

File No. 130745

Committee Item No. 22

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 07/24/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

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Completed by: Victor Young

Date July 19, 2013

Completed by: Victor Young

Date _____

1 [Ground Lease - 1100 Ocean Avenue, L.P. - Affordable Housing - \$43,065,000]

2
3 **Resolution approving and authorizing the Mayor's Office of Housing as Successor**
4 **Housing Agency to the Redevelopment Agency to enter into a 99 year ground lease**
5 **totaling \$43,065,000, with 1100 Ocean Avenue, L.P., a California limited partnership, for**
6 **the development and operation of affordable housing on certain real property located**
7 **at 1100 Ocean Avenue; and making findings that the ground lease is in conformance**
8 **with the California Environmental Quality Act, the General Plan, and the priority**
9 **policies of Planning Code, Section 101.1.**

10
11 WHEREAS, The Redevelopment Agency of the City and County of San Francisco (the
12 "Former Agency") was the fee owner of 1100 Ocean Avenue (Lot 3180, Portion of Block 1 and
13 referred to herein as the "Property") and intended to develop the Property for affordable
14 housing; and,

15 WHEREAS, Through an agreement with the Mayor's Office of Housing ("MOH"), MOH
16 agreed to fund and manage the development of the Property into affordable family rental
17 housing; and,

18 WHEREAS, In April 2009, MOH issued a Request for Qualifications and in June 2009,
19 conditionally selected the team of Housing Services Affiliate of the Bernal Heights
20 Neighborhood Center and Mercy Housing California (together, the "Sponsor") as the qualified
21 developer; and,

22 WHEREAS, the Sponsor formed a limited partnership called 1100 Ocean Avenue, L.P.
23 (the "Developer") that will act as the developer for the Property; and,

24 WHEREAS, Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of
25 2011-12, first Extraordinary Session) ("AB 26"), the Former Agency dissolved as a matter of

1 law on February 1, 2012, and pursuant to AB 26, as amended by California State Assembly
2 Bill No. 1484 ("AB 1484"), and Resolution No. 11-12, adopted by this Board and Mayor on
3 January 26, 2012, Ordinance No. 215-12, adopted by this Board and Mayor on October 12,
4 2012, and the approved housing asset transfer list submitted by MOH to, and approved by,
5 the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety
6 Code Section 34176(a)(2)), MOH is successor in interest to Former Agency's fee interest in
7 the Property; and

8 WHEREAS, The proposed project will be the new construction of 71 rental units and
9 6,036 square feet of ground-level retail space (the "Project") with the rental units targeted to
10 formerly homeless families and transitional age youth, who shall have income no higher than
11 50% of the Area Median Income (as determined by the U.S. Department of Housing and
12 Urban Development and as calculated by MOH) for 55 years after recordation of the
13 memorandum of lease, and income no higher than 60% of the Area Median Income for the
14 remaining term of the Lease (the "Occupancy Restrictions"); and

15 WHEREAS, In order to implement the Project, MOH and the Sponsor negotiated a
16 long-term ground lease (the "Lease"), in substantially the form of the Lease filed with the Clerk
17 of the Board of Supervisors in File No. 130745; and,

18 WHEREAS, The Lease includes: (i) a term of 70 years, with an extension option of 29
19 years; (ii) annual base rent in the amount of Fifteen Thousand Dollars (\$15,000); and (iii) the
20 Occupancy Restrictions; and,

21 WHEREAS, The Planning Department determined that the Project is consistent with
22 the City's General Plan and the Eight Priority Policies of Planning Code Section 101.1,
23 adopted in Planning Commission Motion 17777, which is on file with the Clerk of the Board in
24 File No. 090180; and,

1 WHEREAS, Pursuant to CEQA Guidelines Section 15168, the Planning Department
2 conducted a program-level EIR for the Balboa Park Station Area Plan that also analyzed the
3 proposed Project. The Planning Commission ("Commission") certified the Final EIR on
4 December 4, 2008, in its Motion No. 17774, and adopted a statement of overriding
5 considerations for approving the Balboa Park Station Area Plan in its Motion No. 17776, a
6 copy of each of which is on file with the Clerk of the Board in File No. 090181. The Board of
7 Supervisors made the same findings in Ordinance Nos. 58-09, 59-09, 60-09 and 61-09. The
8 Commission subsequently approved a Conditional Use Application No. 2009-1117C and
9 adopted certain CEQA mitigation measures for the Project in its Motion No. 18153, a copy of
10 which is on file with the Clerk of the Board in File No. 090181; now, therefore, be it

11 RESOLVED, That the Board hereby finds that the Lease is consistent with the General
12 Plan and with the Eight Priority Policies of City Planning Code Section 101.1, and is in
13 compliance with CEQA for the same reasons as set forth in Commission Motions 17774,
14 17776, 17777, and 18153, and Ordinance Nos. 58-09, 59-09, 60-09 and 61-09; and, be it

15 FUTHER RESOLVED, That in accordance with the recommendations of the Director of
16 Property and the Director of MOH, the Board of Supervisors hereby approves and authorizes
17 the Director of Property, along with the Director of MOH, to finalize negotiations for the Lease
18 and following the negotiations for the Lease authorizes the Director of MOH to execute and
19 deliver the Lease; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
21 MOH, in consultation with the City Attorney, to enter into any additions, amendments or other
22 modifications to the Lease (including in each instance, without limitation, the attachment of
23 exhibits) that the Director of MOH determines are in the best interests of the City, do not
24 decrease the revenues of the City in connection with the Property, or otherwise materially
25 increase the obligations or liabilities of the City, and are in compliance with all applicable laws,
including the City's Charter.

1 RECOMMENDED:

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3 _____
4 Olson Lee
5 Director of the Mayor's Office of Housing
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Mayor's Office of Housing and Community Development
City and County of San Francisco



Edwin M. Lee
Mayor

Olson Lee
Director

July 16, 2013

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

RE: Resolution Approving and Authorizing MOHCD to enter into a long term ground lease with 1100 Ocean Avenue, L.P. for the development and operation of affordable housing at 1100 Ocean Avenue.

Thank you for agreeing to introduce a resolution authorizing the Mayor's Office of Housing and Community Development ("MOHCD") to enter into a long term ground lease for 1100 Ocean Avenue, a 70 unit affordable housing project sponsored by a partnership between Mercy Housing and Bernal Heights Housing Corporation. This resolution authorizes Olson Lee, as Director of this office, to enter into a long term ground lease agreement with the 1100 Ocean Avenue L.P., the aforementioned partnership between Mercy and Bernal.

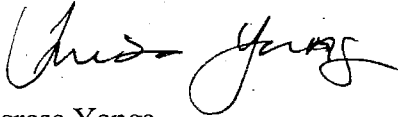
The Mayor's Office of Housing and Community Development respectfully requests your support in introducing and sponsoring the attached resolution at the Board of Supervisors on Tuesday, July 16, 2013, which would authorize the City to enter into a long term lease, with the sponsor, for 1100 Ocean Avenue, (the "Project"). Our hope is to have the resolution calendared for Budget and Finance Committee on Wednesday July 24, 2013, and then returned to the full BoS on Tuesday July 30, 2013. The project anticipates closing on its financing on Tuesday August 20, 2013 and construction will begin shortly thereafter.

As previously noted, the proposed project will be a 70-unit affordable family rental development located in the Ocean Avenue Commercial Corridor. The Project will be a newly constructed multi-storied building comprised of studios, 1, 2 and 3 bedrooms, with a central courtyard, a community room, laundry room, social services space, and ground floor commercial/retail space. The building will serve family households with incomes at 50% AMI and below. Twenty five units will be reserved for Transition Age Youth, young adults, age 18 – 24, who are transitioning from public systems (like foster care) or are at risk of not making a successful transition to adulthood.

The attached resolution has been approved as-to-form by Deputy City Attorney Evan Gross
I am enclosing a brief description of the project for your review.

If you have any questions about the resolution or the project, please contact Kevin Kitchingham
at 701-5523.

Thank you,

A handwritten signature in black ink, appearing to read "Teresa Yanga". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Teresa Yanga
Housing Development Director

1100 Ocean Avenue project Description

1100 Ocean Avenue Apartments, is a 71 unit family development in the transit rich Ocean Avenue Corridor , adjacent to City College of San Francisco. Twenty-five units are affordable at 15% AMI and set aside for transition-age youth (TAY) recently emancipated from the foster care system that are homeless or at risk of homelessness. The other 45 units will be available to families earning up to 50% of local AMI, with the remaining unit reserved for the property manager. The proposed development will be five stories tall with ground floor retail and apartments located on floors 2 and above. The apartment mix is 18 studios, 18 one-bedroom, 21 two-bedroom and 14 three-bedroom units. On the ground floor, approximately 6,500 square feet of space will be devoted to neighborhood-serving retail. Community spaces include a community room for after school programs and other activities, a TAY multi-purpose room, offices for on-site services, and an exercise room for residents. There will be approximately 9,100 square feet of usable open space in the development. The development is expected to start construction in June of 2013.

1 GROUND LEASE

2 This ground lease ("Ground Lease") is dated as of _____ 2013, by and between
3 THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"),
4 represented by the Mayor, acting by and through the Mayor's Office of Housing ("MOH"), as
5 Landlord, and 1100 OCEAN AVENUE LIMITED PARTNERSHIP, a California limited
6 partnership (the "Tenant").

7 RECITALS

8 A. In furtherance of the objectives of the California Community
9 Redevelopment Law (Health and Safety Code, section 33000 et seq. the "Law"), the City created
10 the Redevelopment Agency of the City and County of San Francisco, a public body, corporate
11 and politic ("Agency"), in 1948.

12 B. In furtherance of the objectives of the CRL, the Agency created programs
13 to redevelop and revitalize blighted areas in the City and County of San Francisco, including the
14 development of affordable housing, which it facilitated by lending or expending tax increment
15 housing set-aside funds and by providing developers with site control necessary for such
16 developments in the form of long-term ground leases.

17 C. The Agency was the fee owner of the land located at 1100 Ocean Avenue,
18 San Francisco, California and further described in attachment 1 hereto ("Site"), on which it
19 intended to fund an affordable housing development.

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

1 January 26, 2012, Ordinance No. 215-12, adopted by the City's Board of Supervisors and Mayor
2 on October 12, 2012, and the approved housing asset list submitted by City to, and approved by,
3 the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code
4 Section 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all of
5 the Agency's rights and obligations with respect to the Site.

6 E. The City now desires to lease the Site to Tenant for the development of
7 approximately 71 units of affordable family housing, including housing for formerly homeless
8 families, and transition aged youth, and approximately 6,259 square feet of ground level retail
9 space (the "Project"). Based on preliminary planning, the Project will be an approximately 55-
10 foot tall development with approximately 71 units, comprised of 18 studios, 18 one bedroom, 21
11 two bedroom, and 13 three bedroom units, 1 manager's unit, and other ancillary uses. Proposed
12 on-site amenities include a laundry room, common areas, supportive services office space, bicycle
13 storage, and four retail spaces. The lot is 25,772 square feet, and the total gross building square
14 footage will be approximately 83,862.

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

19
20
21 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
22 City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as

1 defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter
2 set forth, to each and all of which the City and Tenant hereby mutually agree.

3 **ARTICLE 1: DEFINITIONS**

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

6 **1.01 Access Property** has the meaning set forth in Section 8.01.

7 **1.02 Agency** has the meaning set forth in Recital A.

8 **1.03 Agreement Date** means the date that this Ground Lease is deemed to be entered
9 into and effective, as set forth on the cover page.

10 **1.04 Area Median Income** (or “AMI”) means the area median income as determined
11 by the United States Department of Housing and Urban Development for the San Francisco
12 Primary Metropolitan Statistical Area, adjusted solely for actual household size, and as published
13 annually by MOH.

14 **1.05 Effective Date** means the close of escrow date for all financing required to
15 construct the Project, but in no event shall the date be prior to the approval of the Ground Lease
16 by the City’s Board of Supervisors and the Mayor.

17 **1.06 First Lease Payment Year** means the year in which the Project receives a
18 Certificate of Occupancy for all residential units.

19 **1.07 First Mortgage Lender** means any lender and its successors, assigns and
20 participants or other entity holding the first deed of trust on the Leasehold Estate, and in the event
21 of the bond financing, the issuer and the entity purchasing the bonds shall both be First Mortgage
22 Lender.

1 **1.08 Ground Lease** means this Ground Lease of the Site to the Tenant from the City, as
2 amended from time to time.

3 **1.09 Improvements** means all physical construction, including all structures, fixtures
4 and other improvements to be constructed on the Site.

5 **1.10 Lease Year** means each calendar year during the term hereof, beginning on
6 January 1 and ending on December 31, provided that the "First Lease Year" shall commence on
7 the Effective Date and continue through December 31st of that same calendar year. Furthermore,
8 the "Last Lease Year" shall end upon the expiration of the Term hereof.

9 **1.11 Leasehold Estate** means the estate held by the Tenant pursuant to and created by
10 this Ground Lease.

11 **1.12 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of
12 credit or other security instrument, including but not limited to the deeds of trust securing the First
13 Mortgage Lender and which are part of the Loan Documents, and any assignment of the rents,
14 issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold
15 Estate created by this Ground Lease and will be approved in writing by the City.

16 **1.13 Lender** means any entity holding a Leasehold Mortgage.

17 **1.14 Loan Documents** means those certain loan agreements, notes, deeds of trust and
18 ~~declarations and any other documents executed and delivered in connection with the construction~~
19 and permanent financing for the Project.

20 **1.15 MOH** means the Mayor's Office of Housing for the City.

21 **1.16 New Developer** is defined in Section 10.15.

22 **1.17 Notice of Completion ("NOC")** is defined in Section 10.14.

1 **1.18 Occupant** means any person or entity authorized by Tenant to occupy a residential
2 unit on the Site, or any portion thereof.

3 **1.19 Partnership Agreement** means the Amended and Restated Agreement of Limited
4 Partnership by and among Mercy Housing Calwest, Bernal Housing LLC, Bank of America,
5 N.A., and Banc of America CDC Special Holding Company, Inc., dated _____, 2013

6 **1.20 Permitted Limited Partner** has the meaning set forth in Section 19.02. For the
7 purposes of this Ground Lease, Bank of America, N.A. and any affiliate thereof, shall be deemed
8 to be a Permitted Limited Partner.

9 **1.21 Premises** means the Site together with any Improvements thereon.

10 **1.22 Project** means the development, consisting of approximately 71 units of affordable
11 housing with supportive services including one manager's unit, and other ancillary uses on the
12 Site permitted by this Ground Lease and approved by the City. If indicated by context, Project
13 means the leasehold interest in the Site and the fee interest in the Improvements on the Site.

14 **1.23 Project Expenses** means all charges incurred by Tenant in the operation of the
15 Project including but not limited to: (a) lease payments, utilities, real estate and/or possessory
16 interest taxes, assessments, and liability, fire and other hazard insurance premiums; (b) salaries,
17 wages and other compensation due and payable to any employees (if any) or agents of Tenant
18 who maintain, administer, operate or provide services in connection with the Project, including all
19 withholding taxes, insurance premiums, Social Security payments and other payroll taxes or
20 payments required for any such employees; (c) payments of required interest and principal, or
21 annual servicing fees, if any, on any construction or permanent financing secured by the Project;
22 (d) all other expenses incurred by Tenant to cover routine operating and services provision costs

1 of the Project, including maintenance and repair and the reasonable fee of any managing agent;
2 (e) any extraordinary expenses as approved in advance by the City; (f) deposits to reserves
3 accounts required to be established under the Loan Documents or the Partnership Agreement, and
4 (g) an asset management fee in the amount of \$18,420 per year increasing 3.5% annually.

5 **1.24 Project Income** means all revenue, income receipts, and other consideration
6 actually received from the operation of leasing the Improvements and Project. Project Income
7 shall include but not be limited to: all rents, fees and charges paid by tenants; Section 8 or other
8 rental subsidy payments received for the dwelling units; supportive services funding, if to the
9 Tenant; commercial lease income; deposits forfeited by tenants; all cancellation fees, price index
10 adjustments and any other rental adjustments to leases or rental agreements; proceeds from
11 vending and laundry room machines; and the proceeds of business interruption or similar
12 insurance. Project Income shall not include tenants' security deposits, loan proceeds, capital
13 contributions or similar advances.

14 **1.25 Site** means the real property located at 1100 Ocean Avenue, San Francisco, as
15 shown in the Site Legal Description, Attachment 1.

16 **1.26 Subsequent Owner** means any successor (including a Lender or an affiliate or
17 assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the
18 Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure,
19 or transfer from a Lender, its affiliate, and any successors to any such person or entity.

20 **1.27 Surplus Cash** means the excess of Project Income over Project Expenses. All
21 permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(f) of this
22 Ground Lease.

1 **1.28 Tenant** means 1100 Ocean Avenue Limited Partnership, a California limited
2 partnership, and its successors and assigns (or a Subsequent Owner, where appropriate).

3 **1.29 Transition Age Youth** means young adults, age 18 – 24, who are transitioning
4 from public systems (like foster care) or are at risk of not making a successful transition to
5 adulthood.

6 **1.30 Very Low-Income Households** means: (a) a tenant household with combined
7 initial income that does not exceed fifty percent (50%) of Area Median Income, for a term of 55
8 years from the date on which a certificate of occupancy is issued for the Project, and (b) a tenant
9 household with combined initial income that does not exceed sixty percent (60%) of Area Median
10 Income for any period of the Term (or extended term) of this Ground Lease thereafter, as
11 determined by HUD for the San Francisco area, adjusted solely for actual household size, but not
12 high housing cost area.

13 Whenever an “Attachment” is referenced, it means an attachment to this Ground Lease
14 unless otherwise specifically identified. Whenever a section, article or paragraph is referenced, it
15 is a reference to this Ground Lease unless otherwise specifically referenced.

16 **ARTICLE 2: TERM**

17 (a) **Initial Term.** The term of this Ground Lease shall commence upon the Effective
18 Date and shall end seventy-five (75) years from that date (“Term”), unless extended pursuant to
19 section (b) below.

20 (b) **Option for Extension.** Provided that the Tenant is not in default under the terms of
21 this Ground Lease and the Loan Documents, beyond any applicable notice and cure period, either
22 at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the

1 last day of the term (the "Termination Date"), the term of this Ground Lease may be extended at
2 the option of the Tenant for one twenty-four (24) year period as provided below.

3 (c) Notice of Extension. Not later than one hundred eighty (180) days prior to the
4 Termination Date, the Tenant may notify the City in writing that it wishes to exercise its option to
5 extend the term of this Ground Lease (an "Extension Notice"). The extended term shall be for 24
6 years from the Termination Date, which option the Tenant may exercise only once, for a total
7 Ground Lease term of not to exceed ninety-nine (99) years.

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

10 (e) Right of First Refusal. If the City desires to sell its interest in the Site, the Tenant
11 will have the right of first refusal to negotiate for the purchase of the Site as set forth in Section
12 14.02.

13 **ARTICLE 3: FINANCING**

14 Tenant shall submit to the City evidence satisfactory to the City that Tenant has sufficient
15 equity capital and commitments for construction and permanent financing, and/or such other
16 evidence of capacity to proceed with the construction of the Improvements in accordance with the
17 dates specified in the Schedule of Performance, Attachment 2. City hereby acknowledges that as
18 of the Effective Date, Tenant has provided City with sufficient evidence to satisfy this Article 3.

19 **ARTICLE 4: RENT**

20 **4.01 Annual Rent**

21 (a) Tenant shall pay to the City Four Hundred Thirty Five Thousand Dollars
22 (\$435,000.00) (the "Annual Rent") per year for each year of the Term of this Ground Lease,

1 which is equal to ten percent (10%) of appraised value of the Site as of the Effective Date, and
2 consists of Base Rent and Residual Rent, as defined in Sections 4.02 and 4.03 below, without
3 offset of any kind (except as otherwise permitted by this Lease) and without necessity of demand,
4 notice or invoice.

5 (b) If the Tenant elects to extend the term of this Ground Lease pursuant to Article 2
6 above, Annual Rent during any such extended term shall be set by mutual agreement of the
7 parties, taking into account the affordable housing restrictions contained in Section 9.02, project
8 debt (including any surplus cash debt obligations) and the annual income expected to be
9 generated by the Project. If the parties cannot agree on Annual Rent, either party may invoke a
10 neutral third-party process and shall agree on a neutral third-party appraiser to set the Annual
11 Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent
12 determination disputes in San Francisco taking into account the affordable housing restrictions
13 contained in Section 9.02 Project debt (including any surplus cash debt obligations) and the
14 annual income expected to be generated by the Project or, in the event that there is no then-
15 prevailing practice, in accordance with the rules of the American Arbitration Association.
16 Provided, however, that after the neutral third party process, Tenant, in its sole discretion may
17 rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease.

18 **4.02 Base Rent**

19 (a) "Base Rent", means FIFTEEN THOUSAND DOLLARS (\$15,000) per annum.
20 Base Rent shall be due and payable in arrears on January 31st of each Lease Year, however no
21 Base Rent shall be due until after completion of the Improvements. The first Base Rent payment
22 shall be due on the January 31st of the calendar year following the First Lease Payment Year; and

1 provided, further, that in the event that the Tenant or any Subsequent Owner fails, after notice and
2 opportunity to cure, to comply with the provisions of Section 9.02, Base Rent shall be increased
3 to the full amount of the Annual Rent.

4 (b) If the Project does not have sufficient Project Income to pay Base Rent and the
5 City has received written notice from Tenant regarding its inability to pay Base Rent from Project
6 Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without
7 interest until paid (“**Base Rent Accrual**”). The Base Rent Accrual shall be due and payable each
8 year from and to the extent Surplus Cash is available to make such payments and, in any event,
9 upon the earlier of sale of the Project or termination of this Ground Lease.

10 (c) If Tenant has not provided City with written notice that it cannot pay Base Rent
11 due to insufficient Project Income, the City shall assess a late payment penalty of two percent
12 (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty
13 shall not apply to Base Rent Accrual that has been previously approved by the City pursuant to
14 Section 4.02(b). The Tenant may request in writing that the City waive such penalties by
15 describing the reasons for Tenant’s failure to pay Base Rent and Tenant’s proposed actions to
16 insure that Base Rent will be paid in the future. The City may, in its sole discretion, waive in
17 writing all or a portion of such penalties if it finds that Tenant’s failure to pay Base Rent was
18 beyond Tenant’s control and that Tenant is diligently pursuing reasonable solutions to such failure
19 to pay.

20 **4.03 Residual Rent**

21 “Residual Rent” means, in any given Lease Year, Four Hundred Twenty Thousand
22 Dollars (\$420,000.00). Residual Rent shall be due in arrears on April 15th following each Lease

1 Year, payable only to the extent of Surplus Cash as provided in Section 6.02(f), and any unpaid
2 Residual Rent shall not accrue. However, in the event that Surplus Cash is insufficient to pay the
3 full amount of the Residual Rent, Tenant shall certify to the City in writing by April 15 that
4 available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to City any
5 supporting documentation reasonably requested by City to allow City to verify the insufficiency.

6 **4.04 Triple Net Lease**

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

13 **ARTICLE 5: CITY COVENANTS**

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

19 **ARTICLE 6: TENANT COVENANTS**

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

22 **6.01 Limited Partnership/Authority**

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

3 **6.02 Use of Site and Rents**

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

6 **6.02(a) Permitted Uses**

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

10 **6.02(b) Non-Discrimination**

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

21 **6.02(c) Non-Discriminatory Advertising**

22 All advertising (including signs) for sublease of the whole or any part of the Site

1 shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size
2 and design.

3 **6.02(d) Access for Disabled Persons**

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

7 **6.02(e) Equal Opportunity Marketing Plan**

8 Tenant shall submit a Fair Housing Marketing Plan to be approved by the City. The Fair
9 Housing Marketing Plan must follow the City's marketing requirements for such plans.

10 **6.02(e) Lead Based Paint**

11 Tenant agrees to comply with the regulations issued by the Secretary of HUD set forth in
12 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of
13 lead-based paint in certain residential structures undergoing federally assisted construction and
14 require the elimination of lead-based paint hazards.

15 **6.02(f) Permitted Uses of Surplus Cash**

16 At the end of each lease year following the Completion Date, Tenant shall
17 calculate Surplus Cash. If the Tenant is found by the City to be in compliance with all applicable
18 requirements and agreements, Tenant shall use Surplus Cash to make the following payments:

19 First, to Base Rent Accrual payments, if any; second, to an investor services fee in the
20 amount of \$5,000 or the amount allowed by California Department of Housing and
21 Community Development, whichever is less; third, to a partnership management fee in

1 the amount of \$18,450 per year (increasing 3.5% annually) or the amount allowed by
2 California Department of Housing and Community Development, whichever is less;
3 then, for the first 20 full years of Project operations, the balance of Surplus Cash shall
4 be deposited by Tenant into a designated reserve that may only be used to subsidize
5 the MHSA Units; thereafter, one-third (1/3) of remaining Surplus Cash in an amount
6 not to exceed \$500 per unit per year, to a maximum of \$50,000, shall be retained by
7 Tenant and may be used to pay distributions in accordance with Tenant's Partnership
8 Agreement, and the remaining two-thirds (2/3) of Surplus Cash, together with any
9 remaining Surplus Cash after payment of the Tenant's one-third allocation above,
10 shall be paid proportionately to: (i) the California Department of Housing and
11 Community Development; (ii) the California Housing Finance Agency; and (iii) the
12 City, each in accordance with their investment in the Project (including the City's
13 contribution to acquire the Site). The City's portion of Surplus Cash will be applied
14 first to repayment of all City loans, and if any Surplus Cash remains, to Residual Rent.

15 **6.03 City Deemed Beneficiary of Covenants**

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

1 of any land or interest therein to, or in favor of, which such agreements and covenants relate. The
2 City shall have the right, in the event of any breach of any such agreements or covenants, in each
3 case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to
4 maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of
5 such breach of covenants, to which it or any other beneficiaries of such agreements or covenants
6 may be entitled.

