qualify a professional business as an M/WBE does not meet the Agency's M/WBE requirements of having management and control of the business. Likewise, a person used to qualify a construction business who is not the *Qualifying Partner, Responsible Managing Employee or Responsible Managing Officer* as these terms are used by the Contractors' State License Board, cannot meet the Agency's M/WBE requirements of having management and control of the business. An owner who is certified by the Agency for one profession, e.g. electrical engineering, cannot attribute that certification to another profession, e.g. mechanical engineering, unless he or she is registered for more than one professional license. By extension a certified minority-owned plumbing business must also be certified to perform electrical work to be an eligible minority-owned electrical contractor.
12. A business requesting to be certified as an MBE or WBE shall supply the Agency with all such additional information as the Agency may deem relevant in order to make a determination of such status. If such information is not supplied within 45 days of it being requested, the Agency may consider the Application for certification withdrawn.
13. A change in ownership of a firm from majority to minority or woman ownership will be carefully scrutinized. The following factors shall be considered:
 - a. The reason of the timing of the change in ownership of the business relative to the time that bids are opened or proposals are considered;
 - b. Whether an employee-owner who had previous or continuing employee-employer relationship between or among present owners has management responsibilities and capabilities; and
 - c. Whether the interest of the non-minority or non-woman ownership conflicts with the ownership and control requirements of the Agreement.

VII. ARBITRATION OF DISPUTES.

- A. Subject to paragraphs B through D of this §VII, the Agency, Borrower and any affected Contractor may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule B to arbitration pursuant to the arbitration provisions of Attachment No. 4 of the Agreement.

- B. Where the Borrower or Contractor disagree with the Agency's *Notice of Non-qualification* or *Notice of Non-compliance*, the Borrower or Contractor shall have seven (7) days, unless otherwise stipulated by the parties, in which to file a *Request for Arbitration*. If the Borrower or Contractor fails to file a timely *Request for Arbitration*, the Borrower or Contractor shall be deemed to have accepted and to be bound by the finding of Non-qualification or the findings and recommendations contained in the *Notice of Non-compliance*.
- C. The burden of proof with respect to MBE or WBE status and/or good faith efforts shall be on the Borrower or Contractor.
- D. In the case of a dispute over MBE or WBE status, the arbitrator shall make a final decision on the enterprise's status. In all other cases, including disputes over an alleged failure to make good faith efforts, the arbitrator shall have authority to issue relief authorized by §IX.I of Attachment No. 4 of the Agreement.

VIII. TERM. The obligations of the Borrower and the Contractors with respect to minority and woman-owned business enterprises, as set forth in Attachment No. 4 of the Agreement and this Schedule B, shall remain in effect until completion of all work to be performed by the Borrower in connection with the original construction of the Site and any tenant improvements on the Site performed by or at the behest of the Borrower.

APPLICATION FOR CERTIFICATION
(MINORITY OR WOMAN-OWNED BUSINESS ENTERPRISE AFFIDAVIT)
(To be completed by Minority or Woman Owner)

(Name of Project) (General Contractor if not the General itself)

1. Name of Firm _____
(Has business operated under another name? _____ If so, explain under item 22.)

2. Contact Person _____

3. Business Address _____
(P. O. Box is unacceptable)

4. Mailing Address _____
(If different)

5. Telephone Number(s) _____ FAX: _____

6. Is business address or phone number also that of a residence? _____ If so, please explain under item 22.

7. Indicate the type of industry or the business:

- Construction Professional Consultant Supplier
- Manufacturer Manufacturer's Representative Other _____

Identify types of services or products offered. (Equipment operator or trucker should identify the equipment it owns here or under item 22.)

8. Type of ownership: Corporation Sole Proprietor Partnership
 Joint Venture Indicate if another entity _____

9. With your application please submit true and correct copies of the following documents:
- a. Proof of ethnic identification, such as birth certificate or tribal registration, if you are a minority owner.
 - b. Contractors' State License No. _____
(Name of person who qualified for license)

NOTE: *If you have formed a partnership or incorporated since becoming a contractor, the partnership or corporation must have its own Contractors' State License.*

- c. Registration and license issued by the State Board of Architectural Examiners, the Board of Registration for Professional Engineers and Land Surveyors, the State Board of Accountancy or the State Bar of California.
- d. Local business license(s) and permits(s).
- e. Fictitious name filing, if you are doing business as a fictitious entity. The names on the Contractors' State License and the fictitious name filing must match.
- f. Partnership Agreement, if the firm is a partnership. The names of the partners must match those shown to be partners on the Contractors' State License.
- g. If the firm is a corporation:
 - i. Articles of Incorporation,
 - ii. Corporate Bylaws and
 - iii. Minutes of the first meeting.
- h. Joint Venture Agreement (including dollar amount of capital contribution), if a joint venture is the applicant.
- i. Federal personal tax returns, Form 1040, in full with W-2 statements and all supporting schedules and statements for *all* shareholders for the past two years.
- j. Federal corporate tax returns, Form 1120 (including Schedule E), in full with *all* supporting schedules and statements such as Form 4562 for the past two years.
- k. Resumes pointing out the years of specific experience to qualify for the responsibilities delegated to each *Management* person listed in item 15 of this Application.
- l. Proof, if the firm is registered as a disadvantaged business under section 8(a) of the Small Business Act.
- m. Inventory (not to exceed a 10-page extract), if the firm is a manufacturer or supplier.

10. List the owners who have an interest of five (5) percent or greater:

<u>Name</u>	<u>Ethni- city*</u>	<u>Gender M/F</u>	<u>Date of Ownership</u>	<u>Number of Shares</u>	<u>Vote %</u>	<u>U. S. Citizen (yes/no)</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

If more Owners, check here and continue listing under item 22.