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

8 Forty-five (45) days after recordation of a Notice of Completion (as defined in Section
9 10.14) by the Tenant for the Improvements, and not later than December 31st of each year
10 thereafter, Tenant will furnish to the City a list, in the form set forth in Attachment 5, of all of the
11 names of the persons who are Occupants of the Improvements, the specific unit which each
12 person occupies, the household income of the Occupants of each unit, the household size and the
13 rent being charged to the Occupants of each unit. If any state or federal agency requires an
14 income certification for Occupants of the Improvements containing the above-referenced
15 information, the City agrees to accept such certification in lieu of Attachment 5 as meeting the
16 requirements of this Ground Lease.

17 **ARTICLE 8: ADDITIONAL TENANT RIGHTS; CITY RESERVED RIGHTS:**

18 **CONDITION OF SITE - "AS IS"**

19 **8.01 Additional Tenant Rights**

20 In addition to Tenant's right to lease the Site, City hereby grants to Tenant for the duration
21 of the Term the right to use that certain portion of property depicted as the "Plaza Parcel" and
22 legally described on the attached Attachment 6 (the "Access Property") for pedestrian ingress and

1 egress to and from the Project only. Tenant shall not construct any improvements on the Access
2 Property or use it for any other purposes. Notwithstanding the forgoing, Tenant's right to use the
3 Access Property shall be subject to all of the rights of the City and the San Francisco Community
4 College District and all of the conditions set forth in that certain Phelan Plaza Lease Agreement
5 between City (acting by and through the San Francisco Municipal Transportation Agency) and
6 San Francisco Community College District dated _____ and attached hereto as Attachment
7 10. For the purposes of this Section 8.01, "Tenant" shall include any of Tenant's employees (if
8 any), agents, consultants, contractors, subcontractors, tenants, subtenants, invitees, or guests.

9 **8.02 City's Reserved Rights**

10 Notwithstanding anything to the contrary in Section 8.01, City reserves the right to use the
11 Access Property for all purposes that do not prevent the Tenant's permitted use of the Access
12 Property described in Section 8.01. City's reserved rights include, but are not limited to, the right
13 to install, maintain, replace and repair any sidewalks, plaza improvements, electric power lines,
14 telephone and telegraph lines, roadways, transit improvements, and pipelines and related
15 equipment on, across, along or under the Access Property. Tenant acknowledges that City intends
16 to install the plaza improvements depicted on the Attachment 6 in the Access Property; provided,
17 however that City has no obligation to install such improvements.

18 Tenant further acknowledges that a portion of the Site is located within the "**Subject**
19 **Area**" described in that certain Memorandum of Understanding between San Francisco Municipal
20 Transportation Agency ("SFMTA) and San Francisco Public Utilities Commission ("SFPUC"),
21 dated as of February 13, 2007, (the "Pipeline MOU") a copy of which is attached here to as
22 Attachment 7. Notwithstanding anything to the contrary in Section 8.01, City reserves the right to

1 use the Subject Area for the pipeline installation, maintenance, repair, and replacement activities
2 described in the Pipeline MOU, and Tenant's use of the Subject Area shall comply with all
3 requirements and restrictions applicable to SFMTA's use of the Subject Area under the Pipeline
4 MOU. Tenant shall not take any action that would interfere with SFPUC's use of the Subject
5 Area under the Pipeline MOU or cause SFMTA to be in default of any of its obligations under the
6 Pipeline MOU.

7 In addition, Tenant acknowledges that a portion of the Site is located within the
8 "Easement Area" described in that certain Delivery Truck Easement Agreement between the City
9 and Avalon Ocean Avenue, L.P., dated June 30, 2011 and recorded in the Official Records of San
10 Francisco County on July 1, 2011 as instrument number 2011-J208292 (the "Avalon Easement").
11 Tenant hereby agrees that: 1) its rights to use the Site under this Ground Lease shall be subject to
12 the Avalon Easement; 2) it shall not interfere with the easement holder's exercise of its rights
13 under the Avalon Easement; and 3) it shall comply with all of the "Housing Parcel Developer"
14 obligations set forth in the Avalon Easement, until such easement is terminated.

15 **8.03 As Is Condition of Premises**

16 Neither the City, nor any employee, agent or representative of the City has made any
17 representation, warranty or covenant, expressed or implied, with respect to the Site or the Access
18 Property, their physical condition, the condition of any improvements, any environmental laws or
19 regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Site or
20 the Access Property other than as set forth explicitly in this Ground Lease, and the Tenant
21 understands and agrees that the City is making no such representation, warranty or covenant,
22 expressed or implied; it being expressly understood that the Site and the Access Property are

1 being leased in an "AS IS" condition with respect to all matters.

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

3 **9.01 Scope of Development and Schedule of Performance**

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

6 **9.02 Permitted Uses and Occupancy Restrictions**

7 The permitted uses of the Project are limited to seventy-one (71) residential rental housing
8 units, including one (1) manager's unit (together "Residential Units"), ground floor common
9 areas, ground floor commercial space, and ground floor social services spaces. Upon the
10 completion of construction, one hundred percent (100%) of the Residential Units, with the
11 exception of the manager's unit, in the Project shall be occupied or held vacant and available for
12 rental by Very Low-Income Households. In addition, twenty five (25) of the Residential Units
13 shall be occupied or available for rental by Transition Aged Youth.

14 **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

15 **10.01 General Requirements and Rights of Agency**

16 Construction documents for the construction of the Improvements by Tenant, including:
17 (1) the basic concept drawings; (2) the schematic drawings; (3) the design development
18 documents; and, (4) the final plans and specifications (the "Final Construction Documents")
19 (collectively the "Construction Documents") shall be prepared by a person registered in and by
20 the State of California to practice architecture and shall be in conformity with this Ground Lease
21 and all applicable Federal, State and local laws and regulations. The architect shall use, as
22 necessary, members of associated design professions, including engineers and landscape
23 architects. Notwithstanding anything to the contrary contained in this Article 10, the City hereby
24 acknowledges that the Final Construction Documents have been approved as of the Effective

1 Date.

2 **10.02 City Approvals and Limitation Thereof**

3 The Construction Documents must be approved by the City in the manner set forth
4 below:

5 **10.02(a) Compliance with Ground Lease**

6 The City's approval with respect to the Construction Documents is limited to
7 determination of their compliance with this Ground Lease. The Construction Documents shall be
8 subject to general architectural review and guidance by the City as part of this review and
9 approval process.

10 **10.02(b) City Does Not Approve Compliance with Construction**

11 **Requirements**

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

15 **10.02(c) City Determination Final and Conclusive**

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

19 **10.03 Construction to be in Compliance with Construction Documents and Law**

20 **10.03(a) Compliance with Agency and City Approved Documents**

21 The construction shall be in strict compliance with the City-approved Construction
22 Documents.

1 **10.03(b) Compliance with Local, State and Federal Law**

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

4 **10.04 Disapproval of Construction Documents by Agency**

5 If the City disapproves the Construction Documents in whole or in part as not being in
6 compliance with this Ground Lease, Tenant shall submit new or corrected plans which are in
7 compliance within thirty (30) days after written notification to it of disapproval, and the provision
8 of this section relating to approval, disapproval and re-submission of corrected Construction
9 Documents shall continue to apply until the Construction Documents have been approved by the
10 City; provided, however, that in any event Tenant must submit satisfactory Construction
11 Documents (i.e., approved by the City) no later than the date specified therefor in the Schedule of
12 Performance.

13 **10.05 Final Construction Documents to be Approved by City**

14 The Final Construction Documents, including all drawings, specifications and other
15 related documents necessary for the construction of the Improvements in accordance with the
16 requirements of this Ground Lease must be approved by the MOH Director. Notwithstanding
17 anything to the contrary contained in this Article 10, the City hereby acknowledges that the Final
18 Construction Documents have been approved by the City prior to the date of this Ground Lease.

19 ~~**10.06 Intentionally Omitted**~~

20 **10.07 Issuance of Building Permits**

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

1 for building the Improvements.

2 **10.08 Performance and Payment Bonds**

3 Prior to commencement of construction of the Improvements, Tenant shall deliver to the
4 City performance and payment bonds, each for the full value of the cost of construction of the
5 Improvements, which bonds shall name the City as co-obligee, or such other completion security
6 which is acceptable to the City. The payment and performance bonds may be obtained by
7 Tenant's general contractor and name Tenant and City as co-obligees.

8 **10.09 City Approval of Changes after Commencement of Construction**

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

16 **10.10 Times for Construction**

17 Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any
18 ~~part thereof, that Tenant and such successors and assigns shall promptly begin and diligently~~
19 prosecute to completion the redevelopment of the Site through the construction of the
20 Improvements thereon, and that such construction shall in any event commence and thereafter
21 diligently continue and shall be completed no later than the dates specified in the Schedule of
22 Performance, subject to force majeure, unless such dates are extended by the City.

1 **10.11 Force Majeure**

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

1 specified in this Ground Lease.

2 **10.12 Reports**

3 Commencing when construction of the Improvements commences and continuing
4 until completion of construction of the Improvements, Tenant shall make a report in writing to the
5 City every three (3) months, in such detail as may reasonably be required by the City, as to the
6 actual progress of the Tenant with respect to such construction. The MOH Monthly Project
7 Update required under the MOH Loan Documents shall satisfy this requirement.

8 **10.13 Access to Site**

9 Commencing as of the Effective Date, Tenant shall permit access to the Site to the City to
10 the extent necessary to carry out the purposes of the provisions of this Ground Lease, at
11 reasonable times and upon reasonable advance notice.

12 **10.14 Notice of Completion**

13 Promptly upon completion of the construction of the Improvements in accordance with the
14 provisions of this Ground Lease, Tenant shall file a Notice of Completion (“NOC”), and record
15 such approved NOC in the San Francisco Recorder’s Office. Tenant shall provide City with a
16 copy of the recorded NOC.

17 **10.15 Completion of Improvements by New Developer**

18 ~~In the event Lender or a successor thereto forecloses, obtains a deed in lieu of~~
19 foreclosure or otherwise takes title to the Premises and undertakes construction of the
20 Improvements (“New Developer”) (a) such New Developer shall not be bound by the provisions
21 of the Schedule of Performance with respect to any deadlines for the completion of the
22 Improvements but shall only be required to complete the Improvements with due diligence and in

1 conformance with a new Schedule of Performance as agreed upon by the New Developer and the
2 City, (b) such New Developer shall only be required to complete the Improvements in accordance
3 with all applicable building codes and ordinances and the approved Construction Documents with
4 such changes that are mutually agreed upon by the City and the New Developer pursuant to
5 subsection (c) hereof; and (c) City and New Developer shall negotiate in good faith such
6 reasonable amendments and reasonable modifications to this Ground Lease as the Parties
7 mutually determine to be reasonably necessary based upon the financial and construction
8 conditions then existing.

9 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

10 **11.01 Certificate of Completion - Issuance**

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

1 from any and all City requirements or conditions to occupancy of the Improvements, which
2 requirements or conditions must be complied with separately.

3 The City may elect to issue to Tenant a Certificate of Completion if no events of default
4 by Tenant are then existing under this Agreement and Tenant has completed the Improvements in
5 accordance with this Agreement, except for: (1) punch list items; (2) landscaping and other
6 outside areas of the Improvements; and (3) other items that do not adversely affect or impair
7 Tenant's use and occupancy of the Improvements for the purposes contemplated by this
8 Agreement and that do not preclude the City's issuance of a certificate of occupancy or other
9 certificate or authorization of Tenant's use and occupancy of the Improvements. However, the
10 City will not be obligated to issue a Certificate of Completion in these circumstances unless and
11 until Tenant has provided to the City, at the City's request, a bond, letter of credit, certificate of
12 deposit, or other security reasonably acceptable to the City in an amount equal to 110% of the
13 estimated cost of completing the items described in clauses (1) through (3) above, as reasonably
14 determined by the City.

15 **11.02 Certifications to be Recordable**

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

18 **11.03 Certification of Completion - Non-Issuance Reasons**

19 If the City shall refuse or fail to provide any certification in accordance with the
20 provisions of Section 11.01, the City shall provide Tenant with a written statement, within fifteen
21 (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant
22 has failed to complete the construction of the Improvements in accordance with the provisions of

1 this Ground Lease or is otherwise in default hereunder and what measures or acts will be
2 necessary, in the opinion of the City, for Tenant to take or perform in order to obtain such
3 certification.

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

5 **12.01 Post Completion Changes**

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

14
15 **12.02 Definition of Change**

16 'Change' as used in this Article means any alteration, modification, addition and/or
17 substitution of or to the Site, the Improvements, and/or the density of development which differs
18 materially from that which existed upon the completion of construction of the Improvements in
19 accordance with this Ground Lease, and shall include without limitation the exterior design
20 and exterior materials. For purposes of the foregoing, exterior shall mean and include the roof of
21 the Improvements. Changes shall not include repairs, maintenance and interior alterations in the
22 normal course of operation of a mixed use development or as may be required in an emergency to

1 protect the safety and well-being of the Project's Occupants, tenants, or subtenants, or anyone
2 lawfully permitted on the Site.

3 **12.03 Enforcement**

4 Subject to Article 19 hereof, the City shall have any and all remedies in law or equity
5 (including without limitation restraining orders, injunctions and/or specific performance), judicial
6 or administrative, to enforce the provisions of this Article 12, including without limitation any
7 threatened breach thereof or any actual breach or violation thereof.

8 **ARTICLE 13: TITLE TO IMPROVEMENTS**

9 From and after the Effective Date, fee title to any Improvements shall be vested in Tenant
10 and shall remain vested in Tenant during the Term, subject to Section 14.01 below. Subject to the
11 rights of any Lenders and as further consideration for the City entering into this Ground Lease, at
12 the expiration or earlier termination of this Ground Lease, fee title to all the Improvements shall
13 vest in the City without further action of any party, without any obligation by the City to pay any
14 compensation therefor to Tenant and without the necessity of a deed from Tenant to the City.

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

16 **14.01 Assignment, Sublease or Other Conveyance by Tenant**

17 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or
18 form all or any part of its interest in this Ground Lease or in the Improvements or any
19 portion thereof, other than to Lender(s) or affiliates of Lenders, or allow any person or
20 entity to occupy or use all or any part of the Site, other than leases to residential tenants in
21 the ordinary course of business nor may it contract or agree to do any of the same, without
22 the prior written approval of the City, which approval shall not be unreasonably withheld

1 or delayed. Notwithstanding anything contained herein to the contrary, Tenant may sell,
2 assign, convey, sublease or transfer any or all of its interests in and to this Ground Lease
3 to Mercy Housing Calwest ("Mercy"), or to an affiliate or successor of Mercy, and may
4 change, assign, acquire, or liquidate partnership interests in Tenant, as permitted under
5 Article 49 of this Lease. The City reserves the right to review and approve any
6 commercial leases and commercial tenants for the Site.
7

8 **14.02 Assignment, Sublease or Other Conveyance by City**

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

20 **ARTICLE 15: TAXES**

21 Tenant agrees to pay, or cause to be paid, prior to delinquency to the proper authority, any
22 and all valid taxes, assessments and similar charges on the Site which become effective after the

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

17 Tenant shall have no obligation under this Section prior to the Effective Date, including
18 but not limited to any taxes, assessments or other charges levied against the Property which are
19 incurred prior to the Effective Date.

20 **ARTICLE 16: UTILITIES**

21 From and after the Effective Date, Tenant shall procure water and sewer service from the
22 City and electricity, telephone, natural gas and any other utility service from the City or utility

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

6
7 **ARTICLE 17: MAINTENANCE**

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

16
17 **ARTICLE 18: LIENS**

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

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

10 **ARTICLE 19: GENERAL REMEDIES**

11 **19.01 Application of Remedies**

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

14 **19.02 Notice and Cure Rights for Tenant and Permitted Limited Partner**

15 **19.02(a)** The City may not exercise its remedies under this Ground Lease for
16 a default by the Tenant unless and until: (i) the City has given written notice of any such default,
17 in accordance with the notice provisions of Article 39, to Tenant and Permitted Limited Partners
18 who have requested notice as set forth below ("Permitted Limited Partners"), and (ii) such default
19 has not been cured within sixty (60) days or such longer period as may be set forth herein,
20 following the giving of such notice or, if such default cannot be cured within such 60-day period,
21 such longer period, such longer period as is reasonably necessary to cure such default, provided
22 that such cure has been commenced within such 60-day period and is being prosecuted diligently

1 to completion. If the Tenant or a Permitted Limited Partner cannot cure a default due to an
2 automatic stay in Bankruptcy court then any cure period will be tolled during the pendency of
3 such automatic stay.

4 **19.02(b)** The City will not exercise its remedy to terminate this Ground
5 Lease if the Permitted Limited Partner is attempting to cure the default and such cure requires
6 removal of the managing general partner, so long as the Permitted Limited Partner is proceeding
7 diligently to remove the managing general partner in order to effect a cure of such default.

8 **19.02(c)** Unless otherwise provided for herein, any limited partner wishing
9 to become a Permitted Limited Partner other than the Permitted Limited Partner identified in
10 Section 39 must provide five (5) days written notice to the City in accordance with the notice
11 provisions of this Ground Lease, setting forth a notice address and providing a copy of such
12 notice to the Tenant and all of the Tenant's partners. Such limited partner will become a
13 Permitted Limited Partner upon the expiration of the five-day period. A limited partner will not
14 be afforded the protections of this section with respect to any default occurring prior to the time
15 such limited partner becomes a Permitted Limited Partner.

16
17 **19.03 Breach by City**

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

1 of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in
2 writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an
3 action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other
4 remedy available at law or equity.

5 **19.04 Breach by Tenant**

6 **19.04(a) Default by Tenant**

7 Subject to the notice and cure rights under Section 19.02, the following events
8 each constitute a default by Tenant:

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

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

14 (3) From and after the Effective Date, Tenant, or its successor in interest, shall
15 fail to pay real estate taxes or assessments on the Premises or any part thereof prior to
16 delinquency, or shall place thereon any encumbrance or lien unauthorized by this Ground Lease,
17 or shall suffer any levy or attachment to be made, or any material supplier's or mechanic's lien or
18 any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not
19 have been paid, or the encumbrance or lien removed or discharged within the time period
20 provided in Article 18; provided, however, that Tenant shall have the right to contest any tax or
21 assessment pursuant to Article 15 and Article 18 and, upon the posting of an adequate bond or
22 other security, to contest any such lien or encumbrance. In the event of any such contest, Tenant

1 shall protect, indemnify and hold City harmless against all losses and damages, including
2 reasonable attorneys' fees and costs resulting therefrom;

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

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

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

13 **19.04(b) Notification and City Remedies**

14 Upon the happening of any of the events described in Section 19.04(a) above, and
15 prior to exercising any remedies, the City shall notify Tenant, Permitted Limited Partner, and
16 each Lender in writing of the Tenant's purported breach, failure or act in accordance with the
17 notice provisions of Article 38, giving Tenant sixty (60) days from receipt of such notice to cure
18 such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is not
19 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)
20 days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any
21 Lender and subject to Section 19.02 and Article 26, the City thereafter shall be afforded all of its
22 rights at law or in equity, including any or all of the following remedies: (1) terminating in

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

3 Notwithstanding the foregoing, during the 15-year tax credit compliance period,
4 City may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6)
5 above.

6 **ARTICLE 20: DAMAGE AND DESTRUCTION**

7 **20.01 Insured Casualty**

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

1 terminate this Ground Lease pursuant to its right to do so under this Section 20.01, or elects not to
2 restore the Improvements, the insurance proceeds shall be divided among the City, Tenant and
3 any Lender in accordance with the provisions of Section 20.03.

4 **20.02 Uninsured Casualty**

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

1 **20.03 Distribution of the Insurance Proceeds**

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

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

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

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

15 (d) The remainder to Tenant.

16 **20.04 Clean Up of Housing Site**

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

21 **ARTICLE 21: INDEMNIFICATION**

22 **21.01 General Indemnification**

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

16 **21.02 Hazardous Materials –Indemnification**

17 **21.02(a)** From and after the Effective Date, Tenant shall indemnify, defend,
18 and hold the City, and its commissioners, officers, agents and employees (individually, an
19 "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any
20 and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever
21 (including, without limitation, the reasonable fees and disbursements of counsel and engineering
22 consultants) incurred by or asserted against any Indemnified Party in connection with, arising out

1 of, in response to, or in any manner relating to violation of any Environmental Law, or any
2 Release, threatened Release and any condition of pollution, contamination or Hazardous
3 Substance-related nuisance on, under or from the Site or the Access Property.

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

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

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

21 (iii) "Release" shall mean any spillage, leaking, pumping, pouring, emitting,
22 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment,

1 including the abandonment or discharging of barrels, containers, and other closed receptacles
2 containing any Hazardous Substance.

3 **ARTICLE 22: INSURANCE**

4 **22.01 Insurance**

5 **22.01(a) Insurance Requirements for Tenant**

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

11 **22.01(b) Minimum Scope of Insurance**

12 Coverage shall be at least as broad as:

- 13 (1) Insurance Services Office Commercial General Liability coverage
14 (“occurrence” form CG 00 01) or other form approved by the City's Risk Manager.
15 (2) Insurance Services Office Automobile Liability coverage, code 1 form
16 number CA 00 01 – “any auto”) or other form approved by the City's Risk Manager.
17 (3) Workers' Compensation insurance as required by the State of California
18 and Employer's Liability insurance.
19 (4) Professional Liability Insurance: Tenant shall require that all architects,
20 engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors
21 and omissions. Tenant shall provide City with copies of consultants' insurance certificates
22 showing such coverage.
23 (5) Property Insurance, special form coverage against direct physical loss to

1 the Project, excluding earthquake or flood, following completion of construction and during the
2 course of construction to the extent not covered by builders' risk insurance.

3 **22.01(c) Minimum Limits of Insurance**

4 Tenant shall maintain limits no less than:

5 (1) General Liability: \$1,000,000 combined single limit per occurrence for
6 bodily injury, personal injury and property damage. If Commercial General Liability Insurance or
7 other form with a general aggregate limit is used, either the general aggregate limit (\$2,000,000)
8 before the start of demolition/construction if the Site is unoccupied; not less than Five Million
9 Dollars (\$5,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000)
10 annual aggregate limit during demolition/construction and occupancy of the Site/ongoing
11 operations of the Project; shall apply separately to this project/location.

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

14 (3) Workers' Compensation and Employers Liability: Workers' Compensation
15 limits as required by the State of California and Employers Liability limits of \$1,000,000 for
16 bodily injury by accident, and \$1,000,000 per person in the annual aggregate for bodily injury by
17 disease.

18 (4) Professional Liability: professional liability insurance for all architects
19 employed in connection with the Project, with limits not less than Two Million Dollars
20 (\$2,000,000) (or, in the case of any other professionals, \$1,000,000) each claim and Four Million
21 Dollars (\$4,000,000) annual aggregate limit for architects and Two Million (\$2,000,000) annual
22 aggregate for any other professionals with respect to negligent acts, errors or omissions in

1 connection with professional services to be provided in connection with the Project.

2 (5) Crime policy or fidelity bond covering Tenant's officers and employees
3 against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars
4 (\$75,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each
5 loss.

6 (6) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability
7 and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less
8 than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year,
9 this coverage shall be endorsed to include Non-Owned Disposal Site coverage.

10 (7) Property Insurance:

11 Tenant must maintain, or cause its contractors and property managers, as appropriate for
12 each, to maintain, insurance and bonds as follows:

13
14 (a) during the course of any construction, builders' risk insurance, special form
15 coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement
16 value of all completed improvements and City property in the care, custody and control of Tenant
17 or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed
18 Ten Thousand Dollars (\$10,000) each loss, including the City and Tenant as loss payees;

19
20 (b) property insurance, special form coverage, excluding earthquake and flood,
21 but including vandalism and malicious mischief, for one hundred percent (100%) of the
22 replacement value of all furnishings, fixtures, equipment, improvements, alterations and property
23 of every kind located on or appurtenant to the Site or the Access Property, including coverage for
24 loss of rental income due to an insured peril for twelve (12) months, with a deductible not to
25 exceed Ten Thousand Dollars (\$10,000) each loss, including the City as a named insured; and

26
27 (c) boiler and machinery insurance, comprehensive form, in the amount of
28 replacement value of all insurable objects, with any deductible not to exceed Ten Thousand
29 Dollars (\$10,000) each loss, including the City as a named insured.
30
31

1 (8) Commercial Space. Tenant must require that all nonresidential tenants'
2 liability insurance policies include Tenant and the City as additional insureds, as their respective
3 interests may appear. Throughout the term of any lease of Commercial Space in the Project,
4 Tenant must require commercial tenants to maintain insurance as follows:
5

6 (a) to the extent the tenant has "employees" as defined in the California Labor
7 Code, workers' compensation insurance with employer's liability limits not less than One Million
8 Dollars (\$1,000,000) each accident;
9

10 (b) commercial general liability insurance, with limits not less than One
11 Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and
12 property damage, including coverage for contractual liability; personal injury; advertisers'
13 liability; including coverage for loss of income due to an insured peril for twelve (12) months;
14 owners' and contractors' protective; broadform property damage; explosion, collapse and
15 underground (XCU); products and completed operations coverage;
16

17 (c) business automobile liability insurance, with limits not less than One
18 Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and
19 property damage, including owned, hired and non-owned auto coverage, as applicable;
20

21 (d) with respect to any tenant who has (or is required by Law to have) a liquor
22 license and who is selling or distributing alcoholic beverages and/or food products on the leased
23 premises, to maintain liquor and/or food products liability coverage with limits not less than One
24 Million Dollars (\$1,000,000), as appropriate;
25

26 (e) special form coverage insurance, including vandalism and malicious
27 mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings,
28 fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant
29 and of persons claiming through the tenant; and
30

31 (f) full coverage plate glass insurance covering any plate glass on the
32 commercial space.
33

34 (9) Review of Minimum Limits: At no less than every five years during the
35 Term, City may reasonably adjust the Minimum Limits of coverage required in this Section
36 22.01(c).

37 **22.01(d) Deductibles and Self-Insured Retentions**

38 Any deductibles or self-insured retentions in excess of \$50,000 must be declared to

1 and approved by City's Risk Manager. In the event deductibles or self-insured retentions are in
2 excess of \$50,000, at the option of City's Risk Manager, either: the insurer shall reduce or
3 eliminate such deductibles or self-insured retentions as respects the City and its commissioners,
4 members, officers, agents, and employees; or the Tenant shall procure a financial guarantee
5 satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations,
6 claim administration and defense expenses.

7 **22.01(e) Other Insurance Provisions**

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

9 (1) General Liability and Automobile Liability Coverage:

10 (a) Additional Insureds: "The City and County of San Francisco and
11 its Commissioners, members, officers, agents, and employees," are to be named as
12 additional insured as respects: liability arising out of activities performed by or on
13 behalf of the Tenant; products and completed operations of the Tenant, premises
14 owned, occupied or used by the Tenant; and automobiles owned, leased, hired or
15 borrowed by or on behalf of the Tenant in connection with the Project. The coverage
16 shall contain no special limitations on the scope of protection afforded to the City and
17 its Commissioners, members, officers, agents, or employees.

18 (b) Primary Insurance: For any claims related to this Lease, the
19 Tenant's insurance coverage shall be primary insurance as respects to the City and its
20 Commissioners, members, officers, agents, and employees. Any insurance or self-
21 insurance maintained by the City and its Commissioners, members, officers, agents, or
22 employees shall be excess of the Tenant's insurance and shall not contribute with it.

1 (c) Reporting Provisions: Any failure to comply with reporting
2 provisions of the policies shall not affect coverage provided to the City and its
3 respective Commissioners, members, officers, agents, or employees.

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

7 (2) Builder's Risk (Course of Construction) Insurance: Tenant or Tenant's
8 contractor may submit evidence of Builder's Risk insurance in the form of Course of
9 Construction coverage. Such coverage shall contain the following provision:

10 (a) City shall be named as loss payee as their interest may appear.

11 (3) All Coverages: Tenant shall not suspend, cancel, terminate, or reduce the
12 coverage or limits of each insurance policy required by this Section without the prior written
13 consent of the Lender at least thirty (30) days prior to its effective date. Tenant shall provide a
14 copy of any cancellation notice, except the annual cancellation notice received in the ordinary
15 course of business, for any insurance policy required by this Section to the City within ten (10)
16 days of receipt from the insurance carrier.

17 **22.01(f) Acceptability of Insurers**

18 ~~Insurance is to be placed with insurers with a Best's rating of no less than A:VII or~~
19 as otherwise approved by the City's Risk Manager.

20 **22.01(g) Verification of Coverage**

21 Tenant shall furnish City with certificates of insurance and with original
22 endorsements effecting coverage required by this clause at the commencement of this Ground

1 Lease and annually thereafter. The certificates and endorsements for each insurance policy are to
2 be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the
3 right to require complete, certified copies of all required insurance policies, including
4 endorsements demonstrating the coverage required by these specifications at any time.

5 **22.01(h) Contractor, Subcontractors and Consultants Insurance**

6 Tenant shall cause its general contractor and all subcontractors and consultants to
7 maintain workers compensation, automobile liability, and commercial general liability insurance
8 in the amounts and in accordance with the requirements listed above, as applicable, unless
9 otherwise approved by the City's Risk Manager. Tenant must furnish City with general
10 contractor's, architects; and engineers' certificates of insurance and original endorsements
11 effecting coverage required by this Article 22.01(h).

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

13 **23.01 Compliance with Legal Requirements**

14 From and after the Effective Date, Tenant shall at its cost and expense, promptly comply
15 with all laws, statutes, ordinances and governmental rules, regulations or requirements now in
16 force or which may hereafter be in force, with the requirements of any board of fire underwriters
17 or other similar body now or hereafter constituted, with any direction or occupancy certificate
18 issued pursuant to any law by any public officer or officers, insofar as any thereof relates to or
19 affects the condition, use or occupancy of the Site and the Access Property. In the event Tenant
20 contests any of the foregoing, Tenant shall not be obligated to comply therewith to the extent that
21 the application of the contested law, statute, ordinance, rule, regulation or requirement is stayed
22 by the operation of law or administrative or judicial order and Tenant indemnifies the City against

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

2 **23.02 Regulatory Approvals**

3 Tenant understands and agrees that the City is entering into this Ground Lease in its
4 capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency
5 with certain police powers. Tenant understands and agrees that neither entry by the City into this
6 Ground Lease nor any approvals given by the City under this Ground Lease will be deemed to
7 imply that Tenant will obtain any required approvals from City departments, boards or
8 commissions that have jurisdiction over the Premises. By entering into this Ground Lease, the
9 City is in no way modifying or limiting the obligations of Tenant to develop the Project in
10 accordance with all Laws, as provided in this Ground Lease.

11 Tenant understands that its construction of the Improvements on the Premises and
12 development of the Project will require approval, authorization or permit by governmental
13 agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning
14 Administrator and the Department of Building Inspection. Tenant must use good faith efforts to
15 obtain and will be solely responsible for obtaining any such approvals required for the Project in
16 the manner set forth in this Section. Tenant will not seek any regulatory approval without first
17 obtaining MOH's approval, which approval shall not be unreasonably withheld or delayed.

18 Throughout the permit process for any regulatory approval, Tenant will consult and coordinate
19 with MOH in Tenant's efforts to obtain permits. MOH will cooperate reasonably with Tenant in
20 its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of
21 conditions or restrictions in connection with its efforts to obtain a permit from any other
22 regulatory agency if the City is required to be a co-permittee under the permit or the conditions or

1 restrictions could create any financial or other material obligations on the part of the City whether
2 on or off of the Premises, unless in each instance MOH has approved the conditions previously in
3 writing and in MOH's reasonable discretion. No approval by MOH will limit Tenant's obligation
4 to pay all the costs of complying with conditions under this Section. Tenant must bear all costs
5 associated with applying for and obtaining any necessary regulatory approval, as well as any
6 fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the
7 terms and conditions of any regulatory approval.

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

16 **ARTICLE 24: ENTRY**

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

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

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

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

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

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

9 (vi) to show the Premises to any prospective purchasers, brokers,
10 Lenders or public officials, or, during the last year of the Term of this Lease, exhibit the Premises
11 to prospective tenants or other occupants, and to post any reasonable "for sale" or "for lease"
12 signs in connection therewith.

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

22 (c) The City will not be liable in any manner for any inconvenience, disturbance, loss of

1 business, nuisance or other damage arising out of the City's entry onto the Premises, except to the
2 extent damage arises out of the gross negligence or willful misconduct of the City or its agents.
3 The City will be responsible for any losses resulting from its gross negligence or willful
4 misconduct and will repair any resulting damage promptly.

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

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

10 **ARTICLE 25: MORTGAGE FINANCING**

11 **25.01 No Encumbrances Except for Development Purposes**

12 Notwithstanding any other provision of this Ground Lease and subject to the prior written
13 consent of the City in the form attached hereto as Attachment 3, which consent shall not be
14 unreasonably withheld or delayed, Leasehold Mortgages are permitted to be placed upon the
15 Leasehold Estate only for the purpose of securing loans of funds to be used for financing the
16 acquisition, design, construction, renovation or reconstruction or refinancing of the Improvements
17 and any other expenditures reasonably necessary and appropriate to acquire, own, develop,
18 renovate, or reconstruct the Improvements under this Ground Lease and in connection with the
19 operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in
20 furtherance of the purposes of this Ground Lease. The City hereby acknowledges and accepts
21 Bank of America, N.A. and the California Housing Finance Agency as a Lender, and consents to
22 the Leasehold Mortgage associated with the respective construction loans from Bank of America,

1 N.A. and the California Housing Finance Agency to Tenant for the Project.

2 **25.02 Holder Not Obligated to Construct**

3 The holder of any mortgage, deed of trust or other security interest authorized by Section
4 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated
5 to complete any construction of the Improvements or to guarantee such completion; nor shall any
6 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.

7 However, in the event the Holder does undertake to complete or guarantee the completion of the
8 construction of the Improvements, subject to Section 26.06, nothing in this Ground Lease shall be

9 deemed or construed to permit or authorize any such Holder or its successors or assigns to devote
10 the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than
11 those uses or Improvements authorized under Section 9.02 subject to any reasonable
12 modifications in plans proposed by any Holder or its successors in interest proposed for the
13 viability of the Project, subject to the approval of City which approval shall not unreasonably
14 withheld.

15 **25.03 Failure of Holder to Complete Construction**

16 In any case where six months after assumption of obligations pursuant to Section 25.02
17 above, a Lender, having first exercised its option to complete the construction, has not proceeded
18 diligently with completion of the construction, the City shall be afforded the rights against such
19 Holder it would otherwise have against Tenant under this Ground Lease for events or failures
20 occurring after such assumption; subject to any extensions of time granted pursuant to Section
21 10.15 of this Agreement.

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

2 **25.04(a) Right of City to Cure a Default or Breach by Tenant under a**
3 **Leasehold Mortgage**

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

19 **25.04(b) Notice of Default to City**

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

1 **25.05 Cost of Mortgage Loans to be Paid by Tenant**

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

6 **ARTICLE 26: PROTECTION OF LENDER**

7 **26.01 Notification to City**

8 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the
9 existence of any of the rights set forth in this Article 26, each Lender shall give written notice to
10 the City of the Lender's address and of the existence and nature of its Leasehold Mortgage.
11 Execution of Attachment 3 shall constitute City's acknowledgement of Lender's having given
12 such notice as is required to obtain the rights and protections of a Lender under this Ground
13 Lease. The City hereby acknowledges that the First Mortgage Lender and California Housing
14 Finance Agency are deemed to have given such written Notice.

15 **26.02 Lender's Rights to Prevent Termination**

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

1 instead of by Lender.

2 **26.03 Lender's Rights When Tenant Defaults**

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

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

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

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

1 **26.04 Default Which Cannot be Remedied by Lender**

2 Any event of default under this Ground Lease which in the nature thereof cannot be
3 remedied by Lender shall be deemed to be remedied if:

4 (i) within sixty (60) days after receiving notice from the City setting forth the
5 nature of such event of default, or prior thereto, Lender shall have acquired Tenant's Leasehold
6 Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in
7 the nature thereof;

8 (ii) Lender shall diligently prosecute any such proceedings to completion;

9 (iii) Lender shall have fully cured any event of default arising from failure to
10 pay or perform any monetary obligation in accordance with the terms of this Ground Lease, and

11 (iv) after gaining possession of the Improvements, Lender shall diligently
12 proceed to perform all other obligations of Tenant as and when the same are due in accordance
13 with the terms of this Ground Lease.

14 **26.05 Court Action Preventing Lender's Action**

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

1 **26.06 Lender's Rights to Record, Foreclose and Assign**

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

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

15 (ii) each Subsequent Owner shall take said Leasehold Estate subject to all of
16 the provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner
17 of such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of
18 Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section
19 26.07 below, the Subsequent Owner may operate and maintain the seventy one (71) Residential
20 Units without any limitations on the rents charged or the income of the occupants thereof;(iii)

21 the City shall mail or deliver to any Lender which has an outstanding Leasehold Mortgage
22 a duplicate copy of all notices which the City may from time to time give to Tenant pursuant to

1 this Ground Lease; and

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

6 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

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

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

18 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to
19 operate the Project without being subject to Section 9.02, Annual Rent shall be set at the then fair
20 market rental value taking into account any affordability restrictions agreed to by the Subsequent
21 Owner, if any, and the Base Rent shall be increased to the new fair market rent pursuant to
22 Section 26.07(b) and the provisions of Section 6.02(f) shall be suspended; provided, however, that

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

16 **26.08 Permitted Uses After Lender Foreclosure**

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

20 **26.09 Preservation of Leasehold Benefits**

21 Until such time as a Lender notifies the City in writing that the obligations of the Tenant
22 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 Article 26 of this Ground Lease, this Ground Lease shall not be modified,
3 terminated, subordinated, cancelled or surrendered in any manner other than by an agreement in
4 writing signed by all of the parties to this Ground Lease or their respective successors-in-interest,
5 and no such modification, termination, subordination, cancellation or surrender shall be valid or
6 effective without the prior written consent of each Lender (which will not be unreasonably
7 withheld or delayed) and may be conditioned upon the satisfaction of such reasonable terms and
8 conditions as each Lender may prescribe;

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

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

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

1 **26.10 No Merger**

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

5 **26.11 City Bankruptcy**

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

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

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

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

4 **ARTICLE 27: CONDEMNATION AND TAKINGS**

5 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

10 **27.02 Total Taking**

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

13 **27.03 Partial Taking**

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

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

5 **27.04 Effect on Rent**

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

10 **27.05 Restoration of Improvements**

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

14 **27.06 Award and Distribution**

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

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

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

22 **27.07 Payment to Lenders**

1 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
2 when any compensation resulting from a condemnation or threatened condemnation is to be paid
3 to Tenant, such award shall be disposed of as provided in the Loan Documents of the Leasehold
4 Mortgage.

5 **ARTICLE 28: ESTOPPEL CERTIFICATE**

6 The City or Tenant, as the case may be, shall execute, acknowledge and deliver to the
7 other and/or to Lender or a Permitted Limited Partner, promptly upon request (and in no event
8 longer than thirty (30) days following receipt of the request), its certificate certifying (a) that this
9 Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that
10 this Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the
11 dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets
12 or defenses against the enforcement by the City or Tenant to be performed or observed and, if so,
13 specifying the same, and (d) whether there are then existing any defaults by Tenant or the City in
14 the performance or observance by Tenant or the City of any agreement, covenant or condition
15 hereof on the part of Tenant or the City to be performed or observed and whether any notice has
16 been given to Tenant or the City of any default which has not been cured and, if so, specifying the
17 same.

18 **ARTICLE 29: QUITCLAIM**

19 Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the Premises
20 to the City and, at the City's request, shall execute, acknowledge, and deliver to the City a good
21 and sufficient quitclaim deed with respect to any interest of Tenant in the Premises and the
22 Access Property. Title to the Improvements shall vest automatically in the City as provided in

1 Article 13 herein.

2 **ARTICLE 30: EQUAL OPPORTUNITY**

3 In the selection of all contractors and professional consultants for the Project, Tenant must
4 comply with the City's procurement requirements and procedures as described in the MOH
5 Contracting Manual and with the requirements of Chapter 14B of the San Francisco
6 Administrative Code ("LBE Ordinance") according to the procedures established by the City's
7 Human Rights Commission. The Project is subject to the requirements of Section 3 of the
8 Housing and Community Development Act of 1968 and of the San Francisco Section 3 program.
9 Federal Section 3 requirements state that contracts and opportunities for job training and
10 employment be given, to the greatest extent feasible, to local low-income residents. Local
11 residents for this project are San Francisco residents. In addition, this project will be required to
12 comply with hiring requirements as incorporated into the local Section 3 program and in
13 conjunction with the City's low-income hiring requirements pursuant to San Francisco's First
14 Source Hiring Ordinance (San Francisco Administrative Code Chapter 83). The goals for hiring
15 of Section 3-eligible workers on the project will be 30% of new hires, moving towards a goal of
16 30% of total work hours. The Contractor shall also make a best faith effort to meet these goals.

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

18 Tenant agrees to comply with the requirements of the City's Certificate of Preference Program, as
19 it may be amended from time to time, and as set forth on Attachment 4.

20 **ARTICLE 32: LABOR STANDARDS PROVISIONS**

21 Although the Parties acknowledge that the development of the Project is a private work of
22 improvement, Tenant hereby agrees that any person performing labor in the construction of the

1 Project and any Change to the Premises, which Tenant provides under this Ground Lease, shall be
2 paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San
3 Francisco Administrative Code, shall be subject to the same hours and working conditions, and
4 shall receive the same benefits as in each case are provided for similar work performed in San
5 Francisco, California. Tenant shall include in any contract for construction of the Project and
6 Change a requirement that all persons performing labor under such contract shall be paid not less
7 than the highest prevailing rate of wages for the labor so performed. Tenant shall require any
8 contractor to provide, and shall deliver to City upon request, certified payroll reports with respect
9 to all persons performing labor in the construction of the Project or any Change to the Premises.

10 **ARTICLE 33: INTENTIONALLY OMITTED**

11 **ARTICLE 34: INTENTIONALLY OMITTED**

12 **ARTICLE 35: NO PERSONAL LIABILITY**

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

17 **ARTICLE 36: ENERGY CONSERVATION**

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

21 **ARTICLE 37: WAIVER**

22 The waiver by the City or Tenant of any term, covenant, agreement or condition herein

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

10 **ARTICLE 38: TENANT RECORDS**

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

19 **ARTICLE 39: NOTICES AND CONSENTS**

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

1 to time be designated by the parties for the receipt of notices, or when deposited in the United
2 States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and
3 addressed

4 if to Tenant at: Mercy Housing CalWest
5 1360 Mission Street #300
6 San Francisco, CA 94103
7 Attn: Asset Management
8

9 with a copy to: c/o Bernal Housing LLC
10 515 Cortland Avenue
11 San Francisco, CA 94110

12
13 And to Permitted
14 Limited Partner: Bank of America, N.A.
15 Banc of America CDC Special Holding Company, Inc.
16 Tax Credit Equity Investment Asset Management
17 NC1-007-11-25
18 100 North Tryon Street
19 Charlotte, NC 28202
20 Attn: Nicole Baldon
21 Facsimile: 980-386-6662
22

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

28 ~~or to such other address with respect to either party as that party may from time to time~~
29 designate by notice to the other given pursuant to the provisions of this Article 38. Any notice
30 given pursuant to this Article 39 shall be effective on the date of delivery or the date delivery is
31 refused as shown on the delivery receipt.

32 **ARTICLE 40: COMPLETE AGREEMENT**

1 There are no oral agreements between Tenant and the City affecting this Ground Lease,
2 and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,
3 agreements and understandings between Tenant and the City with respect to the lease of the Site
4 and the access rights to the Access Property.

5
6 **ARTICLE 41: HEADINGS**

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

10 **ARTICLE 42: SUCCESSORS AND ASSIGNS**

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

19 **ARTICLE 43: TIME**

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

22 **ARTICLE 44: PARTIAL INVALIDITY**

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

4 **ARTICLE 45: APPLICABLE LAW**

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

7 **ARTICLE 46: ATTORNEYS' FEES**

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

11 **ARTICLE 47: EXECUTION IN COUNTERPARTS**

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

15 **ARTICLE 48: RECORDATION OF MEMORANDUM OF GROUND LEASE**

16 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall
17 be recorded in the form attached hereto as Attachment 7. The parties shall execute the
18 memorandum in form and substance as required by a title insurance company insuring Tenant's
19 leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive
20 notice of the Ground Lease to subsequent purchasers and mortgagees.

21 **ARTICLE 49: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT**

22 Neither the transfer of any limited partner of Tenant (a "Limited Partner") interests in the Tenant

1 or the admission of a successor limited partner or partners pursuant to the terms of the Partnership
2 Agreement shall constitute an event of default under the Lease nor require the City's consent.
3 The withdrawal or removal of a general partner of the Tenant pursuant to the terms of the
4 Partnership Agreement shall not require City consent, and shall not constitute a default under the
5 Lease provided that any replacement general partner shall require the consent of the
6 City which consent shall not be unreasonably withheld, conditioned or delayed.

7 **ARTICLE 50: CITY PROVISIONS**

8 **50.1 Non-Discrimination.**

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

18 (b) Subleases and Other Subcontracts. Tenant shall include in all
19 Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable
20 to such subtenant or other subcontractor in substantially the form of Subsection (a) above. In
21 addition, Tenant shall incorporate by reference in all subleases and other subcontracts the
22 provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative

1 Code and shall require all subtenants and other subcontractors to comply with such provisions.

2 Tenant's failure to comply with the obligations in this subsection shall constitute a material
3 breach of this Ground Lease.

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

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

14 (d) Condition to Lease. As a condition to this Ground Lease, Tenant
15 shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form
16 HRC-12B-101) with supporting documentation and secure the approval of the form by the San
17 Francisco Human Rights Commission.

18 (e) Incorporation of Administrative Code Provisions by Reference.

19 The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to
20 non-discrimination by Parties contracting for the lease of City property are incorporated in this
21 Section by reference and made a part of this Ground Lease as though fully set forth herein.

22 Tenant shall comply fully with and be bound by all of the provisions that apply to this Ground

1 Lease under such Chapters of the Administrative Code, including but not limited to the remedies
2 provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to
3 Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for
4 each calendar day during which such person was discriminated against in violation of the
5 provisions of this Lease may be assessed against Tenant and/or deducted from any payments due
6 Tenant.

7 **50.2 MacBride Principles – Northern Ireland.** The City and County of San
8 Francisco urges companies doing business in Northern Ireland to move toward resolving
9 employment inequities and encourages them to abide by the MacBride Principles as expressed in
10 San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco
11 also urges San Francisco companies to do business with corporations that abide by the MacBride
12 Principles. Tenant acknowledges that it has read and understands the above statement of the City
13 and County of San Francisco concerning doing business in Northern Ireland.

14 **50.3 Conflicts of Interest.** Tenant states that it is familiar with the provisions
15 of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and
16 Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the
17 Government Code of the State of California, certifies that it knows of no facts which would
18 constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact
19 during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies
20 that it has made a complete disclosure to the City of all facts bearing on any possible interests,
21 direct or indirect, which Tenant believes any officer or employee of the City presently has or will
22 have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful

1 failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination
2 and cancellation of this Ground Lease.

3 **50.4 Charter Provisions.** This Ground Lease is governed by and subject to the
4 provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant
5 acknowledges and agrees that no officer or employee of the City has authority to commit the City
6 to this Ground Lease unless and until an resolution of the City's Board of Supervisors has been
7 duly enacted approving this Ground Lease. Therefore, any obligations or liabilities of the City
8 under this Ground Lease are contingent upon enactment of an resolution, and this Ground Lease
9 will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground
10 Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws.
11 Approval of this Ground Lease by any City department, commission or agency may not be
12 deemed to imply that an resolution will be enacted or create any binding obligations on the City.

13 **50.5 Tropical Hardwood/Virgin Redwood Ban.** Pursuant to Section 804(b) of
14 the San Francisco Environment Code, the City and County of San Francisco urges companies not
15 to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood
16 wood product, virgin redwood or virgin redwood wood product. Except as permitted by the
17 application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall
18 not use any items in the rehabilitation, development or operation of the Premises or otherwise in
19 the performance of this Lease which are tropical hardwoods, tropical hardwood wood products,
20 virgin redwood or virgin redwood wood products.

21 **50.6 Tobacco Product Advertising Ban.** Tenant acknowledges and agrees
22 that no advertising of cigarettes or tobacco products may be allowed on the Premises. The

1 foregoing prohibition will include the placement of the name of a company producing, selling or
2 distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any
3 promotion of any event or product, or on any sign. The foregoing prohibition will not apply to
4 any advertisement sponsored by a state, local or nonprofit entity designed to communicate the
5 health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop
6 smoking.

7 **50.7 Pesticide Ordinance.** Tenant shall comply with the provisions of Section
8 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i)
9 prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices
10 and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to
11 submit to the City's Department of the Environment an integrated pest management ("IPM") plan
12 that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides
13 that Tenant may need to apply to the Premises during the Term of this Ground Lease, (b)
14 describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the
15 Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an
16 individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall
17 comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing
18 herein shall prevent Tenant, acting through the City, from seeking a determination from the City's
19 Commission on the Environment that Tenant is exempt from complying with certain portions of
20 the Pesticide Ordinance as provided in Section 307 thereof.

21 **50.8 Compliance with City's Sunshine Ordinance .** Tenant understands and
22 agrees that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State

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

7 **50.9 Notification of Limitations on Contributions.** Through its execution of
8 this Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San
9 Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts
10 with the City for the selling or leasing any land or building to or from the City whenever such
11 transaction would require approval by a City elective officer or the board on which that City
12 elective officer serves, from making any campaign contribution to the officer at any time from the
13 commencement of negotiations for such contract until the termination of negotiations for such
14 contract or three (3) months has elapsed from the date the contract is approved by the City
15 elective officer, or the board on which that City elective officer serves.

16 **50.10 Requiring Health Benefits for Covered Employees.** Unless exempt,
17 Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care
18 Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code
19 Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be
20 amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground
21 Lease by reference and made a part of this Ground Lease as though fully set forth. The text of
22 the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this

1 Section and not defined in this Lease have the meanings assigned to them in Chapter 12Q.

2 Notwithstanding this requirement, City recognizes that the residential housing component of the
3 Improvements is not subject to the HCAO.

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

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

10 (c) Tenant's failure to comply with the HCAO will constitute a material
11 breach of this Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the
12 City's written notice of a breach of this Lease for violating the HCAO or, if the breach cannot
13 reasonably be cured within the 30-day period, Tenant fails to commence efforts to cure within the
14 30-day period, or thereafter fails diligently to pursue the cure to completion, the City will have the
15 right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be
16 exercisable individually or in combination with any other rights or remedies available to the City.

17 (d) Any sublease entered into by Tenant for commercial space in the
18 Project must require the subtenant to comply with the requirements of the HCAO and must
19 contain contractual obligations substantially the same as those set forth in this Section. Tenant
20 must notify the City's Purchasing Department when Tenant enters into a sublease and must certify
21 to the Purchasing Department that Tenant has notified the subtenant of the obligations under the
22 HCAO and has imposed the requirements of the HCAO on subtenant through the sublease.

1 Tenant will be responsible for its subtenants' compliance with this Chapter. If a subtenant fails to
2 comply, the City may pursue the remedies set forth in this Section against Tenant based on the
3 subtenant's failure to comply, provided that City has first provided Tenant with notice and an
4 opportunity to obtain a cure of the violation.

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

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

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

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

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

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

22 (k) If Tenant is exempt from the HCAO when this Lease is executed

1 because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an
2 agreement or agreements that cause Tenant's aggregate amount of all agreements with the City to
3 reach \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises
4 on the effective date of the agreement that causes the cumulative amount of agreements between
5 Tenant and MOH to be equal to or greater than \$75,000 in the fiscal year.