*American Indian or Alaskan Native, which includes Alaskan Indians, Inuits and Aleuts (any person having origins in the indigenous peoples of North America and who is an enrolled member of a federally-recognized tribe), Asian (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or South East Asian), Black (any person having origins in any of the Black racial groups of Africa), Latino (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America, or the Caribbean Islands).

11. List the contributions of money, equipment, real estate, or expertise of each of the owners for firms with less than 100 percent disadvantaged ownership.

12. Date firm was established _____. The total number of years the firm has been in business is _____. The number of years the firm has been in business under present ownership is _____. The following is a brief explanation of the change in ownership of the firm (if applicable):

13. Board of Directors:

<u>Name</u>	<u>Title</u>	<u>Ethni- city</u>	<u>Gender M/F</u>	<u>Date Elected/ Expiration/Term</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If more Directors, check here and continue listing under item 22.

14. If the Board of Directors has changed within the last three years, list the names of the former Directors, their ethnicity, gender and date of resignation under item 22.

15. **Management:** The following duties are actually performed by the persons indicated below:

a. Preparation of estimates and bids:

by _____ who reports to _____
name name

b. Hiring, firing of management personnel:

by _____ who reports to _____
name name

c. Purchasing of major equipment, material or supplies:

by _____ who reports to _____
name name

d. Financial control:

by _____ who reports to _____
name name

e. Negotiations and approval of contracts:

by _____ who reports to _____
name name

f. Administration of contracts:

by _____ who reports to _____
name name

g. Supervision of field operations:

by _____ who reports to _____
name name

h. Marketing and sales activities:

by _____ who reports to _____
name name

i. Warehouse inventory and control:

by _____ who reports to _____
name name

16. Federal identification no. _____

17. Indicate the firm's gross receipts and average number of employees for the last three tax years:

Year ending _____	Amount _____	Employees _____
Year ending _____	Amount _____	Employees _____
Year ending _____	Amount _____	Employees _____

18. **MANUFACTURERS AND SUPPLIERS ONLY:** For last year:

- a. Lowest no. of employees _____
- b. Highest no. of employees _____
- c. No. of employees whose job lasted the entire year _____
- d. Were any of the employees on another firm's payroll? _____ If so, identify the firm: _____
- e. Value of current inventory \$ _____
- f. Location of inventory _____

19. How were applications to other local agencies handled?

	<u>Name of local agency</u>	<u>L/M/WBE?</u>	<u>Approved</u>		<u>Date</u>
			<u>Yes</u>	<u>No</u>	
a.	_____	_____	_____	_____	_____
b.	_____	_____	_____	_____	_____
c.	_____	_____	_____	_____	_____
d.	_____	_____	_____	_____	_____

20. Name of Surety _____

Name of Agent _____ Telephone No. _____

Bonding Limit _____ Sources of letter of credit _____

21. If the firm or other firms with any of the same officers has previously been denied recognition as an M/WBE, MBE or WBE please explain the circumstances.

22. Identify any owner or management official of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Describe present business relationships which include sharing space, equipment, financing or employees, as well as common owners. Please use this additional space to supplement the information provided above, especially under items 1, 6, 10, 11, 12 and 13. You may attach additional sheets.

23. The firm intends to subcontract _____ percent of the work to be performed under its contract with _____ to the following:

	<u>Name</u>	<u>M/WBE Yes/No</u>	<u>Amount of Subcontract</u>	<u>Scope of Work</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____

AFFIDAVIT

(To be completed by Minority or Woman Owner)

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____

(Name of Firm)

as well as the ownership thereof. Further, the undersigned covenant(s) and agree(s) to provide to the local agency current, complete and accurate information regarding actual joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under state law concerning false statements."

NOTE:

- a. The conditions outlined in this affidavit are applicable to any additional information that is required to be provided to authenticate the affiant's firm.
- b. You are required to notify the agency if any significant changes occur that would alter your status as an M/WBE.
- c. Section 94.4 of the Streets and Highways Code states that a D/M/WBE is subject to a civil penalty of not more than \$5,000 if said firm willfully and knowingly makes a false statement with the intent to defraud this certification.

Name of Firm

Name of Firm

Signature

Signature

Name and Title

Name and Title

Date _____

Date _____

On this _____ day of _____, 199_____, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or her free act and deed.

(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

On this _____ day of _____, 199_____, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or her free act and deed.

(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

EXHIBIT 2

M/WBE ELIGIBILITY STATEMENT
(To be completed by Minority or Woman Owner)

(Name of Project)

(General Contractor if not the General itself)

I, _____, declare:

1. I have carefully reviewed the **Affidavit/Declaration** executed by myself

on _____ on behalf of _____
Date Name of Firm

2. The only changes to said document are:

I have personal knowledge of the foregoing facts and if called as a witness I could and would testify competently thereto. I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

in _____
Place of Execution

Signature of Declarant

Title

ATTACHMENT NO. 4

SCHEDULE C

PERMANENT WORK FORCE OF THE BORROWER AND RETAIL TENANTS

- I. **PURPOSE.** The purposes of the Agency and the Borrower in entering into this Schedule C are to ensure:
- A. that minority group persons and women are provided equal opportunity for and are not discriminated against in employment in the Borrower's permanent work force that occupies the improvements on the Site covered by the Loan Agreement and in the work forces of retail businesses which lease space in the Site.
 - B. that San Francisco residents obtain *50 percent* of the permanent jobs in the work forces of the Borrower and retail tenants at the Site.
 - C. that San Francisco residents are given first consideration for employment by the Borrower and retail tenants for permanent employment at the Site.
- II. **APPLICATION OF THIS SCHEDULE TO RETAIL TENANTS.** The Borrower shall include verbatim in its leases and require the incorporation verbatim in all subleases for retail space in the Site the provisions of §§I, II, III, IX and XI of Attachment No. 4 of the Loan Agreement and this Schedule C. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the retail tenant to the same extent as the provisions are binding on and enforceable against the Borrower; except that:
- A. Unless agreed otherwise by the Agency, a retail tenant with *26 or more* employees shall submit its equal opportunity plan (EOP) through the Borrower to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in §V.B of this Schedule C.
 - B. A retail tenant with 25 or less employees shall not be required to submit an EOP pursuant to §IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in §III of this Schedule C. The standards and requirements of Subpart C of Revised Order 4, 41 CFR Part 60-2, shall be applied in determining if such a retail tenant has exercised good faith efforts.
 - C. A retail tenant with less than 25 employees shall submit to the Agency the reports required by §VII of this Schedule C not later than 60 days after it opens for business and annually thereafter.

III. GOALS AND OBJECTIVES.

- A. The Borrower and each retail tenant shall:
1. make good faith efforts to achieve in each job category in its permanent work force at the Site an ethnic and gender mix which reflects the composition of the civilian work force of the City and County of San Francisco. These goals are not to be perceived as inflexible quotas, but rather as objectives to be pursued by the mobilization of available resources and by good faith efforts to fulfill the respective equal opportunity plans.
 2. make good faith efforts to employ 50 percent of its work force at the Site in each job category from residents of the City and County of San Francisco.
 3. as provided in §IV.B.1 of this Schedule C, give first consideration for employment at the Site to SoMa area residents and then to other residents of San Francisco.
- B. If a conflict arises, achieving the ethnic and gender goals set forth in subparagraph A.1 shall take precedence over the San Francisco residency goal and the requirement to give first consideration in employment as set forth in subparagraphs A.2 and A.3 respectively, of this §III.

IV. EQUAL OPPORTUNITY PLAN.

- A. The Borrower and each retail tenant with more than 26 employees, whether or not it is a federal contractor, shall prepare and adopt an EOP for its permanent work force at the Site which meets the requirements of Executive Order 11246 and all applicable regulations promulgated pursuant thereto (in effect as of March 1, 1990), including Revised Order No. 4, 41 CFR Part 60-2. The utilization analysis and the goals shall be based on the civilian labor force of the City and County of San Francisco according to the most recent census data. A separate utilization analysis shall be performed and a separate goal shall be set for each ethnic group, i.e., American Indian, Asian/Pacific Islander, Black, Latino, and for women.
- B. In addition to the elements required under paragraph A of this §IV, the EOP shall contain the following:
1. Detailed procedures for ensuring that San Francisco residents who are equally or more qualified than other candidates obtain first consideration for employment. These procedures shall include specific recruiting, screening and hiring procedures (e.g., phased hiring) which ensure that

qualified residents of San Francisco receive offers of employment prior to other equally or less qualified candidates. If a candidate(s) who is entitled to first consideration is not selected for the position, the Borrower or retail tenant shall have the burden of establishing to the Agency and the arbitrator (if the matter is taken to arbitration), that the candidate who was selected was better qualified for the position than the candidate(s) who was entitled to first consideration.

2. Where it is a reasonable expectation that 10 percent or more of the employees in any job category will regularly work less than 35 hours per week, detailed procedures for ensuring that minority group persons, women, and San Francisco residents do not receive a disproportionate share of the part time work.
3. An agreement that not more than 15 percent of the positions in any job category will be filled by persons transferred from other facilities operated by the Borrower, without the prior approval of the Agency. The Agency shall grant approval upon a showing that transfers in excess of 15 percent do not unreasonably interfere with the objective of creating new jobs for San Francisco residents and that such transfers further legitimate business needs of the Borrower. Transfers shall be counted in determining if the Borrower has met the employment goals for each ethnic group and women.
4. Where required by the Agency, detailed procedures for utilizing Outreach Organizations as meaningful referral sources for job applicants.

V. ARBITRATION OF DISPUTES: SUBMISSION AND RESOLUTION OF DISPUTES CONCERNING THE EQUAL OPPORTUNITY PLAN.

- A. The purpose of this §V is to establish procedures for resolving any disputes concerning the Borrower's or retail tenant's EOP prior to the Borrower or retail tenant occupying the Site covered by the Loan Agreement. The arbitration provisions contained in this §V are in addition to the provisions contained in Attachment No. 4.
- B. The Borrower shall submit its EOP to the Agency 120 days prior to the earlier of the following: (1) the date the Borrower commences filling any permanent position for the Site, whether by new hire or transfer, or (2) the date the Site is scheduled to open; provided that if the Borrower has submitted its EOP to the Agency prior to the execution of the Loan Agreement, the EOP shall be deemed submitted to the Agency 30 days after the Loan Agreement is executed.