6
7 **50.11 Public Access to Meetings and Records.** If Tenant receives a cumulative
8 total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit
9 organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall
10 comply with and be bound by all the applicable provisions of that Chapter. By executing this
11 Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set
12 forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make
13 good-faith efforts to promote community membership on its Board of Directors in the manner set
14 forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure
15 to comply with any of the provisions of this paragraph shall constitute a material breach of this
16 Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be
17 grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

18 **50.12 Resource-Efficient Building Ordinance.** Tenant acknowledges that the
19 City and County of San Francisco has enacted San Francisco Environment Code Chapter 7
20 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby
21 agrees it shall comply with the applicable provisions of such code sections as such sections may
22 apply to the Premises.

1 **50.13 Drug Free Work Place.** Tenant acknowledges that pursuant to the Federal
2 Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a
3 controlled substance is prohibited on City premises. Tenant agrees that any violation of this
4 prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Ground
5 Lease.

6 **50.14 Preservative Treated Wood Containing Arsenic.** Tenant may not
7 purchase preservative-treated wood products containing arsenic in the performance of this Ground
8 Lease unless an exemption from the requirements of Chapter 13 of the San Francisco
9 Environment Code is obtained from the Department of the Environment under Section 1304 of
10 the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with
11 a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination,
12 including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc
13 arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase
14 preservative-treated wood products on the list of environmentally preferable alternatives prepared
15 and adopted by the Department of the Environment. This provision does not preclude Tenant
16 from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term
17 "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes
18 or facilities that are partially or totally immersed in saltwater.

19 **50.15 Nondisclosure of Private Information.** Tenant agrees to comply fully
20 with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative
21 Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided.
22 The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by

1 reference and made a part of this Agreement as though fully set forth. Capitalized terms used in
2 this section and not defined in this Agreement shall have the meanings assigned to such terms in
3 the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the
4 Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

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

7 (i) The disclosure is authorized by this Ground Lease;

8 (ii) Tenant received advance written approval from the
9 Contracting Department to disclose the information; or

10 (iii) The disclosure is required by law or judicial order.

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

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

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

1 **50.16 Graffiti.** Graffiti is detrimental to the health, safety and welfare of the
2 community in that it promotes a perception in the community that the laws protecting public and
3 private property can be disregarded with impunity. This perception fosters a sense of disrespect of
4 the law that results in an increase in crime; degrades the community and leads to urban blight; is
5 detrimental to property values, business opportunities and the enjoyment of life; is inconsistent
6 with City's property maintenance goals and aesthetic standards; and results in additional graffiti
7 and in other properties becoming the target of graffiti unless it is quickly removed from public
8 and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be
9 abated as quickly as possible to avoid detrimental impacts on the City and County and its
10 residents, and to prevent the further spread of graffiti.

11 Tenant shall remove all graffiti from the Premises and any real property
12 owned or leased by Tenant in the City and County of San Francisco within forty eight (48) hours
13 of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of
14 the graffiti from the Department of Public Works. This section is not intended to require Tenant
15 to breach any lease or other agreement that it may have concerning its use of the real property.
16 The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked,
17 etched, scratched, drawn or painted on any building, structure, fixture or other improvement,
18 whether permanent or temporary, including by way of example only and without limitation, signs,
19 banners, billboards and fencing surrounding construction Premises, whether public or private,
20 without the consent of the owner of the property or the owner's authorized agent, and which is
21 visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is
22 authorized by, and in compliance with, the applicable requirements of the San Francisco Public

1 Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any
2 mural or other painting or marking on the property that is protected as a work of fine art under the
3 California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual
4 art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of
5 Tenant to comply with this section of this Ground Lease shall constitute an event of default of this
6 Ground Lease.

7 **50.17 Incorporation.** Each and every provision of the San Francisco
8 Administrative Code described or referenced in this Ground Lease is hereby incorporated by
9 reference as though fully set forth herein. Failure of Tenant to comply with any provision of this
10 Ground Lease relating to any such code provision shall be governed by Article 19 of this Ground
11 Lease, unless (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such
12 failure is specifically addressed by the applicable code section.

13 **50.18 Food Service Waste Reduction.** Tenant agrees to comply fully with and
14 be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in
15 the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and
16 implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by
17 reference and made a part of this Ground Lease as though fully set forth herein. This provision is
18 a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it
19 breaches this provision, City will suffer actual damages that will be impractical or extremely
20 difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the
21 sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred
22 Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred

1 Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable
2 estimate of the damage that City will incur based on the violation, established in light of the
3 circumstances existing at the time this Ground Lease was made. Such amounts shall not be
4 considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's
5 failure to comply with this provision.

6
7 **ARTICLE 51: COMPLETE AGREEMENT**

8 There are no oral agreements between Tenant and the City affecting this Ground Lease,
9 and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,
10 agreements and understandings between Tenant and the City with respect to the lease of the Site
11 and the Access Property.

12 **ARTICLE 52: ATTACHMENTS**

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

- 14
15 1. Legal Description of Site
16 2. Schedule of Performance
17 3. City Consent of Leasehold Mortgage
18 4. Operational Rules for Certificate Holder's Priority
19 5. Tenant Income Certification
20 6. Depiction and Legal Description of Access Property
21 7. MOU between SFMTA and SFPUC
22 8. Memorandum of Ground Lease

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- 9. Asset Management Fee and Partnership Management Fee Policy
- 10. Plaza Parcel Lease

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 **1100 OCEAN AVENUE LIMITED PARTNERSHIP**
5 **a California limited partnership**

6
7 By: Mercy Housing CalWest.,
8 a California nonprofit public benefit corporation, its managing general partner

9
10 By: _____
11 Name: _____
12 Title: _____

13
14
15 By: Bernal Housing LLC
16 a California limited liability company,
17 its co-general partner

18
19 By: Bernal Heights Housing Corporation,
20 a California nonprofit public benefit corporation,
21 its managing member

22
23
24 By: _____
25 Name: _____
26 Title: _____

27
28
29 **CITY:**

30 **CITY**
31 **AND COUNTY OF SAN FRANCISCO,**
32 a municipal corporation, acting by and through
33 the Mayor's Office of Housing
34

35 By: _____
36 Olson Lee

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Its: Director

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: 

Evan Gross
Deputy City Attorney

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ATTACHMENT 1
Legal Description of the Site

Legal Description
For:
A portion of Record of Survey number 5951

All that certain real property situate in the City and County of San Francisco, State of California, being a portion of Assessor's Block 3180, Lot 001, as shown on Record of Survey 5951, filed for record, June 2, 2010, in Book DD of Survey Maps at pages 38 and 39, and shown on those Certificates of Correction recorded July 20, 2010 as Document number 2010-1998415-00 and December 14, 2010 as Document number 2010-J098072-00, all Official Records of the City and County of San Francisco, said real property more particularly described as follows:

Beginning at an angle point in the northerly line of Ocean Avenue (80.00 feet wide) as shown on said Record of Survey; thence, South 75°48'04" East, 18.37 feet along said northerly line of Ocean Avenue, to the True Point of Beginning of this description said point also being the southwest corner of that certain Parcel shown as "PORTION OF LOT 001"; thence leaving said northerly line of Ocean Avenue around the perimeter of said Parcel through the following four (4) courses:

- 1) North 00°24'00" West, 175.67 feet; thence,
- 2) North 89°01'17" East, 132.01 feet; thence,
- 3) South 00°58'43" East, 211.95 feet to a point on the northerly line of Ocean Avenue; thence,
- 4) North 75°48'04" West, 138.62 feet along said northerly line of Ocean Avenue, to the True Point of Beginning of this description

Containing 25,772 square feet/ 0.591 acres more or less.

Being a portion of Assessor's Block 3180, lot 001

Above described real property shown on attached plat and by reference made a part hereof.

Bruce Storrs
Bruce R. Storrs, PLS

No. 6914

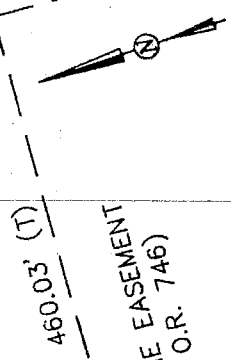
Date

JUNE 17, 2011

My license expires September 30, 2011
City and County Surveyor
City and County of San Francisco



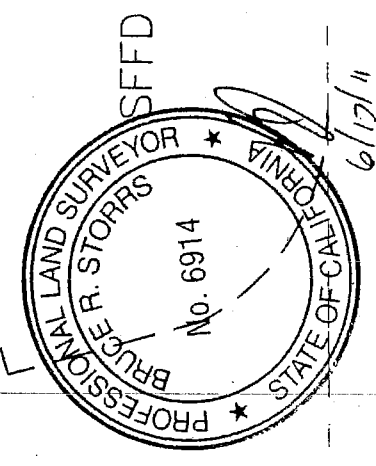
SFPUC



460.03' (T)
PIPELINE EASEMENT
(F734 O.R. 746)

ROS 5951

BK DD, PGS 38-39



MTA

OCEAN AVENUE (80' WIDE)

HAROLD AVENUE
(60' WIDE)

AB 3180
LOT 001
LANDS OF SAN FRANCISCO
COMMUNITY COLLEGE DISTRICT
F734 O.R. 0746

N89°01'17"E
132.01'

S0°58'43"E
211.95'

MTA
PORTION
OF LOT
001

N0°24'00"W
175.67'

AB 3180
LOT 003

REEL 6386 O.R. 412

138.62'
N75°48'04"W

POB
ANGLE POINT IN ROW

S75°48'04"E
18.37'

N75°48'04"W

LEE AVENUE
(70' WIDE)

T=TOTAL
POB=POINT OF BEGINNING

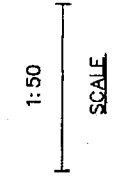


EXHIBIT
PLAT TO ACCOMPANY LEGAL
DESCRIPTIONS FOR APN
3180 PORTION OF LOT ONE

1
2
3
4
5

ATTACHMENT 2

SCHEDULE OF PERFORMANCE

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1	Acquisition/Predev Financing Commitment	Completed	Completed
2.	Development Disposition Agreement Executed	07/2010	Completed
3.	Ground Lease Executed	08/2013	Completed
4.	Development Team Selection		Completed
a.	Architect	Completed	Completed
b.	General Contractor	Completed	Completed
c.	Owner's Representative	Completed	Completed
d.	Property Manager	Completed	Completed
e.	Service Provider	12/2010	Completed
5.	Design		Completed
a.	Submittal of Schematic Design & Cost Estimate	07/2010	Completed
b.	Submittal of Design Development & Cost Estimate	04/2012	Completed
c.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	09/2012	Completed
6.	Environ Review/Land-Use Entitlements		Completed
a.	CEQA Environ Review Submission	Completed	Completed
b.	NEPA Environ Review Submission	03/2011	Completed
c.	CUP/PUD/Variances Approved	07/22/10	Completed
7.	Permits		Completed
a.	Building / Site Permit Application Submitted	03/2012	Completed
b.	Addendum #1 received	06/2013	Completed
c.	Addendum #2 received	06/2013	Completed
d.	Addendum #3 Submitted	03/2013	12/2013

8.	Request for Bids Issued	01/2013	Completed
9.	Service Plan Submission		Completed
a.	Preliminary	07/2010	Completed
b.	Interim	12/2010	Completed
c.	Update	05/2013	Completed
10.	Additional City Financing		Completed
a.	Predevelopment Financing Application #2	06/2010	Completed
b.	Gap Financing Application	06/2010	Completed
11.	Other Financing		Completed
a.	MHP Application	07/23/10	Completed
b.	Construction Financing RFP	03/2013	Completed
c.	AHP Application	04/1/2013	8/2013
d.	CDLAC Application	03/15/2013	Completed
e.	TCAC Application	03/15/2013	Completed
f.	HUD 202 or 811 Application	N/A	Completed
g.	Other Financing Application - MHSA	03/2012	Completed
12.	Closing		
a.	Construction Closing	08/19/2013	08/31/2013
b.	Permanent Financing Closing	08/2015	08/31/2015
13.	Construction		
a.	Notice to Proceed	08/30/2013	08/31/2013
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	2/27/2015	12/2015
14.	Marketing/Rent-up		
a.	Marketing Plan Submission	06/2013	10/2013
b.	Commence Marketing	10/2014	12/2014
c.	95% Occupancy	03/2015	06/2015
15.	Cost Certification/8609	03/2015	08/2015
16.	Close Out MOH/SFRA Loan(s)	09/2015	12/2015

ATTACHMENT 3
CITY CONSENT OF LEASEHOLD MORTGAGE

Date:

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

RE: 5800 Third Street, Lot 3 San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 25.01 of the 1100 Ocean Avenue Ground Lease, dated _____, 2013, between the City and County of San Francisco ("City") and 1100 Ocean Avenue Limited Partnership, 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 1100 Ocean Avenue Ground Lease, dated _____, 2013.

Mayor's Office of Housing

Printed Name and Title

1
2
3 **ATTACHMENT 4**
4 **OPERATIONAL RULES FOR**
5 **CERTIFICATE HOLDERS' PRIORITY**

6 The Owner hereby agrees that priority for units designated for Low Income Households will be
7 given to persons displaced or to be displaced from their homes by Agency redevelopment
8 activities and who have been issued a form described as the "Certificate of Preference"
9 ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order
10 of priority in paragraph D of this Attachment "4". Final acceptance or rejection of Certificate
11 Holders lies with the Owner. The Owner shall notify the City and applicant in writing of the
12 reason for rejection. In order to implement this Attachment "4":
13

14 A. The City agrees to furnish the following:

- 15
16 1. Written and/or printed notices to Certificate Holders advising them that such units
17 will soon be available;
18 2. Assistance to Certificate Holders in filing applications; and
19 3. Verification to the Owner that applicant has been displaced.
20

21 B. The Owner agrees to the following:

- 22
23 1. To supply the City ninety (90) days prior to accepting lease applications with the
24 information listed below. This information shall not be changed without providing
25 the City with ten (10) days written notice.
26 a. A master unit list with the following information:
27 (1) Apartment number;
28 (2) Number of bedrooms and baths;
29 (3) Square footage; and
30 (4) Initial rent to be charged.
31 b. Estimated itemized cost of utilities and services to be paid by tenant by unit
32 size.
33 c. Detailed description of Owner's rules for tenants, which must include:
34 (1) ~~Minimum and maximum income~~
35 (2) Pet policy
36 (3) Selection process: To insure no discrimination against Low Income
37 Households and Certificate Holders all criteria and the relative
38 weight to be given to each criterion indicated. The City shall
39 approve or disapprove the selection process criteria within ten (10)
40 working days after submission thereof to the City.
41 (4) Amount of security deposit and all other fees, as well as refund
42 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 City. 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 Agency property in redevelopment
20 areas.
- 21 b. Families or individuals who were relocated from Agency 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)
41 calendar 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
4 provided ten (10) days after Initial Occupancy. Such certification in no way
5 negates the Owner's continued obligations to provide housing to persons displaced
6 or to be displaced by the City's redevelopment activities as vacancies occur
7 amount the 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 "T", 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.

TENANT INCOME CERTIFICATION

ATTACHMENT 5

TENANT INCOME CERTIFICATION QUESTIONNAIRE

One Form per Adult Member of the Household

NAME: _____	TELEPHONE NUMBER: () _____
<input type="checkbox"/> Initial Certification	BIN # _____
<input type="checkbox"/> Re-certification	
<input type="checkbox"/> Other	Unit # _____

INCOME INFORMATION

	YES	NO		MONTHLY GROSS INCOME
1.	<input type="checkbox"/>	<input type="checkbox"/>	I am self employed. (List nature of self employment) _____	(use <u>net</u> income from self-employment only) \$ _____
2.	<input type="checkbox"/>	<input type="checkbox"/>	I have a job and receive wages, salary, overtime pay, commissions, fees, tips, bonuses, and/or other compensation: List the businesses and/or companies that pay you: <div style="text-align: center;"><u>Name of Employer</u></div> 1) _____ \$ _____ 2) _____ \$ _____ 3) _____ \$ _____	
3.	<input type="checkbox"/>	<input type="checkbox"/>	I receive cash contributions of gifts including rent or utility payments, on an ongoing basis from persons not living with me.	\$ _____
4.	<input type="checkbox"/>	<input type="checkbox"/>	I receive unemployment benefits.	\$ _____
5.	<input type="checkbox"/>	<input type="checkbox"/>	I receive Veteran's Administration, GI Bill, or National Guard/Military benefits/income.	\$ _____
6.	<input type="checkbox"/>	<input type="checkbox"/>	I receive periodic social security payments.	\$ _____
7.	<input type="checkbox"/>	<input type="checkbox"/>	The household receives <u>unearned</u> income from family members age 17 or under (example: Social Security, Trust Fund disbursements, etc.).	\$ _____
8.	<input type="checkbox"/>	<input type="checkbox"/>	I receive Supplemental Security Income (SSI).	\$ _____
9.	<input type="checkbox"/>	<input type="checkbox"/>	I receive disability or death benefits other than Social Security.	\$ _____
10.	<input type="checkbox"/>	<input type="checkbox"/>	I receive Public Assistance Income (examples: TANF, AFDC)	\$ _____
11.	<input type="checkbox"/>	<input type="checkbox"/>	I am entitled to receive child support payments.	\$ _____
	<input type="checkbox"/>	<input type="checkbox"/>	I am currently receiving child support payments. If yes, from how many persons do you receive support? _____	\$ _____
	<input type="checkbox"/>	<input type="checkbox"/>	I am currently making efforts to collect child support owed to me. List efforts being made to collect child support: _____ _____	
12.	<input type="checkbox"/>	<input type="checkbox"/>	I receive alimony/spousal support payments	\$ _____
13.	<input type="checkbox"/>	<input type="checkbox"/>	I receive periodic payments from trusts, annuities, inheritance, retirement funds or pensions, insurance policies, or lottery winnings. If yes, list sources: 1) _____ 2) _____	\$ _____ \$ _____
14.	<input type="checkbox"/>	<input type="checkbox"/>	I receive income from real or personal property.	(use <u>net</u> earned income) \$ _____
15.	<input type="checkbox"/>	<input type="checkbox"/>	Student financial aid (public or private, not including student loans) Subtract cost of tuition from Aid received <i>*For Households receiving Section 8 Assistance Only</i>	\$ _____

ASSET INFORMATION

YES NO			INTEREST RATE	CASH VALUE
16.	<input type="checkbox"/> <input type="checkbox"/>	I have a checking account(s). If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
17.	<input type="checkbox"/> <input type="checkbox"/>	I have a savings account(s). If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
18.	<input type="checkbox"/> <input type="checkbox"/>	I have a revocable trust(s). If yes, list bank(s) 1) _____	_____%	\$ _____
19.	<input type="checkbox"/> <input type="checkbox"/>	I own real estate. If yes, provide description: _____		\$ _____
20.	<input type="checkbox"/> <input type="checkbox"/>	I own stocks, bonds, or Treasury Bills If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____%	\$ _____ \$ _____ \$ _____
21.	<input type="checkbox"/> <input type="checkbox"/>	I have Certificates of Deposit (CD) or Money Market Account(s). If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____%	\$ _____ \$ _____ \$ _____
22.	<input type="checkbox"/> <input type="checkbox"/>	I have an IRA/Lump Sum Pension/Keogh Account/401K. If yes, list bank(s) 1) _____ 2) _____	_____% _____%	\$ _____ \$ _____
23.	<input type="checkbox"/> <input type="checkbox"/>	I have a whole life insurance policy. If yes, how many policies _____		\$ _____
24.	<input type="checkbox"/> <input type="checkbox"/>	I have cash on hand.		\$ _____
25.	<input type="checkbox"/> <input type="checkbox"/>	I have disposed of assets (i.e. gave away money/assets) for less than the fair market value in the past 2 years. If yes, list items and date disposed: 1) _____ 2) _____		\$ _____ \$ _____

STUDENT STATUS

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	Does the household consist of all persons who are <u>full-time</u> students (Examples: K-12, College, Trade School, etc.)?
<input type="checkbox"/>	<input type="checkbox"/>	Does the household consist of all persons who have been a <u>full-time</u> student 5 months in the current calendar year?
<input type="checkbox"/>	<input type="checkbox"/>	Does your household anticipate becoming an all full-time student household in the next 12 months?
<input type="checkbox"/>	<input type="checkbox"/>	If you answered yes to any of the previous three questions are you:
<input type="checkbox"/>	<input type="checkbox"/>	• Receiving assistance under Title IV of the Social Security Act (AFDC/TANF/Cal Works - not SSA/SSI)
<input type="checkbox"/>	<input type="checkbox"/>	• Enrolled in a job training program receiving assistance through the Job Training Participation Act (JTPA) or other similar program
<input type="checkbox"/>	<input type="checkbox"/>	• Married and filing (or are entitled to file) a joint tax return
<input type="checkbox"/>	<input type="checkbox"/>	• Single parent with a dependant child or children and neither you nor your child(ren) are dependent of another individual
<input type="checkbox"/>	<input type="checkbox"/>	• Previously enrolled in the Foster Care program (currently age 18-24)

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PRESENTED ON THIS FORM IS TRUE AND ACCURATE TO THE BEST OF MY/OUR KNOWLEDGE. THE UNDERSIGNED FURTHER UNDERSTANDS THAT PROVIDING FALSE REPRESENTATIONS HEREIN CONSTITUTES AN ACT OF FRAUD. FALSE, MISLEADING OR INCOMPLETE INFORMATION WILL RESULT IN THE DENIAL OF APPLICATION OR TERMINATION OF THE LEASE AGREEMENT.

PRINTED NAME OF APPLICANT/TENANT

SIGNATURE OF APPLICANT/TENANT

DATE

WITNESSED BY (SIGNATURE OF OWNER/REPRESENTATIVE)

DATE

TENANT INCOME CERTIFICATION

Initial Certification 1st Recertification Other

Effective Date: _____
 Move-in Date: _____
 (MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____
 Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$ _____

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate		
If over \$5000		\$ _____ X 2.00%	= (J) Imputed Income	\$ _____
Enter the greater of the total of column I, or J: imputed income			TOTAL INCOME FROM ASSETS (K)	\$ _____
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES:
From item (L) on page 1

\$

RECERTIFICATION ONLY:

Current Income Limit x 140%:

\$ _____

Household Income exceeds 140% at recertification:

Yes No

Current Income Limit per Family Size: \$ _____

Household Income at Move-in: \$ _____

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____
Utility Allowance \$ _____

Rent Assistance: \$ _____
Other non-optional charges: \$ _____

GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility Allowance & other non-optional charges)

\$

Unit Meets Rent Restriction at:

60% 50% 40% 30% _____%

Maximum Rent Limit for this unit: \$ _____

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

yes no

If yes, Enter student explanation*
(also attach documentation)

Enter 1-5

*Student Explanation:

- 1 AFDC / TANF Assistance
- 2 Job Training Program
- 3 Single Parent/Dependent Child
- 4 Married/Joint Return
- 5 Former Foster Care

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit

b. HOME

c. Tax Exempt

d. AHDP

e. _____

(Name of Program)

See Part V above.

Income Status

- ≤ 50% AMGI
- ≤ 60% AMGI
- ≤ 80% AMGI
- OI**

Income Status

- 50% AMGI
- 60% AMGI
- 80% AMGI
- OI**

Income Status

- 50% AMGI
- 80% AMGI
- OI**

Income Status

- _____
- _____
- OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the address of the building.

Unit Number Enter the unit number.

Bedrooms Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List **each** respective household member number from Part II. Include anticipated income only if documentation exists verifying pending employment. If any adult states zero-income, please note "zero" in the columns of Part III.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.

Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).

Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F) List the type of asset (i.e., checking account, savings account, etc.)

Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).

Column (H) Enter the cash value of the respective asset.

Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).

TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K) Enter the greater of the total in Column (I) or (J)

Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources Enter the number from item (L).

Current Income Limit per Family Size Enter the Current Move-in Income Limit for the household size.

Household income at move-in Household size at move-in For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.