- C. During the first 30 days after the EOP is submitted, the Agency and the Borrower shall negotiate in good faith concerning any alleged deficiencies in the EOP or any questions the Agency may have about the terms of the EOP or how it was prepared (e.g., the utilization analysis).
- D. At the expiration of the 30 days, the Agency shall advise the Borrower or retail tenant, through a written "Notice of Noncompliance", of any alleged deficiency in the EOP remaining at the close of negotiations. The Notice shall state the specific basis for the alleged deficiency(ies) and the Agency's suggested cure.
- E. The Borrower or retail tenant shall advise the Agency, within 10 days of the mailing of the Notice of Noncompliance, if the Borrower or retail tenant accepts the cure. If the Borrower or retail tenant rejects the cure, either party may proceed immediately to arbitration by filing a Request for Arbitration on EOP with any member of the panel of arbitrators attached as Exhibit 1 to Attachment No. 4 of the Loan Agreement and serving said Request on the other party. The Request for Arbitration on EOP shall specify the issue presented and the relief requested. Where the Request seeks a temporary restraining order, the arbitrator shall hold a hearing not later than two days after the filing and serving of the Request for Arbitration on EOP. In all other situations, unless the parties agree or the arbitrator orders otherwise, a hearing shall be held within 15 days after the filing and serving of the Request for Arbitration.
- F. The arbitrator shall have the authority to:
1. issue temporary restraining orders and preliminary and permanent injunctions, including, but not limited to, orders enjoining the Borrower or retail tenant from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for permanent employment at the Site pending resolution of the alleged deficiency(ies) in the EOP;
 2. require the inclusion or exclusion of specific terms or provisions in the EOP based on a determination that the term(s) added or removed further the requirements and objectives of Attachment No. 4 and this Schedule C. This subparagraph gives the arbitrator the authority to alter, amend, modify, add to or subtract from the EOP submitted by the Borrower or retail tenant;
 3. issue such other relief deemed necessary to ensure that the EOP is written and implemented in a manner which satisfies the requirements and objectives of Attachment No. 4 of the Loan Agreement and this Schedule C.

VI. ARBITRATION OF DISPUTES: ENFORCEMENT OF PROVISIONS RELATING TO THE BORROWER'S OR RETAIL TENANT'S PERMANENT WORK FORCE, INCLUDING THIS SCHEDULE AND EQUAL OPPORTUNITY PLANS.

Apart from the procedures established in §V, the Agency, the Borrower or retail tenant may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule C or the Borrower's EOP to arbitration pursuant to the arbitration provisions of Attachment No. 4 of the Loan Agreement.

VII. REPORTS.

A. The Borrower and each retail tenant shall prepare, for its Site work force, reports for each job category which show by race, gender, residence and where required by the Agency, by transfer/non-transfer and referral source:

1. Current work force composition;
2. applicants;
3. job offers;
4. hires;
5. rejections;
6. pending applications;
7. promotions and demotions; and
8. employees working, on average, less than 35 hours per week.

B. The reports shall be submitted quarterly to the Agency, unless otherwise required by the Agency. In this regard the Borrower and each retail tenant agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the Agency may require daily, weekly or monthly reports containing all or some of the above information. The Borrower and each retail tenant further agrees that the above reports may not be sufficient for monitoring the Borrower's or tenant's performance in all circumstances, that they will negotiate in good faith concerning additional reports, and that the arbitrator shall have authority to require additional reports if the parties cannot agree.

VIII. TERM. The obligations of the Borrower and its retail tenants with respect to their permanent work forces as set forth in the Loan Agreement, Attachment No. 4 and this Schedule C shall arise from the date the Borrower or its retail tenants first assigns employees to the Site on a permanent basis and remain in effect for three years thereafter.

ATTACHMENT 8

Prevailing Wage Provisions

ATTACHMENT NO. 5

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

11.1 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Agency of which this Attachment No. 5 and these Labor Standards are a part.

11.2 **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**

- (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Borrower shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Borrower shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
- (b) Before close of escrow under the Agreement and as a condition to close of escrow, the Borrower shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

11.3 **Definitions.** The following definitions shall apply for purposes of this Attachment No. 5:

- (a) "Contractor" is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.
- (b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

- (c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

11.4 Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.
- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Borrower to set aside in a separate

interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

- (e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.5 Permissible Payroll Deductions. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

- b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
 - (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
 - (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
 - (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

11.6 Apprentices and Trainees. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

11.7 **Overtime.** No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

11.8 **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
- (c) 2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

- (d) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

11.9 Occupational Safety and Health. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

11.10 Equal Opportunity Program. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit I of the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.

11.11 Nondiscrimination Against Employees for Complaints. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

11.12 Posting of Notice to Employees. A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Borrower, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Borrower shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Borrower, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Borrower fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.
- (d) Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.
- (e) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

- (f) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Borrower or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Borrower shall pay the Contractor from money withheld.
- (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

11.15 Non-liability of the Agency. The Borrower and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Borrower, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI- NATION

The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

PREVAILING WAGE

You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.

APPRENTICES

Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.

PROPER PAY

If you do not receive proper pay, write
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3120
or call 749-2546 and ask for
Mr. George Bridges
Contract Compliance Specialist

ATTACHMENT 9

INCOME COMPUTATION AND CERTIFICATION

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

Re: [Address of Apartment Building]

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

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

Income Computation

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

Included in the total anticipated income listed above are:

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

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

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

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

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

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

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

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

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

Excluded from such anticipated income are:

(a) casual, sporadic or irregular gifts;

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

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

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

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

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

(g) foster child care payments;

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

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

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

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

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

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

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

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

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

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

No _____ Yes _____

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

No _____ Yes _____

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

No _____ Yes _____

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

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

\$ _____

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

\$ _____

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

No _____ Yes _____

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

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

No _____ Yes _____

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

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

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

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

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

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

Applicant

Applicant

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

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. calculation of eligible income:

a. Enter amount entered for entire household in 6 above: \$ _____

b. (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);

(2) Multiply the amount entered in 7(c) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(c) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);

(3) Enter at right the greater of the amount calculated under (1) or (2) above: \$ _____;

c. TOTAL ELIGIBLE INCOME
Line 1.a plus line 1.b(3)): \$ _____

2. The amount entered in 1.c:

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

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

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

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

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

Employer income verification.

Copies of tax returns.