Household Meets Income Restriction Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Current Income Limit x 140% For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. **140% is based on the Federal Set-Aside of 20/50 or 40/60, as elected by the owner for the property, not deeper targeting elections of 30%, 40%, 45%, 50%, etc.** Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

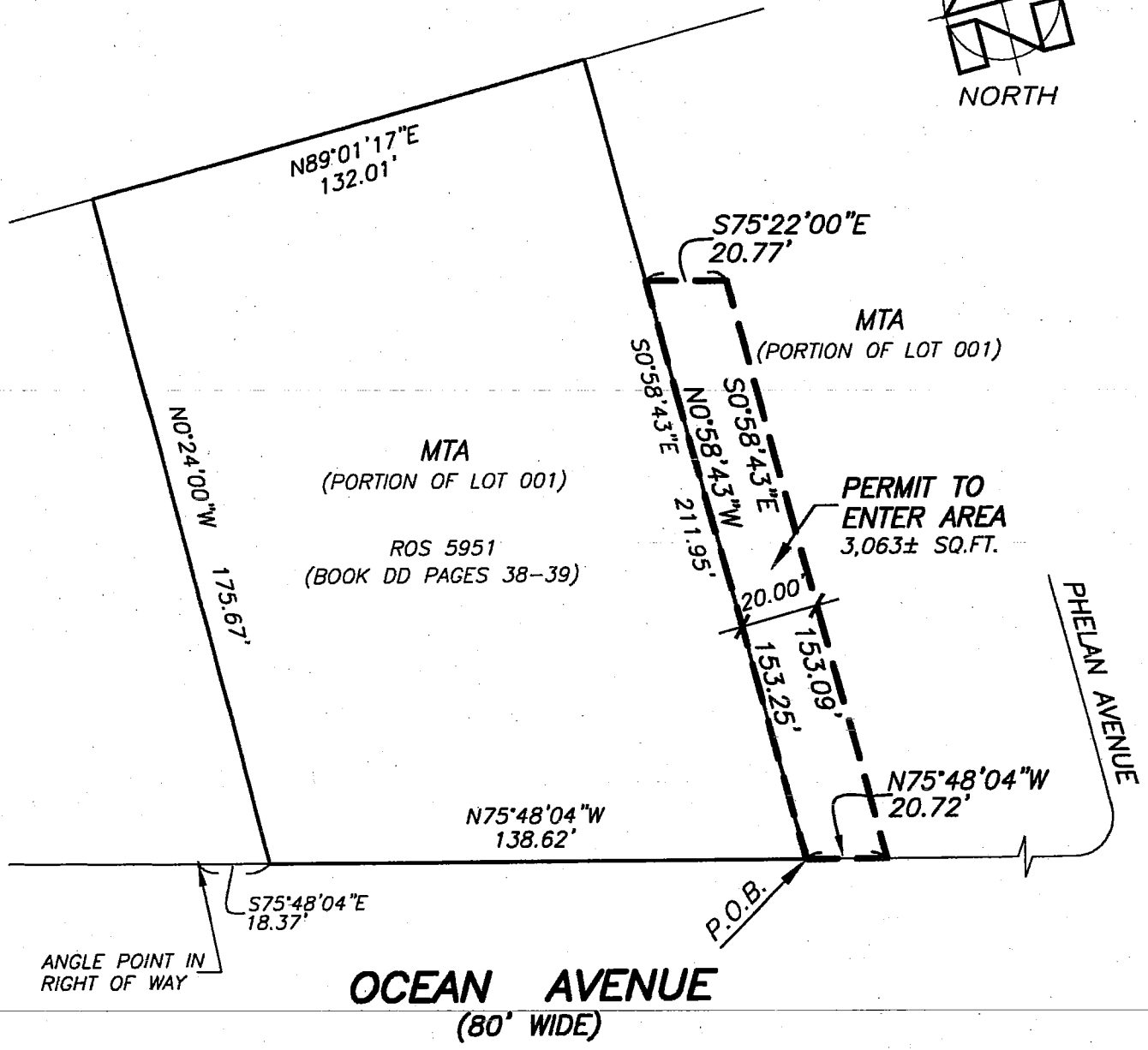
The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

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ATTACHMENT 6

DEPICTION OF THE ACCESS PROPERTY



PLAT TO ACCOMPANY
LEGL DESCRIPTION FOR
**PERMIT TO
ENTER AREA**

ASSESSOR'S BLOCK 3180
SAN FRANCISCO, CALIFORNIA

SUBJECT:

BY	JP	CHKD.	BR	DATE	8-20-12	SCALE	1"=40'	SHEET	1 OF 1	JOB NO.	S-7365
----	----	-------	----	------	---------	-------	--------	-------	--------	---------	--------

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-7365_EASEMENT-PEDESTRIAN.DWG

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ATTACHMENT 7

MOU BETWEEN SFMTA AND SFPUC

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), dated for reference purposes only as of FEB. 13, 2007, is entered into by and between the San Francisco Municipal Transportation Agency ("MTA") and the San Francisco Public Utilities Commission ("SFPUC").

RECITALS

- A. Certain property located near the intersection of Phelan Avenue and Ocean Avenue in the City and County of San Francisco ("City") is under the jurisdiction of MTA, as generally depicted on the attached Exhibit A (the "MTA Parcel"), and certain other property located near such intersection is under the jurisdiction of SFPUC, also as generally depicted on the attached Exhibit A (the "PUC Parcels").
- B. SFPUC presently maintains a 36-inch pipeline known as the Crosstown Pipeline, which delivers water from the west side of the City to the east side of the City (the "Existing Crosstown Pipeline"). A portion of the Existing Crosstown Pipeline is located beneath the surface of a portion of MTA Parcel in the location generally depicted on the attached Exhibit A (labeled "Existing 36" Pipeline (College Hill Feeder Mains)").
- C. SFPUC plans to install approximately 4.5 miles of pipeline known as the East-West Transmission Main from the Alemany Pump Station in the eastern part of the City to Junipero Serra Boulevard at Holloway (the "East-West Pipeline"). The new East-West Pipeline will enable the SFPUC to move water from the east side of the City into the City's Sunset system in the event of a pipeline failure on the peninsula or in the event of other emergencies. Its installation and operation is critical to the health and safety of residents of the Sunset District. The installation of the East-West Pipeline is referred to herein as the "Project."
- D. A portion of the East-West Pipeline will be located beneath the surface of a portion of the MTA Parcel and a portion of the East-West Pipeline will be located under a portion of one or more of the PUC Parcels, in the location generally depicted on the attached Exhibit A (labeled "Future Location of 36" Water Line"). SFPUC and MTA have agreed on the alignment identified in Exhibit A and on the construction drawings and specifications for the Project (the "Initial Plans") prepared by SFPUC and dated August 2006 (the "Preferred Alignment").
- E. SFPUC also plans the future installation of an additional 36-inch pipeline running easterly from the future Balboa Reservoir (the "Future Balboa Reservoir Outlet Pipeline"). The final alignment of the Future Balboa Reservoir Outlet Pipeline has not yet been fixed, but it is anticipated that portions of the Future Balboa Reservoir Outlet Pipeline may be installed beneath the surface of a portion of the MTA Parcel and the PUC Parcels, parallel to that portion of the Existing Crosstown Pipeline located on the MTA Parcel and the PUC Parcels. The installation of the Future Balboa Reservoir Outlet Pipeline is referred to herein as the "Future Balboa Reservoir Project".

F. MTA and SFPUC anticipate entering into one or more future agreements with each other and certain other City agencies or other parties pursuant to which, among other matters, the jurisdiction over or ownership of portions of one or more of the PUC Parcels will be transferred to MTA and one or more of such other agencies or parties and jurisdiction over or ownership of a portion of the MTA Parcel will be transferred to one or more of such other agencies or parties (the "Proposed Transfer Agreement").

G. In connection with the Project, the Future Balboa Reservoir Project and the Proposed Transfer Agreement, SFPUC desires to ensure that SFPUC obtains over the MTA Parcel and reserves over the PUC Parcels an easement in the locations generally depicted on Exhibit A and labeled "60' Wide Future SFPUC Easement" and "23' Wide Future SFPUC Easement" (the "Permit Area"), for the installation of the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline, and for the operation, maintenance and repair of the Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline. The Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline are sometimes referred to herein collectively as the "Pipelines".

H. Not all details of the Proposed Transfer Agreement have been finalized, and it presently appears that the Project may be completed most effectively if construction of that portion of the Project located on the MTA Parcel is permitted to commence prior to the date the Proposed Transfer Agreement is ultimately finalized. Accordingly, SFPUC and MTA now wish to enter into this MOU to set forth the conditions under which the SFPUC will construct the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline on the MTA Parcel, and maintain the Pipelines on the MTA Parcel, to provide for the future documentation of SFPUC's right to use the Permit Area, to provide for the conditions to MTA's use of the Permit Area, and to provide that any party transferring jurisdiction over or ownership of any portion of the Permit Area shall give such transferee notice of the terms and conditions of this MOU.

NOW, THEREFORE, IN CONSIDERATION of the foregoing, MTA and SFPUC hereby agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Preferred Alignment.** SFPUC and MTA acknowledge and agree that the Preferred Alignment remains subject to minor revisions as may be reasonably required by additional design considerations, future environmental review and field modifications, which revisions shall be mutually agreed to by SFPUC and MTA. SFPUC and MTA shall cooperate in identifying and resolving any revisions to the Preferred Alignment which are reasonably required. Any revisions to the Preferred Alignment shall be confirmed by the parties in writing, and following such revision the term "Preferred Alignment" shall refer to the Preferred Alignment, as so revised. Further, upon written notice from SFPUC that SFPUC desires to proceed with plans to install the Future Balboa Reservoir Outlet Pipeline, MTA shall cooperate with SFPUC in establishing the alignment of the Future Balboa Reservoir Outlet Pipeline. Once installed, SFPUC shall provide MTA with a copy of the as-built plans for any installed Pipeline.

3. **SFPUC Use of MTA Parcel.** MTA hereby grants to SFPUC and its agents and contractors the right to enter that portion of the MTA Parcel located in the Permit Area (the "Subject Area") to install the East-West Pipeline in the Preferred Alignment, to install the Future Balboa Reservoir Outlet Pipeline, to access, operate, repair, replace and maintain the Pipelines, and to perform such other actions as are reasonably necessary for the SFPUC to install and operate the Pipelines.

In addition to the foregoing, MTA and SFPUC shall cooperate to identify an access route for SFPUC construction equipment to cross over the MTA Parcel from Ocean Avenue to the Subject Area in connection with construction activities to be performed during the installation of the East-West Pipeline, and MTA shall establish terms and conditions for such access designed to minimize the impact on MTA's use, maintenance, repair, removal or replacement of the current and future bus loops, boarding areas and temporary parking areas located on the MTA Parcel (collectively, the "Bus Activities"). Once such route and terms and conditions are established, MTA shall permit SFPUC to cross over the permitted access route in accordance with such terms and conditions.

SFPUC acknowledges that its entry on the Subject Area or other areas of the MTA Parcel pursuant to this Section shall be subject to reasonable restrictions established by MTA to protect the safety of its employees and passengers and to maintain its efforts to provide reliable public transit services. Such restrictions shall include mutually-agreeable access routes for construction equipment and equipment storage and staging areas required in connection with the exercise of SFPUC's rights hereunder. SFPUC and MTA acknowledge that such access routes and storage and staging areas will need to be created to minimize the impact to MTA's use of the Subject Area and the surrounding area for the Bus Activities, while permitting the access reasonably required for the exercise of SFPUC's rights hereunder.

4. **MTA Use of Permit Area.** Subject to MTA's rights to continue the Bus Activities, MTA shall not do anything in, on, under or about the Subject Area that could cause damage to or interference with the Pipelines or related facilities. Without limiting the foregoing, MTA agrees that no trees or shrubs shall be planted, no structures or improvements of any kind or character shall be constructed or placed, and no excavation shall occur, on the Subject Area without the prior written consent of SFPUC, except as provided in Section 6 below. To prevent damage to the Pipelines, MTA shall not use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Subject Area during construction and/or maintenance of any improvements on or adjacent to the Subject Area, or for any other purpose, without SFPUC's prior written approval. SFPUC acknowledges that for the purposes of this Section 4, the passage, boarding, and temporary parking of buses and trolley coaches over the Subject Area shall not be deemed to violate the foregoing restriction regarding vehicle and equipment weight.

5. **Reserved Rights with Respect to Subject Area.** In addition to MTA's reserved right to perform the Bus Activities, MTA further reserves the right to use the Subject Area for all purposes which are not inconsistent with SFPUC's rights hereunder, including the right to maintain the following over and across and along the Subject Area: roads, streets, sidewalks, electric power lines, and telephone and telegraph lines; provided, however, that MTA shall not use the Subject Area, or permit the same to be used, for any purpose or in any manner which will

interfere with, damage or endanger the Pipelines.

6. **Installation of Future Bus Loop on Reconfigured MTA Parcel; General Restrictions on Installations.** Although not all details of the Proposed Transfer Agreement have been finalized, the parties anticipate that the Proposed Transfer Agreement will provide for a jurisdictional transfer of a portion of the PUC Parcels to MTA to accommodate its anticipated construction and operation of a replacement bus loop and all related appurtenances, and a jurisdictional transfer of a portion of the MTA Parcel to SFPUC to accommodate its anticipated sale of property to San Francisco City College (the "Anticipated Transfers"). SFPUC acknowledges and agrees that, if the Anticipated Transfers occur, MTA shall have the right to conduct the Bus Activities on the portions of the PUC Parcels so acquired by MTA, the definition of "Subject Area" shall be deemed to include the portion of the Permit Area located on such acquired PUC Parcels, and for the purpose of this MOU, the "MTA Parcel" shall be deemed to include the portions of the PUC Parcels so acquired by MTA. In addition, notwithstanding the provisions of Section 5 above, if the Anticipated Transfers occur, MTA shall have the right to install, maintain, use, repair and replace up to four (4) trolley wire support pole foundations and two (2) boarding islands, together with all appurtenances related to the replacement bus loop, including, but not limited to, pavement, sidewalks and shallow utility conduits (collectively, the "Proposed MTA Installations"), on the Subject Area.

The following restrictions (collectively, the "Improvement Conditions") shall apply to the Proposed MTA Installations as well as any other proposed installations by MTA in the Subject Area: (i) MTA shall provide to SFPUC, at the address for the Manager of City Distribution Division set forth in Section 10 below, a copy of each of the conceptual engineering report, the 95% completed plans, and the final plans and specifications for any proposed installation, as each becomes available, to provide SFPUC an opportunity to review and comment on such report and plans, (ii) MTA shall obtain SFPUC's approval of the plans and specifications for any proposed installation, which approval shall not be unreasonably withheld or delayed, (iii) there shall be a minimum of an eight foot (8') linear clearance on a horizontal plane between any trolley wire support pole foundation and any then-existing Pipeline within the Subject Area, unless SFPUC otherwise consents in writing, (iv) such installation, repair and replacement shall be performed in a manner which does not endanger or damage any then-existing Pipelines within the Subject Area, and (v) once installed, SFPUC shall provide MTA with a copy of the as-built plans for such installation.

If MTA is prepared to commence construction activities for its replacement bus loop over a portion of the PUC Parcels before the Anticipated Transfers occur, MTA shall obtain SFPUC's consent prior to commencing such activities, which consent shall not be unreasonably withheld, and shall ensure that each installation so made over the PUC Parcels complies with the Improvement Conditions.

7. **Preparation of Legal Description.** If MTA transfers any portion of the Subject Area to a third party, and such third party requires a legal description of the Subject Area (the "Legal Description"), MTA shall have the right to either obtain such Legal Description or to require SFPUC to obtain such Legal Description in a form that is reasonably acceptable to MTA. If MTA requires SFPUC to obtain such Legal Description, SFPUC shall do so at its sole cost within the thirty (30) day period following receipt of MTA's written request therefor. If MTA

elects to obtain such Legal Description, SFPUC shall reimburse MTA for all third party costs reasonably incurred by MTA in preparing or obtaining such Legal Description within sixty (60) days following MTA's request therefor, which request shall include reasonable documentation of such costs together with a copy of the Legal Description.

8. **Effective Date; Term.** The term of this MOU shall commence the date specified in the introductory paragraph of this MOU, and shall terminate on the earlier of the date an easement deed or agreement is recorded to memorialize an easement across the Subject Area in favor of SFPUC (in which event the terms and conditions of such easement deed or agreement shall govern the rights of the parties) or at such time as the SFPUC elects to permanently terminate operation of the Pipelines for distribution of potable water.

9. **Restriction on MTA Access; Limits on Interference with Bus Activities.** The parties acknowledge that the future construction and installation of the Future Balboa Reservoir Project may temporarily interfere with the use of the Proposed MTA Installations. Accordingly, SFPUC and its contractors may restrict access to the immediate vicinity of the Project, the Future Balboa Reservoir Project, and other construction projects, if any, related to the Pipelines during construction if reasonably necessary to ensure the health and safety of the public, and MTA shall cooperate with such restrictions. SFPUC shall use reasonable efforts to conduct all Pipeline construction and maintenance activities on the Subject Area in a manner that minimizes interference with the Bus Activities, taking into account the scope of work to be performed. MTA and SFPUC shall negotiate in good faith regarding the manner of SFPUC's exercise of its rights hereunder, with the dual goals of minimizing interference with the Bus Activities and minimizing extra cost to SFPUC resulting from construction requirements and restrictions and from measures required to minimize interference with Bus Activities.

Notwithstanding anything to the contrary herein, except to the extent otherwise agreed by MTA in writing, SFPUC shall ensure that, at all times, (a) MTA has reasonable means for the passage of at least one lane of buses over the MTA Parcel (provided that, if the Anticipated Transfers occur, the reconfigured MTA Parcel has a bus passage corridor that is at least fifty-five feet (55') in width at Phelan Avenue), and (b) lines of construction vehicles entering the MTA Parcel are limited to five (5) vehicles per hour.

10. **Notice of Construction.** SFPUC shall provide at least sixty (60) days' prior written notice of SFPUC's planned construction activities in the Subject Area (unless such planned construction activities are to perform the work described in the Initial Plans, in which case SFPUC shall only need to provide at least twenty-one (21) days' prior written notice), together with plans and specifications for such construction activities, to MTA at the following address:

Chief Operating Officer / Director of Muni Operations
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103
Tel.: (415) 701-4202

MTA shall provide at least twenty-one (21) days' prior written notice of MTA's planned construction activities in the Subject Area to SFPUC at the following address:

General Manager
San Francisco Public Utilities Commission
1155 Market Street, Eleventh Floor
San Francisco, CA 94103

with a copy of such notice, together with plans and specifications for such construction activities, to SFPUC at the following address:

Manager of City Distribution Division
San Francisco Public Utilities Commission
1990 Newcomb Ave.
San Francisco, CA 94124

11. **Restrictions on SFPUC Use: Compliance with Law.** SFPUC, at SFPUC's expense, shall comply with all laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to SFPUC's activities hereunder, including compliance with all laws relating to Hazardous Materials (as defined below), which impose any duty upon SFPUC with respect to the use, occupancy or alteration of the MTA Parcel. SFPUC shall immediately notify MTA in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under the law requiring the reporting of such release to a governmental or regulatory agency. As used herein, "**Hazardous Materials**" shall mean any substance, water or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety or property.

12. **SFPUC Maintenance and Repairs.** SFPUC agrees that, subject to the terms of Section 13 below, any damage to the MTA Parcel caused by construction, installation, maintenance, repair or any other activity of SFPUC permitted hereunder shall be repaired and restored to its prior condition upon completion of the construction, maintenance, repair or other activities at no cost to MTA. Following the completion of any excavation work by SFPUC in the Subject Area, SFPUC shall promptly return the surface of the Subject Area to its prior condition, including repaving and regrading any existing roadway as required, subject to the terms of Section 13 below. During the term hereof, SFPUC shall maintain in good repair and condition the improvements made pursuant to this MOU.

13. **Landscaping.** MTA acknowledges that installation of the East-West Pipeline in the Preferred Alignment and installation of the Future Balboa Reservoir Outlet Pipeline will require removal of certain trees and may require the trimming of roots of other trees, and will result in damage to grass in the Subject Area. SFPUC shall replace affected grass with like-kind grass, and at MTA's request shall plant the same kind of grass over areas in which trees are removed by SFPUC. Neither SFPUC nor MTA shall replace any trees in the Subject Area.

14. **Insurance.** SFPUC shall require any contractor or subcontractor it hires in connection with its use of the MTA Parcel to secure such insurance as is recommended by the

City Risk Manager and reasonably approved by MTA. The City shall be included as an additional insured with respect to any such insurance.

15. **Indemnification.** SFPUC shall require MTA to be included as an indemnified party in any indemnification provision between SFPUC and any agent, contractor or subcontractor it hires in connection with its use of the MTA Parcel.

16. **Damages.** It is the understanding of the parties that MTA shall not expend any funds due to or in connection with SFPUC's activities on the MTA Parcel. Therefore, SFPUC agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise as a result of the activities on or about the MTA Parcel by SFPUC, its agents or contractors. The foregoing obligation of SFPUC shall survive the termination of this MOU.

17. **Notices.** All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of MTA and SFPUC as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to MTA to:

Executive Director/CEO
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

and if to SFPUC to:

General Manager
San Francisco Public Utilities Commission
1155 Market Street, Eleventh Floor
San Francisco, CA 94103

or such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Section.

18. **Obligations Run With the Land; Future Easement.** If a party transfers any portion of the Permit Area to a non-City entity, such transferring party shall reserve an easement to the City that incorporates the rights and obligations set forth in this MOU, and the parties intend that any such future reserved easement shall run with the land and be binding on future owners of such transferred portion of the Permit Area. A reserved easement shall be recorded in the City's Official Records, and shall incorporate the party's respective rights and obligations set forth herein as to such portion of the transferred Permit Area, provided that such reserved easement shall be subject to any necessary approval of the San Francisco Municipal Transportation Agency Board of Directors or the San Francisco Public Utilities Commission, as applicable, and, to the extent required, the City's Board of Supervisors and Mayor. If MTA transfers jurisdiction over or permits the use of all or any portion of the MTA Parcel, MTA shall provide such transferee or permittee with a copy of this MOU. If SFPUC transfers jurisdiction over or permits the use of the Pipelines or all or any portion of the affected PUC Parcels, SFPUC

shall provide such transferee or permittee with a copy of this MOU.

19. **Miscellaneous Provisions.**

a. Further Assurances. The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this MOU.

b. Incorporation of Exhibits. All exhibits to this MOU are incorporated herein by this reference and made a part hereof as set forth in full.

[No further text this page]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

AGREED TO AS WRITTEN
ABOVE:

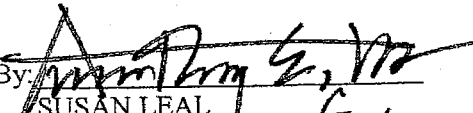
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

By: 
NATHANIEL P. FORD, SR.
Executive Director/CEO

Date: 3.20.07

AGREED TO AS WRITTEN
ABOVE:

SAN FRANCISCO PUBLIC
UTILITIES COMMISSION

By: 
SUSAN LEAL
General Manager for:








Date: 2/13/07
Resolution No.: 07-0028


EXHIBIT A

Depiction of Parcels, Proposed Alignment,
Existing Crosstown Pipeline, and Permit Area

[Attached]

Exhibit A
Drawing No. B-4836
MTA MOU

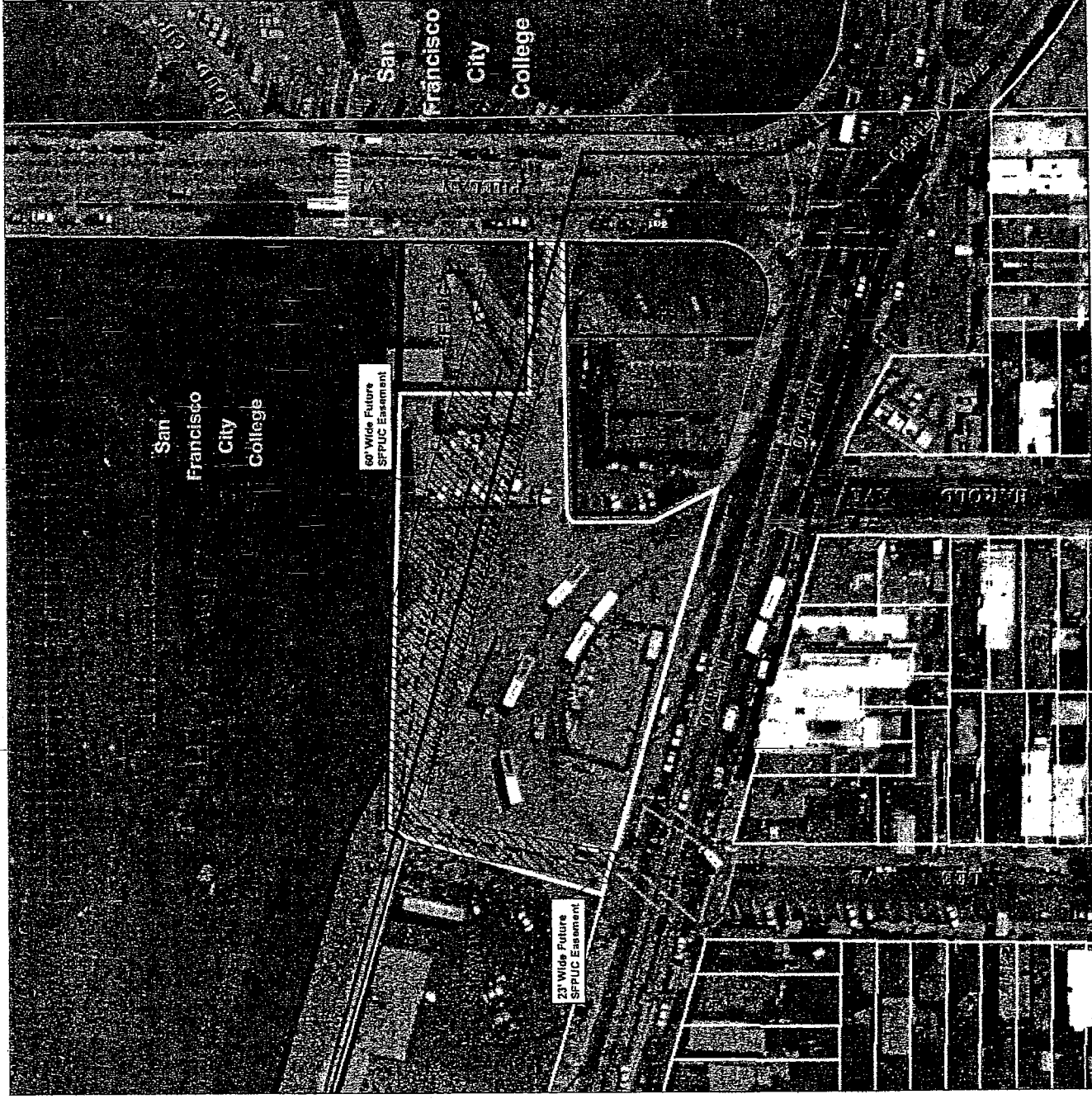
- Legend**
-  Area of Easement to be Granted to SFPUC by MTA and to be Reserved by SFPUC
 -  SFPUC Parcels/Right-of-Way
 -  San Francisco City College
 -  MTA
 -  SF Fire Department
 -  SFPUC Existing Pipelines
 -  SFPUC Future Pipeline

N 
 Scale 1 : 1,200
 1 inch = 100 feet

Feet
 0 30 60 90 120 150

Date: 1/25/07

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. The City is not responsible for any damages arising from the use of this data. Users should verify the information before making project commitments.