Other (_____)

Manager

ATTACHMENT 10

Additional Provisions

- 10) Developer covenants and agrees for itself, and its successors and assigns to or of the Site, or any part thereof, the following additional covenants:
 - 10.1) Developer shall submit for Agency review and approval the CHFA re-financing commitment and any terms and conditions of that commitment;
 - 10.2) Developer shall secure any applicable approvals by HUD;
 - 10.3) Developer shall create a California nonprofit public benefit corporation, qualified under 501(c)(3) for the ownership of the property, with residents selecting at least 3 out of the total 9 seats on the Board of Directors;
 - 10.4) Developer agrees to a development fee, subject to the terms and conditions of the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects (Attachment 11), in an amount not to exceed \$200,000, to be paid through an initial payment at closing, and the balance to be paid from Surplus Cash pursuant to Section 10.6 of this attachment, subject to a change in policy currently under consideration which would allow the deferred portion of the developer fee to accrue interest on its remaining balance at a rate no greater than 5% per annum;
 - 10.5) Developer agrees to an allowance for an asset management fee to be paid to the Developer in the flat fee amount of \$5,000 annually;
 - 10.6) If the Developer is found by the Agency to be in compliance with all applicable requirements and agreements, an eligible expense of the project shall be a thirty-three percent portion of the Surplus Cash (to a maximum of \$50,000) after payment of the fixed groundlease payment, required reserves, all amortized debt service, the asset management fee, the deferred Developer Fee payment, the deposit into a CHFA 2nd Loan Accrual Account and any payment of the Agency-repurchased "B Tranche Loan" and any arrears (if any, as described in Section 2.0 of the Agency Mortgage Purchase Obligation Agreement); but before any payment of the residual ground lease payment and any arrears (subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts, see Attachment 12). Consistent with the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects, such funds shall only be used for CDBG-eligible housing uses within San Francisco;
 - 10.7) The Developer agrees that the City and County of San Francisco Citywide Loan Committee reserves the right to approve or disapprove the final choice of the Property Management firm, subject to CHFA's final

approval for the period of time that CHFA retains mortgages for the property. Such review and reasonable approval is hereby delegated to the Agency's Housing Program Manager;

- 10.8) The Developer agrees that any excess acquisition funds available after the real estate closing, including but not limited to the acquisition contingency amount, may be used to pay the unpaid balance of the deferred Developer Fee;
- 10.9) In the event that there is any Surplus Cash available after full payment of the residual ground lease payment and any arrears, Developer shall use such available cash to make advanced payments toward the remaining unpaid principal of the "B Tranche Loan." Should there no longer be any principal balance remaining on the "B Tranche Loan" of the first mortgage, then Developer shall use such Surplus Cash to make advanced payments toward the remaining unpaid principal of the assumed second CHFA mortgage. Should there no longer be any principal balance remaining on this second mortgage as well then all Surplus Cash shall be governed by the Mayor's Office of Housing Policy on Use of Residual Receipts, and any applicable CHFA requirements.

10.10) DISTRIBUTIONS

10.10.1) Generally

When used in this Agreement, "Distributions" shall mean cash or other benefits, received as Project Income from the operation of the Project and available to be distributed to Developer or any other party having a beneficial interest in the Project, after payments in priority provided for in Attachment Sections 10.6 and 10.9 but shall not include payments for property management or other services performed by Developer under this Agreement. Subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts, Distribution funds shall be disbursed in the following manner: (a) as advanced payment on any remaining interest and/or principal on the "B Tranche Loan"; (b) if the "B Tranche Loan" has no remaining interest or principal balance, as advanced payment on any future Annual Rent payments; (c) if there are no remaining Annual Rent payments to be made within the original term of this Agreement, as a payment to the Developer over and above the thirty-three percent portion of the Surplus Cash (to a maximum of \$50,000) identified in Attachment Section 10.6. Developer may receive Distributions for a particular fiscal year only upon: (a) approval by the Agency of the annual monitoring report submitted for that year; and (b) determination by the Agency that Developer is in full

compliance with the terms of this Agreement; and prior written determination by the Agency that the amount of such Distributions is consistent with the terms of this Agreement.

10.10.2) Prohibited Distributions

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

(a) when written notice of default has been issued by any entity with an equitable, legal or beneficial interest in the Project; or

(b) when the Agency has determined that Developer or Developer's management agent has failed to comply with Agency's written notice of any reasonable requirement for proper maintenance of the Project; or

(c) if all currently required debt service on all loans secured by the Project and all operating expenses (including, but not limited to the fixed groundlease payment) for the Project have not been paid; or

(d) if the Replacement Reserve Account and/or Operating Reserve Account is not fully funded pursuant to any applicable Agreement.

10.11) CHFA PROVISIONS

10.11.1) Non-applicable Provisions

In the event that CHFA assumes the role of lessee following a foreclosure, the following Ground Lease provisions will not apply to CHFA as a lessee:

(a) Article 7, Annual Income Computation and Certification and Article 14.01, Assignment, Sublease or Other Conveyance; and

(b) For Article 30, Equal Opportunity, CHFA shall comply with all laws of the State of California regarding equal opportunity for business enterprises, and shall make a good faith effort to comply with the Rules and Regulations of the Agency in regard thereto, to the extent that, in the sole determination of CHFA, said Rules and Regulations do not conflict with state or federal law, including, but not limited to, constitutions, statutes, regulations, executive orders, or other pronouncements or directives of the governor, or other state or federal officials; and

(c) The Agency acknowledges that, with the exception of property damage coverage, CHFA does not carry insurance (i.e., is "self-insured"). Therefore, the provisions of the following Articles will not apply to CHFA as Lessee, PROVIDED that should CHFA employ a third party to manage the property, CHFA shall require that the manager comply with these provisions: 22.01b.; 22.01c.(1), (2), (3), (4) and (5)(a) and (b); 22.01d.; and 22.01e.; and

(d) For Article 32, Agency Labor Standards Provisions, CHFA shall comply with all laws of the State of California; and

(e) Upon CHFA's reassignment of the Ground Lease to a new lessee, all provisions of the original Ground Lease will be reinstated.

10.11.2)

Right to Reappraisal and Adjustment of Base Rent

In the event that CHFA forecloses and CHFA, or its subsequent assignee, no longer maintains all 101 units as low-income senior residences (with the possible exception of one manager's unit), the Agency reserves the right to reappraise the property and adjust the base rent to market value and adjust the residual rent accordingly.

ATTACHMENT 11

**City and County of San Francisco Policy on Development Fees for Non-Tax Credit
Projects**

FINAL (10/29/97)

**Mayor's Office of Housing
Policy on Development Fees For Non-Tax Credit Projects**

The Mayor's Office of Housing (MOH) will permit nonprofit housing developers to include development fees as part of an approved development budget for an eligible project receiving MOH capital funding.

Eligibility

Eligible projects shall include: (1) new construction of affordable housing units; (2) acquisition and rehabilitation or conversion of existing units; and (3) acquisition of existing units that are part of the San Francisco Housing Preservation Program.

The nonprofit developer shall be a San Francisco based nonprofit housing developer or its affiliate that is the owner or general partner of a partnership of the project. The nonprofit developer or its affiliate shall be a 501c (3) corporation with the provision of developing affordable housing as part of its Articles of Incorporation.

An eligible project must increase the number of units of the San Francisco affordable housing inventory for at least 50 years, and will include acquisition of expiring project based Section 8 housing and other affordable housing funded under the San Francisco housing preservation program. If the project is the acquisition or transfer of an existing affordable housing project that is currently funded by MOH or the San Francisco Redevelopment Agency, the project will not be eligible for developer fees.

In cases where the project has existing affordable units in place, the number of units eligible for the fee is the net increase in the number of permanently affordable units created (i.e., new building expansion).

San Francisco Redevelopment Agency (SFRA) funded projects will also be included under this MOH policy subject to SFRA action approving this policy.

Developer Fee Schedule

The fee schedule shall apply to those projects that receive MOH capital funding. The fee schedule represents the maximum fee amount to be paid to an eligible project receiving MOH funding. If the project generates other funding sources in addition to MOH funding, the project could qualify for higher developer fees. MOH approval shall be required for higher developer fees.

ATTACHMENT 12

City and County of San Francisco Policy on Use of Residual Receipts

Effective: 2/28/00

**Mayor's Office of Housing
Policy on Use of Residual Receipts**

Background:

In general, the Mayor's Office of Housing (MOH) requires repayment of loans provided for the purpose of developing or preserving affordable housing to the extent that such repayment is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Repayment therefore may be required under one or a combination of several alternative structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When there is a possibility that, due to the availability of rent or operating subsidies, the retiring of other debt, or some other circumstance, a development financed by MOH could enjoy more income than is needed to pay expenses, service other debt and fully fund its reserves, it is MOH's policy to expect that the remaining "residual" income be directed toward repayment of MOH's investment.

However, in order to provide an incentive for strong asset management, business management, and property management, to ensure accountability both during the development of the housing and its operation, and to enhance successful owner/developers' capacity to develop additional affordable housing in San Francisco, MOH will permit a modest portion of such "residual" income to be retained by the borrower for its own housing-related activities. In this instance, an owner/developer's share of "residual receipts" would be conditioned on MOH's annual determination that certain performance standards and benchmarks have been met.

Definition of Residual Receipts

"Residual Receipts" means the amount by which Project Income exceeds Project Expenses in any given fiscal year. Notwithstanding the above, the partnership management fee and deferred development fee are not part of Residual Receipts. Residual Receipts will be calculated after the disbursement of the partnership management fee and any deferred development fee from funds remaining after the subtraction of Project Expenses from Project Income.

Repayment of MOH Loans by Residual Receipts

When repayment of loans made by MOH is conditioned on the availability of Residual Receipts, starting one year after the completion of the project, and annually thereafter, Borrower shall pay all or part of any Residual Receipts for the previous fiscal year to the City in repayment of the outstanding balance of the loan. Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the minimum portion of Residual Receipts to be paid to the City shall be that portion that remains after subtracting the lesser of 1/3 of the Residual Receipts or \$500 per unit per year from the total.

Any such residual receipts payments shall apply toward the unpaid balance of the loan, including accrued interest.

Conditions to Distribution of Residual Receipts to Borrower

Distribution of Residual Receipts to the Borrower of a MOH loan may be made only upon: (1) City approval of the Annual Monitoring Report submitted for that year; (2) determination by the City that the Borrower is not in default under terms of the Loan; and (3) approval by the City that the amount of such Distribution is appropriate. Such approval may be assumed unless the City's disapproval has been presented to the Borrower within days of receiving Borrower's request for such approval.

No distribution of Residual Receipts shall be made under any of the following circumstances:

- (a) when a written notice of default has been issued by any other lender or investor and such default has not been cured;
- (b) when the City determines that the Borrower or the Borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes;
- (c) if any operating expense, including debt service on non-City loans remains unpaid;
- (d) if any required reserve account is not fully funded according to the terms of the Loan Agreement; or
- (e) in the event of any other material failure to comply with the provisions of the Loan Agreement.