1
2
3 **ATTACHMENT 8**

4 Form of Memorandum of Lease

5
6
7 Free Recording Requested Pursuant to
8 Government Code Section 27383

9
10 When recorded, mail to:
11 Mayor's Office of Housing of the
12 City and County of San Francisco
13 1 South Van Ness Avenue, Fifth Floor
14 San Francisco, California 94103
15 Attn: Director
16

17
18 **MEMORANDUM OF GROUND LEASE**
19

20
21 This Memorandum of Ground Lease ("Memorandum") is entered into as of _____, 2013,
22 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the
23 "City"), acting by and through the Mayor's Office Of Housing ("City"), and 1100 OCEAN
24 AVENUE Limited Partnership, a California limited partnership ("Tenant"), with respect to that
25 certain Ground Lease (the "Lease") dated _____, 2013, between City and Tenant.
26

27 Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real
28 property more particularly described in Exhibit A, attached hereto and incorporated herein by this
29 reference (the "Property"). In addition, as further set forth in Article 8 of the Lease, City hereby
30 grants to Tenant the right to use that certain portion of property depicted as the "Plaza Parcel" on
31 Exhibit B, attached hereto and incorporated herein by this reference (the "Access Property") for
32 pedestrian ingress and egress to and from the Project only. The Lease shall commence on the date
33 set forth above and shall end on the date which is 75 years from the date set forth above, unless
34 terminated earlier or extended pursuant to the terms of the Lease.

35
36 This Memorandum shall incorporate herein all of the terms and provisions of the Lease as
37 though fully set forth herein.
38

39 This Memorandum is solely for recording purposes and shall not be construed to alter,
40 modify, amend or supplement the Lease, of which this is a memorandum.
41

42 This Memorandum may be signed by the parties hereto in counterparts with the same

1 effect as if the signatures to each counterpart were upon a single instrument. All counterparts
2 shall be deemed an original of this Memorandum.

3
4
5 Executed as of _____, 2013 in San Francisco, California.
6

7
8 TENANT:

9
10 1100 OCEAN AVENUE LP
11 a California Limited Partnership
12

13 By: Mercy Housing CalWest.,
14 a California nonprofit public benefit corporation, its managing general partner
15

16 By: _____
17 Name: _____
18 Title: _____
19

20 By: Bernal Housing LLC,
21 A California limited liability company,
22 its co-general partner
23

24 By: Bernal Heights Housing Corporation,
25 a California nonprofit public benefit corporation,
26 its managing member
27

28 By: _____
29 Name: _____
30 Title: _____
31

32
33 CITY:
34 CITY AND COUNTY OF SAN FRANCISCO,
35 a municipal corporation
36

37
38 By:
39 Olson Lee
40 Director, Mayor's Office of Housing
41
42

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APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

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ATTACHMENT 9
Mayor's Office of Housing Asset Management Fee and the Partnership Management Fee
Policy



MAYOR'S OFFICE OF HOUSING

CITY AND COUNTY OF SAN FRANCISCO

ASSET MANAGEMENT FEE & PARTNERSHIP MANAGEMENT FEE POLICY (10/05/2010)

2010 UPDATE

10/5/10: This update adds clarifying language to several provisions.

8/27/10: This update makes explicit the circumstances when projects are ineligible for General Partner Partnership Management Fees, Limited Partner Asset Management Fees and Limited Partner Investor Services Fee.

2009 UPDATE

This update increases the maximum allowable fees by 3.5% for the year 2010 and also enables the maximum fees to increase by 3.5% per year, effective January 1, unless the City chooses by November 1 of the prior year to forego or postpone the increase.

2008 REVISION OF ASSET MANAGEMENT FEE POLICY

This revised Asset Management Fee Policy reflects the City's efforts to maintain policies that address the current challenges associated with managing affordable housing assets in San Francisco. To inform the revised policy, the City solicited input from developers and owners of affordable housing and analyzed current costs of performing adequate asset management. Highlights of the revised policy include: an increase in the allowable Asset Management Fee; allowing Asset Management Fees to be taken "above the line" in some circumstances (see pages 3-4); and simplified administrative guidelines.

MAXIMUM AMOUNT OF ASSET MANAGEMENT FEE ("MAXIMUM AMF"):

2009	2010	2011	2012	2013	2014	2015	2016
\$15,000	\$15,520	\$16,060	\$16,620	\$17,200	\$17,800	\$18,420	\$19,060

The table above reflects the maximum amount of the Asset Management Fee that can be taken in a project's first year of operations following development work funded by the City. This maximum applies regardless of whether tax credits or bond financing have been supplied to the project. This maximum amount may be allowed to increase annually for each project – see "Default Annual Escalation Rate" below.

The annual increase to the Maximum Asset Management Fee will become effective Jan 1st of each year unless the City acts affirmatively by November 1st of the prior year to forego or postpone the increase. An updated version of this policy document will be posted if the City chooses to exercise this option.

MAXIMUM AMOUNT OF TOTAL OF ASSET MANAGEMENT FEE & PARTNERSHIP MANAGEMENT FEE ("MAXIMUM AMF & PMF"):

2009	2010	2011	2012	2013	2014	2015	2016
\$30,000	\$31,050	\$32,140	\$33,260	\$34,420	\$35,620	\$36,870	\$38,160



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For projects that are eligible for both a partnership management fee and an Asset Management Fee, the combined total for these fees shall not exceed the amounts listed in the table above. This maximum amount may be allowed to increase annually for each project – see “Default Annual Escalation Rate” below.

The annual increase to the Maximum Asset Management Fee & Partnership Management Fee will become effective Jan 1st of each year unless the City acts affirmatively by November 1st of the prior year to forego or postpone the increase. An updated version of this policy document will be posted if the City chooses to exercise this option.

FEE ELIGIBILITY PERIODS - TAX CREDIT-FUNDED PROJECTS:

Subject to the terms of the project's limited partnership agreement and the Maximum AMF & PMF limits described above, tax credit-funded developments may allocate their total AMF/PMF as follows:

- 1) Managing General Partner Partnership Management Fee: payable “below the line” during the initial tax credit compliance period only (i.e., not including any extended use compliance period).
- 2) Project Sponsor Asset Management Fee: payable “above the line” for the duration of the project, capped subject to the Maximum AMF & PMF limits during the tax credit compliance period and subject to the Maximum AMF limits following the termination of the tax credit compliance period.
- 3) Limited Partner Investor Services Fee: while this Fee is not subject to the Maximum AMF & PMF limits described above, any Limited Partner Investor Services Fee must be payable “below the line” until the expiration of the tax credit compliance period or the exit of the limited partner investor, whichever shall occur first. The City recognizes this Fee as a legitimate fee over and above the Asset Management Fee and the Partnership Management Fee payable to the General Partner.

FEE ELIGIBILITY PERIODS - NON-TAX CREDIT PROJECTS

Project sponsors may take Maximum AMF “above the line”, as an operating expense, for the duration of the project.



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DEFAULT ANNUAL ESCALATION RATE FOR ANNUAL ASSET MANAGEMENT FEE & PARTNERSHIP MANAGEMENT FEE

Projects may increase the amount of the Asset Management Fee and Partnership Management Fee by the same rate of increase used for other project expenses in the 20-year operating pro forma approved during City underwriting, or any subsequent proforma approved by the City. If justified by project sponsors and approved during underwriting, projects may use a different escalation rate for the Asset Management Fee, Partnership Management Fee and other expenses.

POLICY GOAL

The revised policy is not intended to result in a decrease in Asset Management Fees. Any reduction in Asset Management Fees should come only as a result of a thorough project-specific analysis.

EFFECTIVE DATE & APPLICABILITY

This policy applies to any project that has not received its gap financing commitment from the City by the effective date of this policy.

Projects Without Executed City Funding Agreements

For projects that are currently under development but have not yet executed gap funding agreements with the City, the sponsor may submit for approval a proposed revision of the underwriting and operational projections that incorporate the limits under this revised policy. Requests will be subject to approval by City underwriters. Changes to projects that have already received gap funding approval from the Citywide Loan Committee may require Loan Committee approval for the changes, depending on the impact that such changes may have on debt service schedules or other major financing structures.

Projects with Existing City Gap Funding Agreements

The applicability of this revised policy to existing projects will vary depending on whether the City's underlying loan/grant agreements include any guidelines about Asset Management and related fees. There are two relevant categories: 1) Projects for which the City's underlying funding agreements include provisions for allowable Asset Management Fees; 2) Projects for which the City's underlying funding agreements are silent on Asset Management Fees.

1. Projects for which the City's underlying funding agreements include provisions for allowable Asset Management Fees

As with all aspects related to the development and operation of a project, the ultimate source of guidance for how the project must be developed and operated is the funding



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agreement (including the other documents related to the loan/grant agreement, such as the Promissory Note and Declaration of Restrictions). If a City funding agreement for a project includes any guidance related to asset management and related fees, the funding agreement must be followed unless an amendment is executed. The City will review requests for amendments, but project sponsors must recognize that the initial underwriting assumptions and current project circumstances may make it impossible to revise the guidelines in any significant way. Sponsors seeking amendments should be prepared to provide significant updates about project operations, including but not limited to:

- Updated 20-year proformas
- Variance analysis/es
- Operating reserve analysis
- Replacement reserve analysis informed by a current capital needs assessment
- Descriptions of asset management structure and staffing and sources of income to cover asset management costs
- Asset Management Plans
- Analysis/es of obstacles to effective asset management

2. Projects for which the City's underlying funding agreements are silent on allowable Asset Management Fees

For projects for which the City's underlying funding agreements are silent about asset management and related fees, the project may take Asset Management Fees and Partnership Management Fees in accordance with this revised policy but only if all of the following conditions are met.

- The project is in full compliance with all of the City's funding agreements.
- Project funds can support Asset Management Fee to be taken.
- The project submits a written request to the City to allow the Asset Management Fee to be taken, and the City approves the request in writing.

Important note regarding possible conflicts with the funding agreements of other project funders: The City recognizes that agreements with other project funders may not be consistent with those of the City, and encourages sponsors to assess agreements for inconsistencies. Under no circumstances should the existence of an agreement based on the policy of one funder be used by a project sponsor as a justification for failing to satisfy the requirements of any other project funder(s).

VARIATIONS FROM THE ASSET MANAGEMENT FEE POLICY

City underwriters have the authority to approve Asset Management and/or Partnership Management Fee(s) that vary from the revised policy; such variations must also be approved by City Asset Management staff, documented explicitly in the Evaluation of



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PREVIOUS POLICY

As described above, many funding agreements created prior to the implementation of the revised Asset Management Fee policy may include explicit guidelines regarding the acceptable practices related to a given project's allowable asset management and related fees. Because these agreements' guidelines are generally based upon the Previous Asset Management Fee policy, the previous policy is being kept available below for reference.

The Asset Management Fee policy will become effective for completed projects which are required to submit annual compliance monitoring reports for the 2001 reporting year and subsequent years. The City's review of annual CDBG Housing Program Administration grant requests for asset management expenses will take into consideration those amounts received from other sources which may be used for asset management, including any Asset Management Fees derived from projects as described below.

The Asset Management Fee can be taken in addition to whatever partnership management fee is allowed under the partnership agreement, if any.

The minimum amount that can be taken as an Asset Management Fee is \$3,000 per project per year; the maximum amount of the Asset Management Fee is the lesser of:

- \$15,000 per year per project; or,
- \$12 per residential unit per month (total units including assisted and non-assisted).

For underwriting purposes, the Asset Management Fee may increase three percent (3%) per year after the first complete year of operation.

In the first year, the first \$3,000 of the Asset Management Fee is to be considered an operating expense. After the first year, the amount to be considered an operating expense is the first \$3,000 plus whatever amount is derived from the 3% annual increase. This amount will be referred to as the "base Asset Management Fee. Amounts beyond the base Asset Management Fee may be taken only after payment of required reserves and debt service (if any), but prior to a ground lease fee (if any), partnership management fee (if any), non-amortizing loans (if any), and residual receipts (if any).

Should a project be eligible for both a partnership management fee and an Asset Management Fee, then the total for these fees shall not exceed \$25,000, unless the borrower provides a detailed breakdown for the line item uses for each of these fees, to be approved by the City, which clearly demonstrates that there is no duplicative funding of activities. If there is duplicative funding of activities such that a particular task or function could be paid through both a partnership management fee and an Asset Management Fee, then the Asset Management Fee shall be reduced by a commensurate amount to preclude duplicative funding of the same cost.



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As permitted by other sources of project financing, the Asset Management Fee may be taken provided that the borrower complies with each of the following conditions:

1. Sponsor must request the City approval of the Asset Management Fee in writing concurrently with or after the submission of that project's fully completed annual compliance report to the City, as applicable. Approval by the City shall not be unreasonably withheld. The request should include the following items:
 - A. A brief description of staff devoted to asset management. These staff must not be the property managers responsible for day-to-day operations. Adequate and non-duplicative oversight must be provided;
 - B. A description of all amounts and sources the project receives or may be allowed to receive for asset management activities (e.g. Community Development Block Grant Housing Program Administration, California Department of Housing and Community Development Asset Management Fee, HUD Asset Management Fee, etc.), if any;
 - C. If not submitted within the last 3 years, a comprehensive, 20-year capital needs assessment (aka replacement reserve study or long-term capital improvement plan). This assessment must have been completed, approved by the City, and be updated every three (3) years;
 - D. An analysis showing that reserves are fully funded in accordance with the most recent comprehensive capital needs assessment or the final budget approved by the City, whichever is more current;
2. The project must be in full compliance with all regulatory requirements;
3. There must be no significant outstanding monitoring findings; and,
4. Required reports and budgets must be consistently submitted to City on time. Property management fees for sponsors collecting both property management and Asset Management Fees should be within the normal range for comparable projects as determined by City.



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Request for Funding and approved by the Loan Committee so the operational teams from both the sponsor and the City can reference them in the future..

Approval of maximum fees above the limits established by the revised policy is highly unlikely; proposals to increase the maximum fee(s) will require submission of an extensive project-specific analysis to justify the added operational expense.

Approval of maximum fees below the limits established by the revised policy is possible, particularly when any of the following factors are present.

- Project has a relatively small operational budget.
- Project has relatively fewer capital and/or operational funders, and therefore less compliance reporting.
- Building and/or the systems is/are new and/or in good working order
- Target population/s is expected to have minimal impact on the building & staff.
- Project sponsor has adequate existing Asset Management staffing & infrastructure.

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**ATTACHMENT 10
PLAZA PARCEL LEASE**

PHELAN PLAZA LEASE AGREEMENT

THIS PHELAN PLAZA LEASE AGREEMENT (this "**Lease**") dated for reference purposes only as of September 18, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code ("**Tenant**"). City and Tenant may each be referred to from time to time as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. City owns that certain real property near the intersection of Ocean Avenue and Phelan Avenue, commonly known as Assessor's Block 3180 Lots 5, 190, 193, and 194 (the "**City Property**"), and Tenant owns that certain adjacent real property commonly known Assessor's Block 3180 Lot 191 (the "**College Property**"), as depicted on the attached Exhibit A.

B. City wishes to facilitate the development of a portion of the City Property in accordance with the Balboa Park Station Area Plan (the "**Plan**") adopted by the City's Board of Supervisors on April 7, 2009, and approved by the City's Mayor on April 17, 2009.

C. The Plan contemplates the development of a public plaza on a portion of the City Property depicted as the "Proposed Plaza" on the attached Exhibit B (the "**Plaza Parcel**") and the development of a mixed-use building with affordable housing (the "**Mixed Use Project**") on the adjacent portion of the City Property commonly known as Assessor's Block 3180 Lot 5, which portion is depicted as the "Proposed Housing Project" on the attached Exhibit B and described on the attached Exhibit C (the "**Housing Parcel**").

D. The Plaza Parcel and the Housing Parcel cannot be developed unless SFMTA receives sufficient funds to pay for its costs (the "**Relocation Costs**") to relocate an existing bus loop located thereon (the "**Existing Bus Loop**") to a proposed location east of the Plaza Parcel, as depicted on the attached Exhibit B (the "**Relocated Bus Loop**"), and to design and build a public plaza improvements on the Plaza Parcel (the "**Plaza Costs**").

E. To facilitate the development of the Mixed Use Project, City sold the Housing Parcel to the San Francisco Redevelopment Agency ("**Agency**") for \$4,056,580 (the "**Agency Purchase Proceeds**") on October 31, 2011, pursuant to an Agreement for the Purchase and Sale of Property between Agency and City dated as of April 7, 2011, as amended by a First Amendment to Agreement for the Purchase and Sale of Property (as amended, the "**Agency Purchase Agreement**").

F. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("**AB 26**"), the Agency has dissolved as a matter of law, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 ("**AB 1484**"), and Resolution No. 11-12, adopted by the City's Board of Supervisors and Mayor on January 26, 2012, City acquired fee ownership of the Housing Parcel on February 1, 2012, and the Housing Parcel has been placed under the jurisdiction of the City's Mayor's Office of Housing ("**MOH**").

G. Provided that City is entitled to retain the Agency Purchase Proceeds, SFMTA has conditionally received a grant of additional funds from the Federal Transit Administration and Metropolitan Transportation Commission that would pay for the remainder of the Relocation Costs (including the Plaza Costs).

H. A public plaza on the Plaza Parcel would create a natural gateway to the southern

entrance of Tenant's Ocean Campus on the College Property, and as a condition of approving an Agreement for the Exchange and Conveyance of Real Estate between City and Tenant dated as of July 11, 2011, City requested that Tenant agree to manage and maintain such a public plaza on the Plaza Parcel under a long-term lease.

I. City is willing to lease the Plaza Parcel to Tenant, and Tenant is willing to lease the Plaza Parcel from City, on the terms and conditions of this Lease.

AGREEMENT

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. If there is any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	September 18, 2012
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code
Premises (Section 3.1):	Plaza Parcel, including the Final Plaza Improvements and any Future Tenant Improvements, but excluding the City Facilities and Third Party Utilities, if any
Term (Section 4.2):	Commencing on the Delivery Date and terminating on the seventy-fifth (75 th) anniversary of the Delivery Date
Rent (Section 3.1):	Tenant's costs to perform its obligations under this Lease, including all Reimbursement Amounts owed by Tenant to City
Final Plaza Improvements (Article 5):	City and Tenant to collaborate on initial design pursuant to Section 5.2(a) and City to construct the Final Plaza Improvements on the satisfaction of the Construction Conditions, as more particularly described in Section 5.3(a)
Use (Section 7.1):	Management and maintenance of a public plaza, as more particularly described in Section 7.1
Notice Address of City (Section 24.1):	San Francisco Municipal Transportation Agency Finance & Technology Division - Real Estate Section 1 South Van Ness Avenue, 8 th Floor
San Francisco, CA 94103 Attn: Senior Manager	
with a copy to: City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate/Finance Team	Office of the City Attorney

Key Contact for City:
Telephone No.:

Address for Tenant (**Section 24.1**): Peter Goldstein
Vice Chancellor of Finance and Administration
San Francisco Community College District
33 Gough Street
San Francisco, CA 94103

Director of Facilities Planning & Construction
San Francisco Community College District
33 Gough Street
San Francisco, CA 94103

Key Contact for Tenant:
Telephone No.:

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions made to any Improvements or to the Premises by or on behalf of Tenant, but shall not include the Final Plaza Improvements.

"**Approved Legal Description**" has the meaning given in **Section 3.2**.

"**Approved Title Conditions**" has the meaning given in **Section 5.4**.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article I**.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, SFMTA, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"**City Facilities**" means any and all subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, the SFPUC Pipelines and any other water lines and sewer lines, and any existing and future surface improvements and facilities in, under, or about the Premises and used by SFMTA to support its bus operations on the City Property.

"**City Reserved Rights**" has the meaning given in **Section 3.3**.

"**Conditions of Title**" shall mean any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises or any portion thereof.

"**Construction Approval Date**" has the meaning given in **Section 5.3(a)**.

"**Construction Conditions**" has the meaning given in **Section 5.3(a)**.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Delivery Date**" has the meaning given in **Section 5.4**.

"**Delivery Date Notice**" has the meaning given in **Section 5.4**.

"**Design Requirements**" has the meaning given in **Section 5.1**.

"**Director of Transportation**" means the Director of Transportation of SFMTA or any equivalent position created by SFMTA to replace the Director of Transportation.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.1**.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 17.1**.

"**Expiration Date**" means the seventy-fifth (75th) anniversary of the Delivery Date.

"**Final Design**" has the meaning given in **Section 5.2(a)**.

"**Final Plaza Improvements**" has the meaning given in **Section 5.2(a)**.

"**Future Access Right**" has the meaning given in **Section 3.3(h)**.

"**Future Tenant Improvements**" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant or any Tenant permittee pursuant to **Section 8.1** of this Lease, without limitation, any signs, walks, fences, walls, stairs, poles, plantings and landscaping.

"**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements, or are naturally occurring substances on, in or about the

Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against either City (including SFMTA) and its Agents or Tenant and its Agents, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"Housing Parcel Access Right" has the meaning given in **Section 3.3(g)**.

"Improvements" means the Final Plaza Improvements and any Future Tenant Improvements.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" means the clients, customers, invitees, guests, members, licensees, permittees, assignees and sublessees of Tenant and any party that enters the Premises, but excluding any of City's Agents, licensees or assignees.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Notice of Default" has the meaning given in **Section 17.1**.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Outside Design Date" shall be August 31, 2013.

"Outside Delivery Date" has the meaning given in **Section 5.4**.

"Party" means City or Tenant; **"Parties"** means both City and Tenant.

"Permitted Uses" has the meaning given in **Section 7.1**.

"**Pipeline Activities**" has the meaning given in **Section 3.3(b)**.

"**Pipeline MOU**" means a Memorandum of Understanding between SFMTA and SFPUC, dated as of February 13, 2007, a copy of which is attached here to as Exhibit D.

"**Plaza Costs**" has the meaning given in Recital F of this Lease.

"**Premises**" has the meaning given in **Section 3.1**. The Premises shall include the Improvements. Notwithstanding anything to the contrary in this Lease, the Premises shall not include the City Facilities, any Third Party Utilities, or any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Reimbursement Amount**" shall be any payment to be paid by Tenant to City pursuant to **Section 6.1, Section 9.5, Article 11, Section 17.2(a), Section 19.3**, or as otherwise expressly set forth in this Lease.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any Improvements, or in, on, under or about the Premises, or any City Facilities or Third Party Utilities, or any portion thereof.

"**Relocation Costs**" has the meaning given in Recital D of this Lease.

"**Remediation**" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises, the Improvements, or City Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**Scheduled Delivery Date**" has the meaning given in **Section 5.3(b)**.

"**SFMTA**" means the San Francisco Municipal Transportation Agency.

"**SFPUC**" means the San Francisco Public Utilities Commission.

"**SFPUC Pipelines**" has the meaning given in **Section 5.3(b)**.

"**Sublease**" has the meaning given in **Section 16.1**.

"**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Tenant**" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"**Tenant Indemnified Parties**" means Tenant, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of

them.

"**Tenant's Personal Property**" means the personal property of Tenant (including equipment) at the Premises, as further described in **Section 8.3**.

"**Term**" means the term of this Lease as determined under **Section 4.2**.

"**Third Party Utilities**" shall mean any and all utility improvements located in, under, on or about the Premises and owned by any party other than City or Tenant.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 16**.

"**Unmatured Event of Default**" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES; CITY RESERVED RIGHTS

3.1. Leased Premises; Rent. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City the Plaza Parcel, a legal description for which shall be prepared pursuant to **Section 3.2**, together with the Final Plaza Improvements (the "**Premises**"). Tenant shall not be obligated to pay any monthly rent for its use of the Premises pursuant to this Lease to City, provided, however, that Tenant's costs to perform its obligations under this Lease and to deliver any Reimbursement Amounts to City shall be deemed to be "Rent" for purposes of California Civil Code Sections 1951.2 and 1951.4.

3.2. Approved Legal Description. City shall deliver a proposed legal description for the Premises to Tenant on or before February 1, 2013. Tenant shall provide City with its written approval of, or comments to, the proposed legal description within thirty (30) days of receiving the proposed legal description, which approval shall not be unreasonably withheld or conditioned. If the Parties do not mutually agree to the proposed legal description for the Premises on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. If the Parties mutually approve of the legal description for the Premises, such legal description shall be the "**Approved Legal Description**" and the Parties shall execute an amendment to this Lease that attaches the Approved Legal Description as an exhibit thereto.

3.3 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times (collectively, the "**City Reserved Rights**"):

(a) SFMTA shall have the right to access the Premises at all times to the extent necessary to perform any work reasonably necessary to maintain, repair, replace, or operate the Relocated Bus Loop (if any). SFMTA shall provide Tenant with at least thirty (30) days' prior notice of SFMTA's intent to access the Premises for such purposes, provided, however, that no such prior notice shall be required in the event of an emergency.

(b) A portion of the Premises is located within the "**Subject Area**" described in the Pipeline MOU. City reserves the right to use the Premises for the pipeline installation, maintenance, repair, and replacement activities described in the Pipeline MOU, and Tenant's use of the Subject Area shall comply with all requirements and restrictions applicable to SFMTA's use of the Subject Area under the Pipeline MOU. Tenant shall not take any action that would interfere with SFMTA's use of the Subject Area under the Pipeline MOU (the "**Pipeline Activities**") or cause SFMTA to be in default of any of its obligations under the Pipeline MOU.

(c) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(d) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(e) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(f) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any of the City Facilities;

(g) If not recorded in the Official Records prior to the Effective Date, the right to grant any right of access for emergency fire apparatus and pedestrians required for the construction and operation of the Mixed Use Project (the "**Housing Parcel Access Rights**") pursuant to agreements substantially in the form attached hereto as Exhibit E, as such agreements may be modified to grant licenses instead of easements, provided that if a Housing Parcel Access Right is granted after the Effective Date, City shall be responsible, at its sole cost, for repairing any damage to Tenant's Personal Property or the Improvements resulting from the grantee's use of such Housing Parcel Access Right and City shall deliver a copy of such Housing Parcel Access Right to Tenant before the Permitted Uses are subject to such Housing Parcel Access Right;

(h) The right to grant future easements, rights of way, permits and/or licenses (each, a "**Future Access Right**") over, across, under, in and upon the Premises (i) that City determines to be in the public interest or otherwise related to determining the physical condition of the Premises or (ii) for the installation, operation, maintenance, repair and removal of (A) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, (B) commercial billboards, signs and/or advertising kiosks, or (C) construction staging materials reasonably necessary for the construction of the Mixed Use Project, provided that any Future Access Right shall not unreasonably interfere with the operation of the Premises as a public plaza and shall be conditioned upon the grantee's assumption of liability to Tenant for any damage to Tenant's Personal Property or the Improvements resulting from the grantee's use of such Future Access Right, and City shall deliver a copy of the written document evidencing such Future Access Right to Tenant before the Permitted Uses are subject to such Future Access Right;

(i) All rights of access provided for in **Article 20** below.

3.4. Exercise of City Reserved Rights. Any party exercising the City Reserved Rights shall not take any action that would cause Tenant to be in default of any of its obligations under this Lease. Except for any actions arising from the Pipeline Activities, City shall exercise the City Reserved Rights in a manner that reasonably minimizes any interference with Tenant's rights and obligations under this Lease. At all times during the Term of this Lease when exercising a City Reserved Right, except for any actions arising from the Pipeline Activities, City shall take, and shall cause any of its Agents or invitees exercising a City Reserved Right to take, reasonable care to protect the Premises, the Improvements, and Tenant's Personal Property from any damage, injury, or disturbance directly caused by the exercise of such City Reserved Right.

Any actions arising from the Pipeline Activities that interfere with Tenant's rights and obligations under this Lease shall not constitute an Event of Default, but if such actions damage the Premises or the Improvements, City shall repair such damage or terminate this Lease, at its sole discretion. City shall deliver written notice of its election to repair such damage or to terminate this Lease within thirty (30) days of receiving Tenant's written notice of such damage to the Premises or the Improvements. If City elects to repair such damage, City shall additionally notify Tenant of the timing of City's performance of such repair, and City shall commence such correction during such anticipated period and diligently pursue completion of such correction.

If any actions arising from the Pipeline Activities damage Tenant's Personal Property, City shall repair such damage or compensate Tenant for the then-value of such damaged Tenant's Personal Property.

4. TERM

4.1. Effective Date. This Lease shall become effective on the date (the "**Effective Date**") that the Parties hereto have duly executed and delivered this Lease.

4.2 Term of Lease; Expiration Date. The Premises are leased for a term (the "**Term**") that shall commence on the Delivery Date and shall terminate on the seventy-fifth (75th) anniversary of the Delivery Date (the "**Expiration Date**") unless sooner terminated pursuant to the provisions of this Lease. Any holding over after the Expiration Date without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein.

5. FINAL PLAZA IMPROVEMENTS; DELIVERY OF POSSESSION

5.1. Design Requirements. City and Tenant shall collaborate on the plaza design to be developed at the Premises pursuant to the process set forth in **Section 5.2**. Such design shall incorporate each of the following requirements (collectively, the "**Design Requirements**"): (i) substantially conform to the public plaza described in the Balboa Park Station Area Plan, (ii) incorporate the mitigation measures specified in the Balboa Park Station Area Plan Environmental Impact Report (SCH# 2006072114) prepared by the City's Planning Department and adopted by the City's Planning Commission on December 4, 2008 (the "**Balboa EIR**"), and any additional measures for the Final Plaza Improvements required by the City's Planning Department, (iii) be based on the needs of the Tenant and the neighborhood adjacent to the Undivided Parcel, (iv) accommodate the Relocated Bus Loop, all City Facilities and Third Party Utilities existing at the Premises as of the Outside Design Date, the Easements, and any Future Access Rights existing as of the Effective Date if such existing Future Access Right will remain in effect after the Outside Design Date, (v) comply with the requirements of the Pipeline MOU, (vi) incorporate City's public art requirements applicable for public improvements constructed on City property, and (vii) include signage that the plaza on the Premises is open to the public.

5.2 Approval of Final Design.

(a) **Proposed Design.** City, at its sole cost, shall deliver a proposed plaza concept design to Tenant on or before November 1, 2012. On or before February 15, 2013, City, at its sole cost, shall deliver a proposed 65% construction drawing plaza design (the "**Proposed Design**") to Tenant. The Proposed Design shall be based on the proposed plaza concept design previously delivered by City to Tenant and include a list of the plaza improvements that City plans to construct at the Premises prior to the Delivery Date to effectuate such design (the "**Proposed Improvements**"). Tenant's Director of Facilities Planning and Construction ("**Tenant's Design Reviewer**") shall review the Proposed Design and Proposed Improvements to determine, in good faith, if they conform to the Design Requirements. Tenant shall notify City of the Tenant's Design Reviewer's approval or comments to the Proposed Design and Proposed Improvements within thirty (30) days following City's delivery of the Proposed Design and Proposed Improvements to Tenant.

If Tenant's Design Reviewer believes the Proposed Design or the Proposed Improvements do not conform to the Design Requirements, City, at Tenant's request, shall meet with Tenant to discuss such comments. City shall not unreasonably reject or delay its review of any request by Tenant for modifications to the Proposed Design or Proposed Improvements that Tenant reasonably believes are required to conform to the Design Requirements. Each Party shall bear its own costs in reviewing the Proposed Design and Proposed Improvements and meeting to discuss either Party's comments thereto.

If the Parties do not mutually agree to the Proposed Design and Proposed Improvements on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any Proposed Design and Proposed Improvements prepared by City and approved in writing by Tenant pursuant to this Section shall be the "**Final Design**" and the "**Final Plaza Improvements**" and the Parties shall execute an amendment to this Lease that attaches the Final Design and Final Plaza Improvements as exhibits thereto.

City, at City's sole cost, shall have the right to modify the Final Design and the Final Plaza Improvements if such modifications are required by City's Planning Department for consistency with the EIR or the City's General Plan, if City determines that such unmodified Final Design and the Final Plaza Improvements would create (or create) a safety hazard at, or materially impact, the use or operation of the Relocated Bus Loop, or if such modification is required to accommodate any of the City Reserved Rights. College shall have no obligation to modify the Final Design or the Final Plaza Improvements if such modification is required for the matters in the foregoing sentence unless College is otherwise responsible for such modification pursuant to **Section 9.5**. If City modifies the Final Design or the Final Plaza Improvements at any time, City shall provide Tenant no less than thirty (30) days to review and comment on such modifications, and the Parties shall execute an amendment to this Lease that attaches such modified Final Design or the Final Plaza Improvements as an exhibit thereto. City shall bear the costs to relocate the Improvements existing at the Premises at such time and to construct any new Improvements required under any such modified Final Design or modified Final Plaza Improvements.

(b) **Plaza Approval Conditions.** The "**Plaza Approval Conditions**" are as follows:

(i) SFMTA shall have received sufficient confirmation that SFMTA will not be required to transfer of all or any portion of the Agency Purchase Proceeds to another entity or to use of all or any portion of the Agency Purchase Proceeds for any particular purpose pursuant to AB 26, as amended by AB1484 and as may be further amended by the Outside Date, and SFMTA shall have obtained sufficient funding to fully pay for the remainder of the Relocation Costs (including the Plaza Costs).

(ii) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Final Design pursuant to **Section 5.2**.

(iii) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Management Plan pursuant to **Section 7.3**.

(iv) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Maintenance Plan pursuant to **Section 9.1**.

If any Plaza Approval Condition is not timely satisfied, this Lease shall automatically terminate on the Outside Design Date.

5.3 Plaza Construction.

(a) **Construction Conditions.** The "**Construction Approval Date**" shall be the date, if any, on which each of the following conditions (collectively, the "**Construction**

Conditions") are fully satisfied:

- (i) Each of the Plaza Approval Conditions shall have been timely satisfied;
- (ii) All environmental review, if any, necessary for the removal of the Existing Bus Loop, the construction of the Relocated Bus Loop, and the construction of the Final Plaza Improvements shall have been completed, and City's Planning Department shall have either confirmed that the Final Design is consistent with the EIR and City's General Plan or the Final Design shall have been modified to be consistent with the EIR and City's General Plan; and
- (iii) The construction of the Mixed Use Project shall be substantially completed.

(b) **Final Plaza Work Period.** If each of the Construction Conditions is fully satisfied, then prior to the eighteen (18) month anniversary of the Construction Approval Date (the "**Scheduled Delivery Date**"), City shall perform the following activities (the "**Final Plaza Work**") at City's sole cost: (i) remove, at City's sole cost, any and all improvements, fixtures, furnishings, equipment or other personal property from the Premises, excluding the pipelines and related equipment and facilities described in the Pipeline MOU (the "**SFPUC Pipelines**"), (ii) perform the soil remediation work on the Premises described in the attached Exhibit F (the "**City Remediation Work**"), and (iii) construct the Final Plaza Improvements in substantial conformance with the Final Design. Notwithstanding anything to the contrary in the foregoing, if the Construction Approval Date does not occur on or before July 1, 2014, and City reasonably determines that such later Construction Approval Date would prevent the timely completion of the Final Plaza Work on or before the Outside Delivery Date, City shall have the right to terminate this Lease by delivering written notice of such termination to Tenant on or before December 31, 2014.

(c) **Performance of Final Plaza Work.** The Final Plaza Work shall be performed (i) by duly licensed and bonded contractors or mechanics, (ii) in a good and professional manner, and (iii) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances). City, at its sole expense, shall procure all regulatory permits and approvals required for the Final Plaza Work and the City Remediation Work, including any required for the disposal of any contaminated soil removed as part of the City Remediation Work, and shall promptly upon receipt deliver copies of any such permits and approvals to Tenant within thirty (30) days following Tenant's request therefor. No material change from the Final Design may be made without Tenant's prior written consent. Tenant and its Agents shall have the right to inspect the course of the construction of the Final Plaza Improvements at all times, provided such inspection is conducted in a manner that does not interfere with such construction activities.

If Tenant reasonably determines that the Final Plaza Work or the City Remediation Work does not comply with applicable Laws or the required regulatory permits and approvals therefor, or that the Final Plaza Improvements are not in keeping with the Final Design, Tenant shall deliver written notice of such determination to City and City shall attempt in good faith to correct any such deficiency within thirty (30) calendar days after receiving such notice. If the deficiency is not reasonably susceptible to correction within the thirty (30) day period, City shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of receiving the original notice from Tenant and diligently pursue completion of such correction. City's proposal shall be subject to approval by Tenant, which shall not be unreasonably withheld, conditioned or delayed.

5.4. Delivery Date; Delivery of Possession. City shall deliver written notice of its completion of the Final Plaza Work to Tenant (the "**Delivery Date Notice**"), which shall be accompanied with a complete set of final as-built plans and specifications for the Final Plaza Improvements. The "**Delivery Date**" shall be the thirtieth (30th) day immediately following Tenant's receipt of the Delivery Date Notice. City shall deliver, at its sole cost, possession of the

Premises to Tenant on the Delivery Date with all Final Plaza Work completed and free and clear of possession and rights of possession by any other parties, subject to (i) the City Reserved Rights and (ii) all liens, encumbrances, covenants, and easements existing as of the Effective Date and all liens, encumbrances, covenants, and easements arising between the Effective Date and the Delivery Date that results from the acts of Tenant or its Agents, does not materially increase Tenant's costs or liabilities in performing its obligations under this Lease, is otherwise approved by Tenant in writing, or is a Future Access Right (collectively, the "**Approved Title Conditions**").

If the Delivery Date does not occur on or before the Scheduled Delivery Date, City shall not be liable to Tenant for any Losses resulting therefrom, nor, provided the Delivery Date occurs on or before December 1, 2016 (the "**Outside Delivery Date**"), shall the validity of this Lease be affected. Tenant waives all provisions of any Laws to the contrary, and the Term shall not commence until City delivers possession of the Premises in compliance with the conditions set forth in this Section. If the Delivery Date occurs after the Scheduled Delivery Date but on or before Outside Delivery Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease. If the Delivery Date does not occur on or before the Outside Delivery Date, this Lease shall automatically terminate as of the Outside Delivery Date.

5.5. As Is Condition of Premises. Tenant shall conduct a thorough and diligent inspection and investigation prior to the Delivery Date, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use on the Delivery Date and City's performance of its obligations under **Section 5.4**. If, after receiving the Delivery Date Notice, Tenant determines that City has not performed its obligations under **Section 5.4**, Tenant shall notify City in writing and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to correct such deficiency or City's good faith disagreement with such Tenant determination.

Tenant's acceptance of possession of the Premises on the Delivery Date shall be deemed to be Tenant's acceptance of the Premises in the condition in which they are in as of the Delivery Date, subject to (a) City's agreement, in its sole and absolute discretion, to modify the Final Plaza Improvements pursuant to **Section 3.3**, **Section 5.1**, **Section 5.2**, or **Section 7.2** (the "**Future Modifications**"), and (b) City's obligations under **Section 9.3**. Tenant acknowledges and agrees that City shall have the right, in its sole and absolute discretion, to elect to terminate this Lease in lieu of performing any of the Future Modifications, and Tenant shall have no right to cause the City to perform any of the Future Modifications.

6. INSURANCE, TAXES, ASSESSMENTS, EXPENSES AND REIMBURSEMENT AMOUNTS

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Tenant shall not be responsible for any leases, taxes or assessments for the Premises that are applicable to any periods prior to the Delivery Date. To the extent applicable, Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises (including those assessed under the Ingleside-Ocean Avenue Community Benefit District), any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements on or after the Delivery Date. Notwithstanding anything to the contrary in the foregoing, Tenant shall not be responsible for any taxes, assessments, fees or charges levied on or assessed against the Premises with respect to any of the City Reserved Rights. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing

authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) No Liens; Contest Requirement. Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the City Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses. Subject to City's obligations under **Section 9.3**, Tenant shall be responsible for any and all other charges, costs and expenses related to the performance of its obligations under this Lease or its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for the operation of the Premises as a public plaza.

6.3. Evidence of Payment. Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

6.4 Interest on Late Reimbursement Amounts. If Tenant fails to timely deliver any Reimbursement Amounts to City within thirty (30) days of receiving written request therefor, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

7. USE AND MANAGEMENT

7.1. Tenant's Permitted Uses. Tenant acknowledges that Premises shall remain open for public use subject to the rules and regulations established in the Management Plan, and Tenant shall operate and manage the Premises in compliance with the Management Plan. As of the Delivery Date, Tenant shall operate the Premises and Improvements under the Management Plan as a public plaza that allows for informal daily use and scheduled special events that comply with all City laws and regulations for such events on City property, including farmers' markets and festivals, and for performing its obligations under this Lease (collectively the "**Permitted Uses**"), and for no other use or purpose. The Permitted Uses shall comply with the terms and conditions of this Lease and shall include the following uses:

(a) Pedestrian Right of Way. A safe and inviting connection for people walking between the areas abutting the Premises (e.g., the Ocean Campus of City College, the Relocated Bus Loop, existing and future light rail facilities, the Mixed Use Project and the future and existing retail buildings and housing in the general area).

(b) **Public/Community Uses.** Social, entertainment, and other community uses that may be proposed by the City, Tenant, or the public (i.e., farmer's markets, special events, entertainment activities), passive seating and resting areas, including benches, tables and chairs, and outdoor seating for any restaurant or cafe in the Mixed Use Project, provided the operator of such restaurant or cafe obtains the permits delineated in the Management Plan for such use).

(c) **Vending/Retail Uses.** Mobile, non-permanent vending/retail uses proposed by the City, Tenant, or the public (i.e., food or other push cart or kiosk vendors), including regular farmers' markets, provided such uses comply with all City laws and regulations for the performance of such activities on City property.

(d) **Tenant Uses.** Social, entertainment, and other uses that may be proposed by the Tenant (e.g., temporary tables providing information about student clubs and other activities at the Ocean Campus of City College) and are conducted in compliance with the Management Plan.

7.2 Use Modifications by City. City shall have the right to modify the Permitted Uses if it determines that such uses create a safety hazard at, or materially impacts operations of, the Relocated Bus Loop or interferes with SFPUC's rights, or conflict with SFMTA's obligations, under the Pipeline MOU. Tenant shall not be responsible for any additional expenses arising from any installation of new Improvements or modifications of existing Improvements to provide for such modifications.

7.3. Management Plan. On or before March 15, 2013, Tenant, at its sole cost, shall deliver to City a proposed management plan for the Premises that incorporates each of the following requirements (collectively, the "**Management Requirements**"): (i) creates a reasonable process for receiving and reviewing applications for proposed activities and uses of the Premises, which shall not be discriminatory or unduly cumbersome, prohibitive, or excessive, (ii) establishes reasonable fees for use of the Premises, which shall not be excessive or unreasonable and shall be only used to offset Tenant's management and maintenance costs under this Lease, (iii) requires each permittee, at its sole cost, to acquire all permits required by City, acting in its regulatory capacity, for such permittee's proposed use, (iv) requires each permittee to carry insurance of a type and amount reasonably required by the City and Tenant for such proposed use and to name City and Tenant as additional insureds on such insurance; (v) minimizes early morning programming before 8:00 am (except as needed at earlier times for farmers' markets) and late evening programming after 9:00 pm, and requires all activities at the Premises to use reasonable efforts to comply with any City noise laws, ordinances or regulations; (vi) ensures litter control; (vii) prohibits uses that generate noxious or hazardous odors; and (viii) provides for reasonable security measures that a public entity would reasonably take to secure a public space of similar size and uses, including additional security measures for any permitted uses as necessary and appropriate.

City shall review the proposed management plan timely delivered by Tenant to determine, in good faith, if the proposed management plan conforms to the Management Requirements. City shall notify Tenant of its approval or comments to a proposed management plan within thirty (30) days following Tenant's delivery of such proposed management plan to City. If City believes the proposed management plan does not conform to the Management Requirements, Tenant, at City's request, shall meet with City to discuss such comments. Tenant shall not unreasonably reject or delay its review of any request by City for modifications to any proposed management plan that City reasonably believes are required to conform to the Management Requirements. Each Party shall bear its own costs in reviewing Tenant's proposed management plan and meeting to discuss any comments to any proposed management plan.

If the Parties do not mutually agree to the proposed management plan on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any proposed management plan proposed by Tenant and approved in writing by City pursuant to this Section shall be the "**Management Plan**", and Parties shall enter into an amendment to this

Lease that attaches the Management Plan as an exhibit thereto.

7.4 Management of Premises. Commencing on the Delivery Date, Tenant shall cause the Premises to be managed at its sole cost and in conformance with the Management Plan. If there is a conflict between the provisions of the Management Plan and the provisions of this Lease, the provisions of this Lease shall control. If Tenant desires to engage in any use that is not a Permitted Use or to materially change the manner in which Tenant manages a Permitted Use from the manner described for such Permitted Use in the Management Plan, Tenant shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the Director of Transportation, which may be withheld in his or her sole discretion.

If City reasonably determines that the operations or services provided at the Premises or the coordination of daily use and special events at the Premises are not in keeping with the Management Plan or are inconsistent with the Management Requirements, City shall deliver written notice of such determination to Tenant and Tenant shall respond within ten (10) business days of receiving such notice of its agreement to correct such deficiency or its good faith disagreement with such City determination. If the deficiency is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than ten (10) business days after the date of receiving the original notice from City, and shall diligently pursue such cure to completion. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion. If the deficiency is not corrected by the end of the ten (10) business day period, or if City has not accepted Tenant's plan for cure by such date or Tenant fails to diligently pursue a cure to completion, City shall have the right to deliver a Notice of Default regarding such matter to Tenant.

7.5. Days and Hours of Operation. Tenant shall use reasonable and diligent efforts to operate the Premises pursuant to the Management Plan and to further the operations thereof and to serve the surrounding community (including the Ocean Campus of City College, the Mixed Use Project and the surrounding commercial and residential areas) and the public at large. The Premises shall be open for public use daily from generally 8:00 am and sunset (or any earlier times required by any applicable Laws); provided that the Premises shall remain open for pedestrian ingress and egress purposes at all times. The schedule is approved by City and may not be altered in any manner without prior written approval from the Director of Transportation, which may be withheld in his or her sole discretion.

7.6. Rates and Charges. There shall be no admission charge for the daily informal use and special events at the Premises except as otherwise set forth in the Management Plan and described in **Section 7.3(ii)**.

7.7. Covenants Regarding Use. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder as soon as reasonably practicable.

(b) Covenant Against Waste. Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) Covenant to Protect Premises, City Facilities and Third Party Utilities. At all times during the Term of this Lease, Tenant shall take reasonable efforts to protect the Premises, the City Facilities, if any, and the Third Party Utilities, if any, from any damage, injury or

disturbance directly caused by Tenant, its Agents or any Invitees.

(d) Covenant Against Dumping; Waste Disposal. Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Tenant shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) Covenant to Protect Trees or Other Native Vegetation. Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the Director of Transportation, which may be withheld in his or her sole discretion.

(f) No Tree Planting. Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises without the prior written approval of the Director of Transportation, which may be withheld in his or her sole discretion.

(g) Covenant Against Hunting. Tenant shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the Director of Transportation in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(h) Pesticides Prohibition. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to SFMTA an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance.

(i) Weed Control. Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Section 7.2(h)**.

(j) Covenant Against Burning. Tenant shall not burn any weeds, debris or other substances on or about the Premises.

(k) Sewerage System. Tenant shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the Director of Transportation and the SFPUC, all sewerage system components installed as part of the Final Plaza Improvements and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewerage system.

(l) Soil Erosion. Tenant shall not cause any material erosion of soil on or around the

Premises. Tenant shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Tenant engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the Director of Transportation, which may be withheld in his or her sole discretion.

(m) Operating Covenants. Tenant shall use reasonable and diligent efforts to facilitate the Permitted Uses and to operate the Premises in compliance with the Management Plan, the Maintenance Plan and this Lease. Tenant shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Tenant shall use and operate the Premises in a first class and professional manner.

(n) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City departments including 75% landfill diversion by 2010 and maximum participation in the City's municipal composting program at all City properties where there is food service. In addition, City has recently passed the Food Service Waste Reduction Ordinance (see **Section 24.42**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Tenant shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Tenant shall submit a recycling and composting plan prior to the Delivery Date, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

(o) Americans with Disabilities Act. Tenant acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 12** below, and subject to City's obligations under **Section 9.3**, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. Notwithstanding anything to the contrary in the foregoing, Tenant shall have no obligation to make any mandated physical changes to the Premises resulting from the ADA or any other disability access laws or regulations.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements. Tenant shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises without the prior written consent of the Director of Transportation in each instance, which the Director of Transportation may give or withhold in his or her sole and absolute discretion. Any Improvement or Alteration that Tenant wishes to install, place, make or permit with the prior written consent of the Director of Transportation shall be a "**Future Tenant Improvement**". Subject to the Director of Transportation's consent as provided above, each Future Tenant Improvement shall be done at Tenant's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the Director of Transportation in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the Director of Transportation, (iii) in

a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the Director of Transportation or SFMTA may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any Future Tenant Improvement impair the use or operation of the Final Plaza Improvements or the City Facilities (if any), or any portion thereof, or the City's access thereto. Prior to the commencement of any work on the Premises to construct any Future Tenant Improvement, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Future Tenant Improvement, Tenant shall furnish City with a complete set of final as-built plans and specifications. If the cost of any Future Tenant Improvement exceeds Five Thousand Dollars (\$5,000), Tenant shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work to offset City's costs in reviewing such matter. Tenant shall require from each contractor and subcontractor performing any Future Tenant Improvement work on or about the Premises to carry a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2.**

8.2. Ownership of Improvements. Any Future Tenant Improvement constructed on or affixed to the Premises by or on behalf of Tenant above shall be and remain Tenant's property during the Term. Upon the Expiration Date or any earlier termination hereof, Tenant shall, upon City's request, remove all such Future Tenant Improvements from the Premises in accordance with the provisions of **Section 22.1**, unless City, at its sole option and without limiting any of the provisions of **Section 8.1**, specifies that such Future Tenant Improvement may remain on the Premises following the expiration or termination of this Lease at the time of City's approval thereof.

8.3. Tenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Tenant or at Tenant's request that can be removed without structural or other material damage to the Premises (all of which are herein called "**Tenant's Personal Property**") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1**.

9. REPAIRS AND MAINTENANCE

9.1. Maintenance Plan. On or before March 15, 2013, Tenant, at its sole cost, shall deliver to City a proposed maintenance plan for the Premises that incorporates each of the following requirements (collectively, the "**Maintenance Requirements**"): (i) the plan should be comprehensive and designed to ensure that the Premises and the Improvements, including any landscaping, are maintained in a safe, secure, sanitary, and aesthetically pleasing condition; (ii) the plan shall have reasonable provisions to address the provision of utilities, litter collection, garbage and recycling services, the removal of graffiti, the ordinary maintenance, repair and replacement of the Improvements (including painting, repairs, renovations, and replacing light bulbs and worn materials), and maintenance of the landscape (including the use of trees, shrubs, plants and grasses that are generally adaptable to San Francisco's climatic zone and the provision of adequate irrigation); and (iii) if the Final Design includes public restrooms, the plan shall have reasonable provisions to address the ordinary maintenance, repair and replacement of such restrooms.

City shall review any proposed maintenance plan timely delivered by Tenant to determine, in good faith, if the proposed plan conforms to the Maintenance Requirements. City shall notify Tenant of its approval or comments to a proposed maintenance plan within thirty (30) days following Tenant's delivery of such proposed maintenance plan to City. If City believes the

proposed maintenance plan does not conform to the Maintenance Requirements, Tenant, at City's request, shall meet with City to discuss such comments. Tenant shall not unreasonably reject or delay its review of any request by City for modifications to any proposed maintenance plan that City reasonably believes are required to conform to the Maintenance Requirements. Each Party shall bear all of its costs to review Tenant's proposed maintenance plan and meet to discuss any comments to such proposed maintenance plan.

If the Parties do not mutually agree to the proposed maintenance plan on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any proposed maintenance plan approved in writing by City pursuant to this Section shall be the "**Maintenance Plan**", and Parties shall enter into an amendment to this Lease that attaches the Maintenance Plan as an exhibit thereto.