Eligible Owner/Developers

The owner/developer must be a San Francisco based a 501(c)3 nonprofit housing development corporation or an affiliate of such a corporation that owns or acts as general partner of a limited partnership that owns the affordable housing development in question. The Articles of Incorporation of the owner/developer must include the development of affordable housing among its primary purposes.

Use of Residual Receipts Distributed to the Borrower

That portion of Residual Receipts that is not applied toward repayment of the City's loan may be retained by the borrower and used for activities associated with the development or preservation of affordable housing in San Francisco insofar as those activities are eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction). Borrower will be required to report annually on the use of such income.

Uses of Project Income for Services and other Extraordinary Costs

With the exception of Residual Receipts distributed to a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOH financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOH financing is committed and approved.

The Loan Committee may approve variations of this policy on a project-specific basis, including the payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents either as a project expense or out of that portion of Residual Receipts that would otherwise be repaid to the City.

ATTACHMENT 13

CHFA "Side Letter" on Surplus Cash



CALIFORNIA HOUSING FINANCE AGENCY

Theresa A. Parker
Executive Director

Clark Wallace
Chairman

July 27, 2000

Mr. Olson Lee
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102

Re: O'Farrell Tower Apartments
San Francisco, CA
CHFA #99-033-N

Dear Mr. Lee,

This letter serves to outline in general terms the process California Housing Finance Agency ("CHFA") anticipates following in the review and approval of any and all distributions of surplus cash for the O'Farrell Tower Apartments (the "Project"). For the project, CHFA holds a first lien position as a leasehold mortgage subject to a CHFA regulatory agreement. Pursuant to this agreement, CHFA has the right to approve the distribution of surplus cash after the project's financial obligations to CHFA have been met. These financial obligations include the funding of the transition reserve ("TOF") in the regulatory agreement, repair and rehabilitation for the project in the event the project's replacement reserves are not adequate, payment toward the SMP loan and other project related needs as determined by CHFA.

In the event that there is surplus cash after the project's financial obligations to CHFA have been met, CHFA in its sole discretion may approve a distribution to the sponsor. CHFA anticipates that any distribution to the sponsor shall be administered pursuant to the terms of Attachment 10 of the Groundlease, subject to the reasonable and final approval of CHFA as per the terms of the regulatory agreement and CHFA regulations.