9.2 Tenant Responsible for Maintenance. On and after the Delivery Date, Tenant shall cause the Premises to be maintained at its sole cost and pursuant to the Maintenance Plan. If there is a conflict between the provisions of the Maintenance Plan and the provisions of this Lease, the provisions of this Lease shall control. If Tenant desires to materially change the manner in which Tenant conducts its maintenance obligations from the manner described in the Maintenance Plan, Tenant shall request such modification in writing, and such modification shall be subject to the approval of the Director of Transportation, which may be withheld in his or her sole discretion.

If City determines that Premises are not being maintained in conformance with the Maintenance Plan, City shall deliver written notice of such determination to Tenant and, within ten (10) business days of receiving such notice, Tenant shall deliver written notice to City of its agreement to correct such deficiency or Tenant's good faith disagreement with such City determination. If the deficiency is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than ten (10) business days after the date of receiving the original notice from City. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion. If the deficiency is not corrected by the end of the ten (10) business day period, or if City has not accepted Tenant's plan for cure by such date or Tenant fails to diligently pursue a cure to completion, City shall have the right to deliver a Notice of Default regarding such matter to Tenant.

9.3 City's Maintenance and Repair Obligations. Following the Delivery Date, City shall not under any circumstances be responsible for the repair or maintenance of the Premises or the repair, modification or replacement of any of the Final Plaza Improvements except to the extent such needed repair or replacement directly results from any of the following: (a) City's material default of any of its obligations under this Lease (a "**City Default Condition**"), (b) any physical condition or Approved Title Condition (a "**Pre-Existing Condition**"), (c) the requirements of any applicable law or regulation (a "**Legal Condition**"), or (d) the gross negligence or willful misconduct of City or any of its Agents (a "**City Misconduct Condition**"). City shall not under any circumstances be responsible for the repair, modification or replacement of any of Future Tenant Improvements unless such needed repair, modification or replacement is required as a result of a City Default Condition or a City Misconduct Condition.

If Tenant discovers any material defect in any of the Final Plaza Improvements at any time during the ten (10) year period immediately following the Delivery Date, or any repair, modification or replacement of any Final Plaza Improvements is required as a result of a City Default Condition or a City Misconduct Condition, or any repair, modification or replacement of any Future Tenant Improvement is required as a result of a City Misconduct Condition, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to correct such deficiency within thirty (30) calendar days of delivering such notice, if the deficiency is reasonably susceptible to correction within such thirty (30) day period, or City's good faith disagreement with such Tenant determination. If City elects to cure such deficiency, but it is not reasonably

susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing and City shall commence such correction during such thirty (30) day period and diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of a Pre-Existing Condition or a Legal Condition (an "**Optional City Repair**"), Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its election, in its sole and absolute discretion, to make such Optional City Repair at its sole cost or to terminate this Lease, or City's good faith disagreement with such Tenant determination. If City elects to make any Optional City Repair, City shall additionally notify Tenant of the timing of City's performance of such Optional City Repair, and City shall commence such correction during such anticipated period and diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of any event of default by Agency or any of its officers, directors, board members, employees, agents, consultants, contractors, subcontractors, tenants, subtenants, invitees, or guests under the Housing Parcel Easement, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to cause Agency to correct such deficiency or City's good faith disagreement with such Tenant determination. If City agrees to cause Agency to correct such deficiency, but such deficiency is not reasonably susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing and City shall cause Agency to commence such correction during such thirty (30) day period and to diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of any event of default by any Future Access Right holder under the documenting granting such Future Access Right, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written response to Tenant of its agreement to cause such holder to correct such deficiency or City's good faith disagreement with such Tenant determination. If City agrees to cause the Future Access Right holder to correct such deficiency, but such deficiency is not reasonably susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing and City shall cause such holder to commence such correction during such thirty (30) day period and to diligently pursue completion of such correction.

9.4. No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to perform City's obligations under **Section 9.3** or to keep any adjoining property owned by City (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of such matter. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent. If City fails to perform its obligations under **Section 9.3** or to keep any City property adjoining the Premises (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, and such failure reasonably prevents Tenant from performing its management or maintenance obligations under this Lease, Tenant shall be excused from performing such obligations (to the extent such performance is prevented by City's failure) until such failure is cured.

9.5 Repair of Damage by Tenant. Tenant shall be responsible for the repair of any damage to the Premises or the Final Plaza Improvements to the extent resulting from any of the following

(each, a "**Tenant Repair Obligation**"): (a) normal wear and tear, (b) Tenant's material default of any of its obligations under this Lease, (c) casualty (subject to the limitations specified in **Article 14**), (d) the act of Tenant or any of Tenant's Agents or Invitees (subject to the limitations specified in **Article 14**), or (e) the act of any other party other than City or any of its Agents (subject to the limitations specified in **Article 14**), unless City is otherwise responsible for such repair as described in **Section 9.3**, Agency is otherwise responsible for such repair pursuant to the Housing Parcel Access Rights, or a Future Access Right holder is responsible for such repair pursuant to the document granting such Future Access Right. Tenant shall perform the necessary repair or correction required for a Tenant Repair Obligation at its sole cost and expense.

If a Tenant Repair Obligation arises, but it is not material and does not affect the SFPUC Pipelines or the Relocated Bus Loop (a "**Nonmaterial Event of Damage**"), Tenant shall correct such Nonmaterial Event of Damage within ten (10) business days after it occurs; provided that if such matter is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure within such ten (10) business day period and shall diligently commence and pursue completion of such correction. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion, but such approval shall not be unreasonably withheld.

If a Tenant Repair Obligation arises, and it materially damages, injures or disturbs any of the Premises or the City Facilities or any portion thereof (a "**Material Event of Damage**"), Tenant shall immediately notify City of that occurrence. A Material Event of Damage that poses an immediate threat to public health or safety, or damages or threatens to damage the SFPUC Pipelines, or materially interferes with or threatens to interfere with the operation of the Relocated Bus Loop shall be an "**Immediate Threat**". If there is a Material Event of Damage that is not an Immediate Threat, or if there is a Material Event of Damage that is an Immediate Threat but City does not elect to exercise its repair rights under the following paragraph, Tenant shall attempt in good faith to correct such Material Event of Damage within ten (10) business days after providing such notice; provided that if such matter is not reasonably susceptible to correction within such ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure within such ten (10) business day period and shall diligently commence and pursue completion of such correction. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion, but such approval shall not be unreasonably withheld.

Without limiting any of its other rights hereunder, if a Material Event of Damage is an Immediate Threat, City may immediately take all actions it deems proper to repair such Material Event of Damage at Tenant's sole expense following delivery of written notice of such election by City (except in the event of an emergency in which case no notice or cure period is required). Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Future Tenant Improvements or Tenant's Personal Property placed on the Premises as necessary to avoid interference with the City Reserved Right described in **Section 3.3(a)**, **Section 3.3(b)**, **Section 3.3(g)**, or **Section 3.3(h)**; provided, however, that such removal shall be at City's sole cost if the applicable Future Tenant Improvements were approved by City in writing or otherwise permitted pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Tenant's operations hereunder as City may determine are necessary or appropriate to safeguard the City Facilities or are reasonably necessary or appropriate to safeguard any of the City Reserved Rights or City's fee interest in the Premises. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

A Tenant Repair Obligation shall include, without limitation, the responsibility of Tenant to make any substantial or structural repairs and alterations to the Premises (including any Improvements) required for a Tenant Repair Obligation, regardless of, among other factors, the relationship of the cost of curative action to Tenant's financial obligations under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Tenant Repair Obligation involved,

and whether the Tenant Repair Obligation involved is related to Tenant's particular use of the Premises.

10. UTILITIES

10.1. Utilities and Services. The Final Design shall detail any water, gas, electrical and sewerage utility connections that City will make as part of the Final Plaza Improvements. Tenant shall pay for, at Tenant's sole cost, all water, gas, electricity, sewerage services, garbage and recycling material removal and disposal, telephone, facsimile and internet service provided to the Premises, except for the extent that such utilities and services are used by City or any of its Agents or invitees pursuant to the City Reserved Rights. If Tenant desires any upgrades to water, gas, electricity or sewerage services in connection with the operation of the Premises, such upgrades shall be subject to City's prior written consent (which shall not be unreasonably withheld, conditioned or delayed) and shall be made at Tenant's sole cost and expense.

10.2. Interruption of Services. City's obligation to provide utilities for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall be done at City's sole cost and shall not entitle Tenant to any damages, relieve Tenant of the obligation to pay any Reimbursement Amounts or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by City.

10.4. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. If City provides such written approval in writing, such approved antennae or telecommunications dish shall not interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location at the Premises reasonably acceptable to Tenant.

11. LIENS

Tenant shall keep the Premises and the Final Plaza Improvements free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the

obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien provided that City delivers no less than ten (10) business days prior written notice of its intent to cause the release of such lien to Tenant. If City pays any sums or incurs any expenses in connection therewith (including, without limitation, reasonable attorneys' fees) after the expiration of such ten (10) business notice period, City shall deliver written notice thereof to Tenant, together with reasonable documentation of such sums and expenses, and Tenant shall reimburse City for such sums and expenses within ten (10) business days of receiving such written notice. If Tenant does not timely reimburse City, City shall have the right to deliver a Notice of Default describing such matter to Tenant. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and the Final Plaza Improvements from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Tenant shall, at its sole expense, perform its obligations under this Lease, conduct its use and operations at the Premises, and cause the uses and operations at the Premises by its Agents and Invitees to be conducted in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease.

No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Reimbursement Amount or in its costs to perform its obligations under this Lease, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

12.2. Regulatory Approvals.

(a) Responsible Party. Tenant understands and agrees that Tenant's use, management and maintenance of the Premises and the activities of any of Tenant's licensees or permittees at the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the Director of Transportation, which shall not be unreasonably withheld. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties.

(b) City Acting as Owner of Real Property. Tenant understands and agrees that City,

acting by and through SFMTA, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises for Tenant's use, management or maintenance of the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause its use, management or maintenance of the Premises or any Improvements to be in accordance with all applicable Laws, as provided further above.

12.3. Compliance with City's Risk Management Requirements. Except in the event of City performance of any activities required to protect public health or safety or needed with respect to the SFPUC Pipelines or the operation of the Relocated Bus Loop (a "**City Service Situation**"), neither Party shall not do anything, or permit anything to be done, in or about the Premises or any Improvements that would create any unusual fire risk, and shall take commercially reasonable steps to protect the Parties from any potential premises liability. Each Party shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder, provided that City may waive such requirements to the extent necessary to respond to a City Service Situation.

12.4. Reports. Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's management and maintenance of, and the activities conducted at, the Premises, in compliance thereof with this Lease and all applicable Laws. If Tenant prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Tenant shall promptly deliver a copy of such report or document to City.

If, within the sixty (60) day period immediately following the Delivery Date, Tenant delivers a written request to City for documentation regarding City's completion of the City Remediation Work and the compliance of the Final Design and construction of the Final Plaza Improvements in compliance with all applicable Laws, City shall deliver a copy of any written materials received by City with respect to such matters, together with a written summary of how such matters were completed in compliance with all applicable Laws. If City, acting in its proprietary capacity pursuant to this Lease, prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, City shall promptly deliver a copy of such report or document to Tenant.

13. ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time transfer or Encumber its fee estate in any portion of the Premises provided that (i) City retains fee ownership of the Premises, (ii) any such transfer or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (iii) Tenant's right to maintain, manage and operate the Premises shall not be affected or disturbed by any such transfer or Encumbrance, or by the exercise of any rights or remedies by any transferee or Encumbrancer arising out of any instrument reflecting such transfer or encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property owned by City, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 15**, Tenant shall not Encumber this

Lease or Tenant's interest in this Lease or the Premises, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. Except as otherwise set forth in this Section, if the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party (as defined below), and Tenant carries a third-party policy of insurance that complies with the conditions under **Article 19** for such event, Tenant shall deliver written notice of the insurance proceeds that will be available under such insurance policy (the "**Insurance Proceeds**") to repair the damage within five (5) business days of receiving such determination from the insurer providing such insurance policy, which notice shall include Tenant's reasonable determination whether the Insurance Proceeds are sufficient to repair such damage (the "**Insurance Proceeds Notice**"). If the Insurance Proceeds are sufficient to repair the damage, and such damage did not occur during the last fifteen (15) years of the Term, then Tenant shall diligently repair such damage and this Lease shall remain in full force and effect, except that Tenant shall have the right to modify the public use of the Premises to the extent reasonably necessary to make such repair. A "**Private Party**" shall mean any party other than Tenant or any of its Agents, or City or any of its Agents, unless such acting party is the Agency acting in default of its obligations under the Housing Parcel Access Rights, or a Future Access Right Holder acting in default of its obligations under the document granting such Future Access Right.

If the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party, but Tenant self-insures for such event and such damage does not occur during the last fifteen (15) years of the Term, then Tenant shall diligently repair such damage and this Lease shall remain in full force and effect, except that Tenant shall have the right to modify the public use of the Premises to the extent reasonably necessary to make such repair.

If the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party during the last fifteen (15) years of the Term, or if Tenant carries a third-party insurance for casualty or the act of any Private Party or of any of Tenant's Agents or Invitees that complies with the conditions of **Article 19**, but the Insurance Proceeds Notice sets forth Tenant's reasonable determination that the Insurance Proceeds are insufficient to repair the damage caused by such matter and Tenant does not elect to provide, at its sole cost, the additional funds necessary to repair such damage, either Party shall have the right to terminate this Lease by delivering written notice thereof to the other Party within the thirty (30) day period immediately following Tenant's delivery written notice of the Insurance Proceeds Notice. If either Party timely terminates this Lease pursuant to this Section, then at City's election, which shall be made in City's sole discretion and in writing, Tenant shall promptly, at its sole cost, demolish such damaged Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below, to the extent the Insurance Proceeds are sufficient to perform such demolition and removal, or leave such damaged Improvements at the Premises and assign all Insurance Proceeds received or receivable by Tenant with respect to such damage, and this Lease shall terminate as of the date that Tenant removes the damaged Improvement or City receives such Insurance Proceeds.

14.2. No City Obligations. City shall have no obligation to repair the Premises, the Improvements or any of Tenant's Personal Property in the event of any damage or destruction caused by casualty or the act of any Private Party.

14.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. EMINENT DOMAIN

15.1. General. If any Taking of all or any part of the Premises or any interest in this Lease occurs after the Effective Date, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall automatically terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

15.4. Award. Upon termination of this Lease pursuant to an election under **Section 15.3**, then City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3**, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, Tenant shall continue to perform all of the terms, conditions and covenants of this Lease. City shall be entitled to receive any Award in the event of such temporary Taking.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "**Assignment**"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "**Sublease**"); provided, however, that any assignment of management obligations pursuant to **Section 16.4** and the issuance of any permit to third party in compliance with the Management Plan shall not be deemed an "Assignment" or a "Sublease". Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Tenant.

16.2. Effect of Transfer. If City consents to a proposed Sublease or Assignment, no such Sublease or Assignment by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment made without City's prior written consent shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Reimbursement Amount or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

16.3. Indemnity for Relocation Benefits. Without limiting **Section 16.2**, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16.4 Assignment of Management Obligations. Tenant may arrange for a third party to manage the Premises in compliance with the terms and conditions of this Lease subject to the prior written approval of such third party management by the Director of Transportation, which shall not be unreasonably withheld.

17. DEFAULT; REMEDIES

17.1. Events of Default. If either Party determines that the other Party is in default of its obligations under this Lease, such Party shall have the right to deliver written notice of such determination to the other Party (a "**Notice of Default**"). Any of the following shall constitute an event of default ("**Event of Default**") hereunder:

(a) **Failure to Reimburse.** Tenant's failure to deliver a Reimbursement Amount to City as and when due, provided Tenant shall have a period of three (3) days from the date of City's delivery of a Notice of Default describing such failure within which to cure the failure described in such Notice of Default.

(b) **Covenants, Conditions and Representations.** A Party's failure to perform or comply with any other covenant, condition or representation made by such Party under this Lease, provided such Party shall have a period of fifteen (15) days from the date of receiving a Notice of Default describing such failure from the other Party within which to cure such default under this Lease; provided that if such failure is not capable of cure within such fifteen (15) day period,

such Party shall have a reasonable period to complete such cure if such Party promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion, and such Party uses its best efforts to complete such cure within sixty (60) days after the receipt of Notice of Default from the other Party.

(c) Vacation or Abandonment. Any vacation or abandonment of the Premises by Tenant for more than fourteen (14) consecutive days.

(d) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. Remedies.

(a) Default by Tenant. If there is an occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(i) Terminate Lease and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(ii) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Rent due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Rent owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount of Rent for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(a)(ii)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(iii) Appointment of Receiver. The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

(iv) **City's Right to Cure Tenant's Defaults.** If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at any time following the third (3rd) day following City's delivery of a Notice of Default therefor Tenant (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Any City demand for such payment shall be in writing and include reasonable detail and documentation of the sums, costs, damages, expenses or liabilities described in such demand. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

(b) **Default by City.** If there is an occurrence of an Event of Default by City, and such Event of Default reasonably prevents Tenant from performing its management or maintenance obligations under this Lease, Tenant shall be excused from performing such obligations (to the extent such performance is prevented by City's Event of Default) until such Event of Default is cured.

18. INDEMNIFICATION

Tenant shall defend, indemnify, and hold harmless City and its officers, directors, employees, and agents from any and all claims and liabilities related to or as a result of Tenant's performance of its obligations under this Lease, except to the extent caused, in whole or in part, by the gross negligence or willful misconduct of City or its Agents. City shall defend, indemnify, and hold harmless Tenant and its officers, directors, employees, and agents from any and all claims and liabilities related to or as a result of City's performance of its obligations under this Lease, except to the extent caused, in whole or in part, by the gross negligence or willful misconduct of Tenant or its Agents.

Such indemnification obligations shall include any Losses resulting from a Party's default of its obligations under **Article 23**, including any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) and the extent to which such Release migrates onto other property owned by the other Party, and all Hazardous Materials Claims. Such Losses includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property.

19. INSURANCE

19.1. Tenant's Insurance. Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate, combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

(c) All risk property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) of the Final Plaza Improvements and any Future Tenant Improvements, without any reduction in coverage for any act of Tenant's Agents or Invitees that is not a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct.

(d) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

19.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder, and endorsed to provide the following:

(i) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(ii) Provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

19.3. Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Delivery Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

19.4. Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

19.5. No Limitation on Indemnities. Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Article 18** hereof or any of Tenant's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

19.7. Tenant's Personal Property and Alterations and Improvements. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property, Alterations, and Improvements made by or on behalf of Tenant.

19.8. Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise. Tenant shall have the right to self-insure for the general liability risks and workers compensation insurance required under **Section 19.1** and City agrees that Tenant shall not be required to carry any third party insurance for general liability and workers compensation.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, each Party hereby waives any right of recovery against the other Party and against any other Party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other Party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) **General Access.** In addition to the access reserved to City pursuant to **Section 3.3**, City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any of the following purposes:

- (i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);
- (ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.2(a)**;
- (iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

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

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) No Liability. City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

(d) No Abatement. Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

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

20.2. City Facilities and Utility Installations. Without limiting Section 20.1, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the City Facilities, including any of the SFPU Pipelines or any Third Party Utilities. City shall bear the expense of any such activities, unless the need is occasioned by the gross negligence or willful misconduct of Tenant or its Agents or Invitees or any default by Tenant of its obligations under this Lease. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities, and such temporary loss or disruption shall not be deemed to be Tenant's default of its obligations under this Lease.

20.3. Rights of Public. Tenant shall keep the Premises open to the public at all times consistent with the Permitted Uses, subject to the Rules and Regulations, the Management Plan, Section 7.5 or as otherwise approved by the Director of Transportation in writing.

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Delivery Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which any Reimbursement Amounts have been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The Director of

Transportation shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant, and with all Tenant's Personal Property removed therefrom. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Future Tenant Improvements from the Premises requested by City to be removed (except for any Future Tenant Improvements that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Future Tenant Improvement. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, all Losses resulting therefrom shall include, without limitation, all Losses made by a succeeding tenant or licensee at the Premises as a result of Tenant's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises and any Future Tenant Improvements that Tenant is entitled to leave at the Premises under **Section 8.2** or **Section 22.1** shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any Future Tenant Improvements that Tenant is entitled to leave at the Premises under **Section 8.2** or **Section 22.1**.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Article 20**, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

City covenants and agrees that neither City nor any of its Agents or any of its licensees shall

cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements except to the extent reasonably required to maintain, repair, replace, operate or install the SFPUC Pipelines. City shall immediately notify Tenant if and when City learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. Tenant may from time to time request City to provide adequate information for Tenant to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and City shall promptly provide all such information. Without limiting **Article 20**, Tenant and its Agents shall have the right to make noninvasive inspections of the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to City (except in the event of an emergency).

23.2 Remediation. If Tenant or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises and any property owned by City (if such Hazardous Materials migrate from the Premises onto such other City property) to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material that is Released by Tenant. Tenant shall not be responsible for remediating any environmental condition existing at the Premises on the Delivery Date, except to the extent that such condition was released or otherwise exacerbated by Tenant's gross negligence or willful misconduct. Nothing in this Section shall be deemed to release City from its obligations to perform the City Remediation Work pursuant to **Section 5.3(b)**.

If City or any of its Agents or invitees causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, City shall, immediately, at no expense to Tenant, take any and all appropriate actions to return the Premises and any property owned by Tenant (if such Hazardous Materials migrate from the Premises onto such other Tenant property) to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. City shall provide Tenant with written notice of and afford Tenant a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material that is Released by City.

24. GENERAL PROVISIONS

24.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to (a) Tenant at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, (b) City at City's address set forth in the Basic Lease Information, or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 24.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither Party may give official or

binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

24.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent or Reimbursement Amounts during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Transportation shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Transportation provided such amendment or modification does not (i) decrease the amount of rental income payable by Tenant to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

24.4. Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

24.5. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the Director of Transportation acting alone, unless stated to the contrary herein.

24.6. Successors and Assigns. Subject to the provisions of Article 16 relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal

representatives and successors and assigns.

24.7. Brokers. Neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the Party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee. The provisions of this Section shall survive any termination of this Lease.

24.8. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.9. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

24.10. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein. City hereby acknowledges that neither Tenant nor Tenant's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein.

24.11. Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting Party or the Party not prevailing in such dispute; as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24.12. Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.13. Cumulative Remedies. All rights and remedies of either Party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.14. Survival of Indemnities. Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities, waivers and representations and warranties given or made to the other Party under this Lease, nor shall it affect any provision of this Lease that

expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities by Tenant contained in this Lease, Tenant has an immediate and independent obligation to defend City and the City Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. City specifically acknowledges and agrees that, with respect to each of the indemnities by City contained in this Lease, City has an immediate and independent obligation to defend Tenant and the Tenant Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to City by Tenant and continues at all times thereafter.

24.16. Relationship of Parties. Neither Party is, and none of the provisions in this Lease shall be deemed to render a Party, a partner in the other Party's business, or joint venturer or member in any joint enterprise with the other Party. Neither Party shall act as the agent of the other Party in any respect hereunder, and neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

24.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the Parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.18. Recording. Tenant agrees that it shall not record this Lease in the Official Records.

24.19. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of either Party shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by such Party or for any amount which may become due to the other Party, its successors and assigns, or for any obligation of either Party under this Lease or otherwise.

24.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. ~~Tenant shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.~~

24.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. Tenant agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code

Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Tenant or its Subcontractors. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

24.22. Intellectual Property; Music Broadcasting Rights. Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (ASCAP) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

24.23. Supervision of Minors.

(a) **Records Request.** If any person applies for employment or for a volunteer position with Tenant, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) **Restriction on Hires for Recreational Sites.** If Tenant, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "**Recreational Site**"), Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) **Notice Required for Sites Other Than Recreational Sites.** If Tenant, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Tenant shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Tenant shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) **General Requirements.** Tenant shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of

Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

24.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "**Ordinance**"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Tenant or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Tenant hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Tenant's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Tenant recognizes that, if the Ordinance applies to Tenant's operations on the Premises, Tenant must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

24.25. Non-Discrimination in City Contracts and Benefits Ordinance.

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

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

~~(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this~~
Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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

24.26. No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

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

24.28. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City.

24.29. Tropical Hardwood and Virgin Redwood Ban. Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. In the event Tenant fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Tenant acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Tenant from any contract with the City and County of San Francisco.

24.30. Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or

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 *(Please print clearly.)*

Name of contractor: 1100 OCEAN AVENUE LIMITED PARTNERSHIP

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

1) Mercy Housing Calwest, (managing general partner of the 1100 Ocean Avenue Limited Partnership)

President Jane Graf

Vice President –

Valeri Augustino,

Stephen Daues,

Barbara Gualco,

Ed Holder,

Lillian Murphy,

Doug Shoemaker,

Steve Spears,

Ben Phillips

VP/Treasurer

Vince Dodds

Secretary

Amy Bayley

Asst. Secretary

Patricia O'Roark

2) 1) Mercy Housing California, (parent of Mercy Housing Calwest, the managing general partner of the 1100 Ocean Avenue Limited Partnership)

Doug Shoemaker – President

Val Augustino – Vice President (Operations)

Ed Holddler – Vice President (RE Development)

3) Person with ownership of 20% or more

n/a

4) Subcontractor in the contract

1100 Ocean Avenue Limited Partnership

5. Political committee controlled or sponsored

n/a

Bernal Heights Housing Corporation, (sole member of Bernal Housing LLC, the Co-General Partner of 1100 Ocean Avenue Limited Partnership)

1) Board of Directors

President - Carren Shagley

Treasurer – Kimberly Balmediano Radavero

Secretary – Jane Duong

Member – Wendy Phillips

2) CEO - Rachel Eborá	
3) Person with ownership of 20% or more n/a	
4) Subcontractor in the contract 1100 Ocean Avenue Limited Partnership	
5. Political committee controlled or sponsored n/a	
Contractor address: 515 Cortland Avenue SF, CA 94110	
Date that contract was approved:	Amount of contract: \$ 43,065,000
Describe the nature of the contract that was approved: Long Term Ground Lease (99 years) for Development of 100% affordable housing at 1100 Ocean Avenue, which includes housing transition age youth.	
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