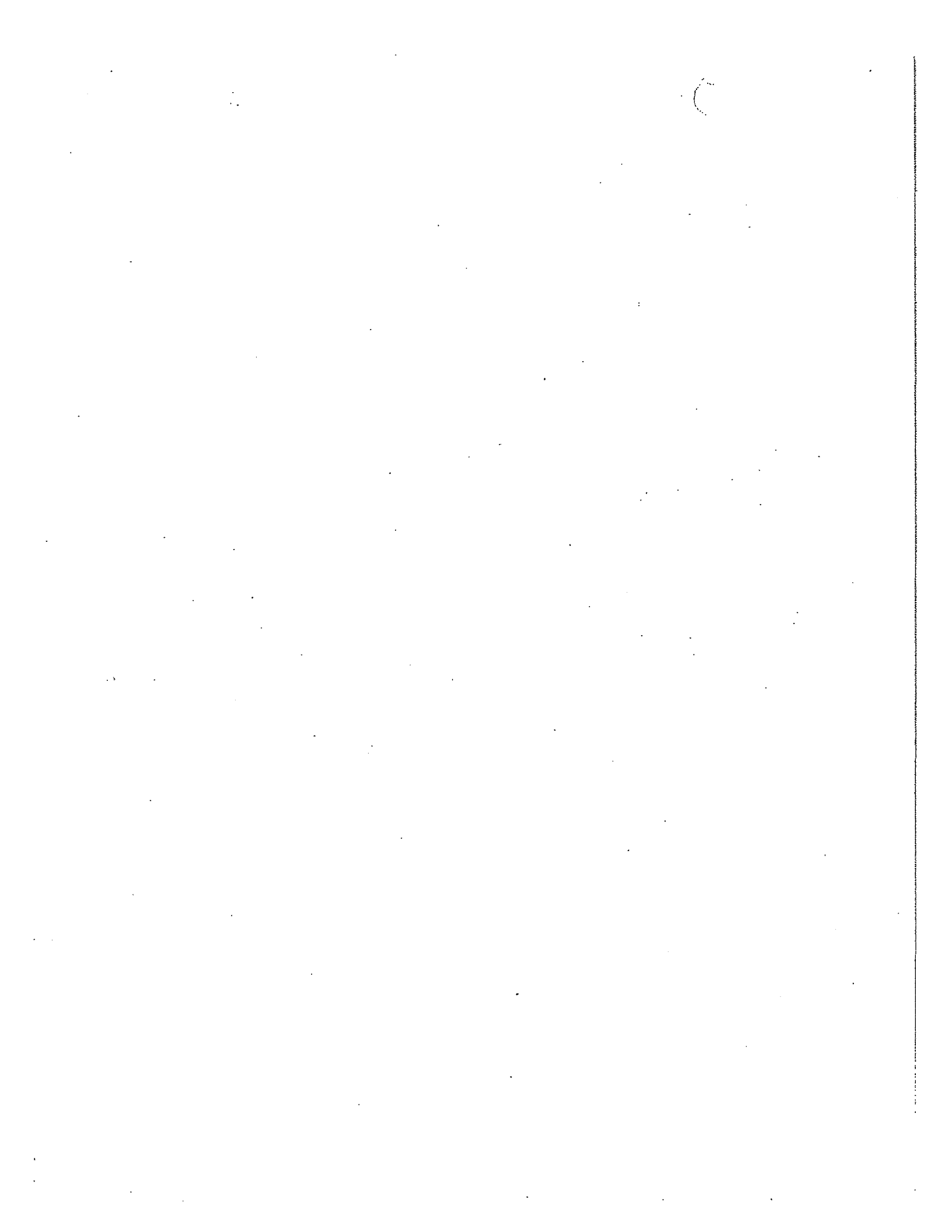
Sincerely,

Linn G. Warren
Chief, Multifamily Programs

SACRAMENTO HEADQUARTERS
1121 L STREET, SEVENTH FLOOR
SACRAMENTO, CA 95814-3974
(916) 322-3991

www.chfa.ca.gov

LOS ANGELES OFFICE
100 CORPORATE POINTE, SUITE 250
CULVER CITY, CA 90230-7641
(310) 342-1250



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

O'Farrell Senior Housing, Inc.
26 O'Farrell Street, Suite 600
San Francisco, CA 94108
Attention: President

This is to certify that this is a
true and correct copy of the
original document recorded
on 4.21.05 at 8 AM
as No. H 941459 in the
County of SAN FRANCISCO
Old Republic Title Company
By [Signature]

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF
ASSIGNMENT OF GROUND LEASE**

This Memorandum of Assignment of Ground Lease (the "Memorandum") is made as of the 19th day of April, 2005, by and among Citizens Housing Corporation, a California nonprofit public benefit corporation ("Assignor") and O'Farrell Senior Housing, Inc. , a California nonprofit public benefit corporation ("Assignee") with respect to that certain Assignment and Assumption of Ground Lease dated as of the 19th day of April, 2005, (the "Assignment") between Assignor and Assignee.

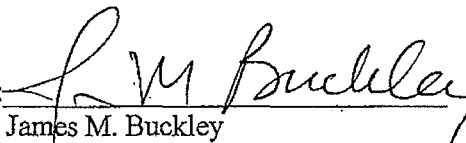
Pursuant to the Assignment, Assignor has assigned to Assignee its rights, title, interest and obligations, as lessee, in that certain Ground Lease dated as of August 4, 2000, entered into with the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, as lessor, for the purpose of leasing that certain real property, more particularly described in Exhibit A attached hereto and incorporated herein, as evidenced by that certain Memorandum of Ground Lease dated as of August 4, 2000, recorded in the Official Records of the City And County of San Francisco on August 4, 2000 as Serial No. 2000-G809887-00.

This Memorandum shall incorporate herein all of the terms and provisions of the Assignment as though fully set forth herein.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date first written above.

ASSIGNOR:

Citizens Housing Corporation, a California
nonprofit public benefit corporation

By: 
James M. Buckley
President

ASSIGNEE:

O'Farrell Senior Housing, Inc., a California
nonprofit public benefit corporation

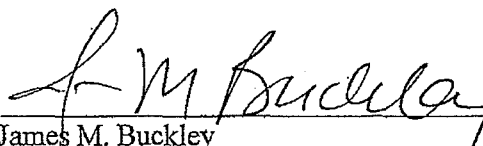
By: 
James M. Buckley
Vice President

EXHIBIT A

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

BEGINNING at a point on the southerly line of O'Farrell Street, distant thereon 60 feet easterly from the easterly line of Jones Street; running thence easterly along said line of O'Farrell Street 99 feet and 6 inches; thence at a right angle southerly 137.50 feet; thence at a right angle westerly 22 feet to the easterly line of Steveloe Place; thence at a right angle northerly along said line of Steveloe Place 15 feet to the northerly line of Steveloe Place; thence at a right angle westerly along said line of Steveloe Place 77.50 feet; thence at a right angle northerly 122.50 feet to the point of beginning.

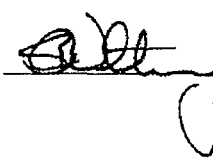
BEING part of 50 Vara Block No. 225.

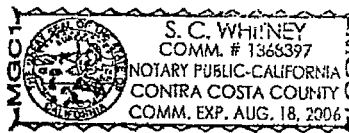
EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN FRANCISCO)

On April 19, 2005, before me, S. C. Whitney, personally appeared James M. Buckley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.





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

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: O'Farrell Towers Associates LP.	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>1. Board of Directors: Noreen Beiro; Margaret Schrand; Elizabeth Tracey; Patrick Murcia; Dave Kroot; Lisa Blakely; Nelson Bostrom; Curtis Bradford; Sally Carlson; Dr. Saul Fedlman; Chris Gouig; Lisa Le; Dick McNeil Jr.; Dr. Erica Mohan; Josh Mukhopadhyay; Jan Peters; Ascanio Piomelli; Samia Rashed; Nicole Rivera; Loren Sanborn; Candy Smallwood; Gabriel Speyer; Amy Tharpe; Pedro Torres; Kristy Wang</p> <p>2. CEO: Donald S. Falk; CFO: Paul Sussman; COO: Liz Orlin</p> <p>3., 4., 5. N/A</p>	
Contractor address: 201 Eddy Street, San Francisco, CA 94102	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contracts: \$ 975,000 (\$15k for 65 yrs.)
Describe the nature of the contract that was approved: Amendment to existing ground lease at 477 O'Farrell Street, San Francisco.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
EXHIBIT SUPERVISOR

Time stamp
or meeting date

2019 NOV 14 11:33

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Jane Kim

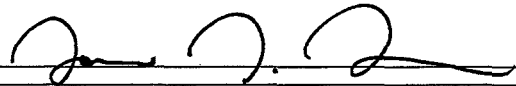
Subject:

Resolution for Ground Lease at 477 O'Farrell Street

The text is listed below or attached:

Please see attached

Signature of Sponsoring Supervisor:



For Clerk's Use Only: