

File No. 210187

Committee Item No. 3
Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date March 10, 2021

Board of Supervisors Meeting

Date March 16, 2021

Cmte Board

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

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Amended and Restated Ground Lease</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>General Plan Referral - January 6, 2021</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Linda Wong Date March 5, 2021

Completed by: Linda Wong Date March 12, 2021

1 [Ground Lease - MHDC Mariposa Gardens Associates LP - 2445 Mariposa Street - \$20,000
2 Annual Base Rent]

3 **Resolution approving and authorizing a long term amended and restated ground lease**
4 **with MHDC Mariposa Gardens Associates LP, on City owned land at 2445 Mariposa**
5 **Street, Assessor’s Parcel Block No. 4014, Lot No. 001, for a term of 38 years, to**
6 **commence following approval by the Board of Supervisors, with one 44-year option to**
7 **extend, and with an annual base rent of \$20,000 in order to rehabilitate a 100%**
8 **affordable, 62-unit multifamily rental housing development (plus one staff unit) for low-**
9 **income persons; adopting findings that the amended and restated ground lease is**
10 **consistent with the California Environmental Quality Act, the General Plan, and the**
11 **eight priority policies of Planning Code, Section 101.1; and authorizing the Director of**
12 **Property and Director of the Mayor’s Office of Housing and Community Development to**
13 **execute documents, make certain modifications, and take certain actions in**
14 **furtherance of this Resolution, as defined herein.**

15
16 WHEREAS, In 2004 Mariposa Gardens, a California Limited Partnership (“MG”) and
17 Mariposa Gardens II Affordable Housing, a California Limited Partnership (“MGII”) entered
18 into a Ground Lease for 2445 Mariposa Street, Assessor’s Parcel Block No. 4014, Lot No. 001
19 (the “Land”), dated February 23, 2004, as amended (the “ Ground Lease”) for the
20 development of a 100% affordable, 62-unit multifamily rental housing development (plus one
21 staff unit) for low-income persons (“Project”); and

22 WHEREAS, In 2004, pursuant to the appropriate legal instruments, MG conveyed the
23 Land and assigned the Ground Lease to the Redevelopment Agency of the City and County
24 of San Francisco (the “Agency”); and

25

1 WHEREAS, Under California State Assembly Bill No. 26 (Chapter 5, Statutes of 2011-
2 12, first Extraordinary Session) (“AB 26”), the Agency dissolved as a matter of law on
3 February 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No.
4 1484 (“AB 1484”), and Resolution No. 11-12, adopted by the City’s Board of Supervisors and
5 Mayor on January 26, 2012, Ordinance No. 215-12, adopted by the City’s Board of
6 Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted
7 by City to, and approved by, the State of California Department of Finance pursuant to AB
8 1484 (Cal. Health & Safety Code, Section 34176(a)(2)), the City, acting by and through the
9 Mayor’s Office of Housing and Community Development (“MOHCD”), is successor in interest
10 to the Agency’s rights with respect to the Land and the Ground Lease; and

11 WHEREAS, On May 7, 2020, MGII, assigned to MHDC Mariposa Gardens LLC, a
12 California limited liability company (MHDC MG), and MHDC MG accepted the assignment
13 from MGII of all of MGII’s rights and obligations with respect to the Ground Lease; and

14 WHEREAS, In order to facilitate the refinancing and rehabilitation of the Project,
15 MHDC MG desires to transfer the Ground Lease to a new entity, MHDC Mariposa
16 Gardens Associates LP, a California limited partnership (“Lessee”); and

17 WHEREAS, Upon assignment of the Ground Lease, City and Lessee desire to
18 amend and restate the Ground Lease; and

19 WHEREAS, The amended and restated Ground Lease (the “Amended Lease”)
20 will facilitate financing, rehabilitation, and operation of the Property by Lessee; and

21 WHEREAS, The proposed rent of the Amended Lease is less than Market Rent
22 (as defined in Administrative Code, Section 23.2), but the purpose of the Amended
23 Lease is solely to implement the mission of MOHCD, and the lower rent will serve a
24 public purpose of providing affordable housing for low-income households in need; and

25

1 WHEREAS, MOHCD and the Director of Property have approved the form of the
2 Amended Lease, pursuant to which MOHCD will lease the Property to the Lessee for a
3 Base Rent of \$20,000 per year, in exchange for the Lessee's agreement, among other
4 things, to rehabilitate and operate the Project with rent levels for 19 units affordable to
5 households up to 50% of unadjusted San Francisco Area Median Income ("AMI") and
6 rent levels for 43 units affordable to households up to 60% of AMI; and

7 WHEREAS, A copy of the Amended Lease in substantially final form is on file
8 with the Clerk of the Board of Supervisors in File No. 210187, and is incorporated
9 herein by reference; and

10 WHEREAS, The Amended Lease provides, among other conditions, for a term
11 of 38 years and one 44-year option to extend; and

12 WHEREAS, In a General Plan Referral Letter dated January 6, 2021, the
13 Planning Department has determined that the actions contemplated in this Resolution
14 comply with the California Environmental Quality Act (California Public Resources
15 Code, Sections 21000 et seq.) and are consistent with the eight priority policies of
16 Planning Code, Section 101.1, and such determination is on file with the Clerk of the
17 Board of Supervisors in File No. 210187 and is incorporated herein by reference;
18 now, therefore, be it

19 RESOLVED, That the Board of Supervisors hereby adopts the findings
20 contained in a General Plan Referral Letter and hereby incorporates such findings by
21 reference as though fully set forth in this Resolution; and, be it

22 FURTHER RESOLVED, That in accordance with the recommendations of the
23 Director of Property of the Real Estate Division and the Director of MOHCD, the Board
24 of Supervisors hereby approves the Amended Lease, and authorizes the Director of
25 Property (or designee) and the Director of MOHCD (or designee) to execute and

1 deliver the Amended Lease and any such other documents that are necessary or
2 advisable to complete the transaction contemplated by the Amended Lease, and to
3 effectuate the purpose and intent of this Resolution; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director
5 of MOHCD (or designee), in consultation with the City Attorney, to enter into any
6 additions, amendments or other modifications to the Amended Lease (including in each
7 instance, without limitation, the attachment of exhibits), that the Director of MOHCD
8 determine are in the best interests of the City, do not materially decrease the benefits
9 to the City with respect to the Property, or otherwise materially increase the obligations
10 or liabilities of the City, and are necessary or advisable to complete the transaction
11 contemplated herein, effectuate the purpose and intent of this Resolution, and are in
12 compliance with all applicable laws, including the City's Charter, provided that
13 documents that include amendments from what was previously submitted to the Board
14 shall be provided to the Clerk of the Board, as signed by the parties, together with a
15 marked copy to show any changes, within 30 days of execution for inclusion in the
16 official file; and, be it

17 FURTHER RESOLVED, That all actions taken by any City employee or official
18 with respect to the exercise of the Amended Lease authorized and directed by this
19 Resolution and heretofore taken are hereby ratified, approved and confirmed by this
20 Board of Supervisors.

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

RECOMMENDED:

/s/
Eric D. Shaw, Director,
Mayor's Office of Housing and Community Development

/s/
Andrico Q. Pennick,
Director of Real Estate

File 3 Item 21-0187	Departments: Mayor's Office of Housing and Community Development (MOHCD)
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the amended and restated ground lease between MOHCD and Mariposa Gardens Associates for the City-owned land at 2445 Mariposa Street. The amended ground lease (1) continues the existing 55-year term and adds one 44-year option to extend the lease, totaling 99 years; (2) adopts findings that the amended ground lease is consistent with the California Environment Quality Act (CEQA), General Plan, and eight priority policies of Planning Code Section 101.1; and (3) authorizes the Directors of Real Estate and MOHCD to take actions to implement the proposed resolution. <p>Key Points</p> <ul style="list-style-type: none"> • In 2004, the Board of Supervisors approved the former San Francisco Redevelopment Agency's 55-year ground lease for the purpose of rehabilitating and preserving an affordable housing development located at 2445 Mariposa Street in the Mission neighborhood, known as Mariposa Gardens Apartments. The apartment building includes a total of 62 units (plus one staff unit) eligible for project-based Section 8 vouchers serving low- and very-low-income households. • A refinanced loan obtained by Mariposa Gardens Associates to rehabilitate the site requires the amendment of the existing ground lease to (1) incorporate and amend provisions sought by the lender Freddie Mac related to lender protections; (2) update the rental rate as a result of a new appraisal of the property; and (3) reflect the new limited partnership entity established to rehabilitate the site. The property would operate 19 units with rent levels affordable to households earning up to 50 percent of the unadjusted San Francisco Area Median Income (AMI) and the remaining 43 units at rent levels affordable to households earning up to 60 percent of AMI. • The rehabilitation will cost a total of \$7 million and will include extensive repairs to the exterior and interior. Work is scheduled to begin in mid-May 2021 and take up to 12 months, and tenant relocation is not expected to occur. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • The amended ground lease includes an annual base rent of \$20,000 and an annual residual rent of \$2,870,000 if net operating revenues are sufficient to pay residual rent. Pursuant to MOHCD's ground lease policy, the residual rent and loan repayments shall not exceed two-thirds of the project's surplus cash, with unpaid residual rent accruing unless waived by MOHCD. • The MOHCD expects that the site will not generate sufficient income to pay the new residual rent rate; for this reason, the amended lease terms specify that unpaid residual rent will not accrue. <p>Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease of real property for a period of ten or more years including options to extend, or that has anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

City Administrative Code Section 23.30 states that leases of City-owned property can be for less than market rent if the lease is for a proper public purpose.

BACKGROUND

In 2004, the Board of Supervisors approved the former San Francisco Redevelopment Agency's 55-year ground lease for the purpose of rehabilitating and preserving an affordable housing development located at 2445 Mariposa Street in the Mission neighborhood, known as Mariposa Gardens Apartments (File #04-0187).

The apartment building includes a total of 62 units (plus one staff unit) eligible for project-based Section 8 vouchers serving low- and very-low-income households. The units vary in size as follows: five one-bedroom units, 31 two-bedroom units, 25 three-bedroom units, and 2 four-bedroom units. The site includes four buildings that are three stories tall, connected by bridges. At the time, the Redevelopment Agency was the property owner and Mariposa Gardens II (MG II), a limited partnership affiliate of Mission Housing Development Corporation (Mission Housing), was the tax credit entity established to acquire and operate the development. The Redevelopment Agency and MG II entered into a ground lease, with a \$20,000 annual base rent to be paid by MG II to the Agency and a residual rent of \$159,200 annually if net operating revenues were sufficient to pay residual rent, totaling \$179,200. MOHCD notes that the last rehabilitation of the Mariposa Gardens Apartments in 2004 exceeds 15 years, the typical length of time at which major building systems reach the end of their useful life. According to MOHCD, bridges connecting the buildings on the property recently required emergency repairs.

Pursuant to state law under AB 26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) and related state and local law, the Redevelopment Agency was dissolved in February 2012 and MOHCD became the "successor in interest" to the Agency's rights with respect to the land and the ground lease. Essentially, MOHCD inherited the Mariposa Gardens property and other affordable housing sites in the Redevelopment Agency's portfolio.

In May 2020, MG II assigned their rights and obligations with respect to the ground lease to Mission Housing Development Corporation (Mission Housing) Mariposa Gardens Associates LP. Mission Housing is in the process of refinancing the senior loan on the property in order to obtain funds necessary to conduct repairs at the Mariposa Gardens site as well as five other affordable housing sites they operate. The rehabilitation of the Mariposa Gardens property will cost a total of \$7 million and will include extensive repairs to the exterior and interior, such as painting, lighting, and waterproofing the exterior and electrical upgrades, kitchen updates, and water efficiency and energy enhancements to the interior. Work is scheduled to begin in mid-May 2021 and take up to 12 months, and tenant relocation is not expected to occur. We display financial sources and uses of the Mariposa Gardens rehabilitation in Exhibit 1 below.

Exhibit 1: Mariposa Gardens Apartments Rehabilitation, Sources and Uses of Funds

SOURCES	Amount
Loan Proceeds	\$7,035,555
USES	Amount
Hard Costs	
Construction Costs	\$4,904,818
Construction Contingencies	532,509
Soft Costs	
Other Development Costs	512,324
Financing Costs	295,400
Architecture & Design	187,646
Legal Costs	80,000
Soft Cost Contingency	54,110
Engineering & Environmental Studies	6,835
Reserves	338,657
Developer Costs	123,256
Total	\$7,035,555

Source: MOHCD

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the amended and restated long-term ground lease between MOHCD and Mariposa Gardens Associates LP for the City-owned land at 2445 Mariposa Street. The amended and restated ground lease (1) continues the existing 55-year term and adds one 44-year option to extend the lease, totaling 99 years, and sets annual base rent at \$20,000; (2) adopts findings that the amended and restated ground lease is consistent with the California Environment Quality Act (CEQA), General Plan, and eight priority policies of Planning Code Section 101.1; and (3) authorizes the Directors of Real Estate and MOHCD to take actions to implement the proposed resolution.

The refinanced loan obtained by Mariposa Gardens Associates to rehabilitate the buildings requires the amendment of the existing ground lease to (1) incorporate and amend provisions sought by the lender Freddie Mac related to lender protections; (2) update the rental rate as a result of a new appraisal of the property (see Fiscal Impact); and (3) reflect the new limited partnership entity established to facilitate the refinance and rehabilitation of the site, Mariposa Gardens Associates, an affiliate of Mission Housing.

Of the 62 below-market-rate units, Mariposa Gardens Associates would continue to operate 19 units with rent levels affordable to households earning up to 50 percent of the unadjusted San Francisco Area Median Income (AMI) and the remaining 43 units at rent levels affordable to households earning up to 60 percent of AMI, as displayed in Exhibit 2 below for a typical household size.

Exhibit 2: 2020 San Francisco Unadjusted Area Median Income (AMI)

Income Definition	Number of Units	4-Person Household
50% AMI	19	\$64,050
60% AMI	43	\$76,850

Source: 2020 Maximum Income by Household Size, MOHCD.

FISCAL IMPACT

The amended ground lease includes an annual base rent of \$20,000 and an annual residual rent of \$2,870,000 if net operating revenues are sufficient to pay residual rent. The residual rent of \$2,870,000 and base rent of \$20,000, totaling \$2,890,000, equals 10 percent of the newly appraised land value of \$28.9 million—in accordance with MOHCD’s policy on the rental rate for ground leases. Pursuant to MOHCD’s ground lease policy, the residual rent and loan repayments shall not exceed two-thirds of the project’s surplus cash, with unpaid residual rent accruing unless waived by MOHCD.

The MOHCD expects that the site will not generate sufficient income to pay the new residual rent rate, which has substantially increased over the prior residual rent of \$159,200 because of the higher appraised property value. For this reason, the amended lease terms specify that unpaid residual rent will not accrue.

RECOMMENDATION

Approve the proposed resolution.

AMENDED AND RESTATED GROUND LEASE

This Amended and Restated Ground Lease (this “**Ground Lease**”) is dated as of _____, 2021 (the “**Agreement Date**”) by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**” or “**Landlord**”), acting by and through its Real Estate Division and the Mayor's Office of Housing and Community Development (“**MOHCD**”), and MHDC Mariposa Gardens Associates LP, a California limited partnership, as tenant (the “**Tenant**”).

RECITALS

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

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

C. The Agency was the fee owner of the land located at 2445 Mariposa Street, California and further described in Attachment 1 (“**Site**”), and entered into a ground lease with Mariposa Gardens, a California Limited Partnership, dated as of February 23, 2004, as amended by that certain First Amendment to the Mariposa Gardens Ground Lease dated as of November 8, 2005 by and between the City and Mariposa Gardens II Affordable Housing, a California Limited Partnership (“**MGII**”), and as assigned to the MHDC Mariposa Gardens LLC, a California limited liability company (“**MG LLC**”), pursuant to that certain Assignment and Assumption Agreement (Ground Lease) dated as of May 7, 2020 by and among MGII, MG LLC, and the City, and as assigned to the Tenant pursuant to that certain Assignment and Assumption Agreement dated substantially concurrently herewith by and among MG LLC, Tenant, and the City (as amended, modified, or supplemented, the “**Agency Ground Lease**”) under which Tenant rehabilitated five one-bedroom, thirty-one two-bedroom, twenty-five three-bedroom, and two four-bedroom units at 2445 Mariposa Street with approximately _____ gross square feet, and including one manager’s units and other ancillary uses on the Site (the “**Project**”).

D. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) (“**AB 26**”), the Agency dissolved as a matter of law on February 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 (“**AB 1484**”), and Resolution No. 11-12, adopted by the City's Board of Supervisors and Mayor on January 26, 2012, Ordinance No. 215-12, adopted by the City’s Board of Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted by City to, and approved by, the State of California Department of Finance pursuant to AB 1484 (Cal. Health &

Safety Code Section 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all of the Agency's rights and obligations with respect to the Site.

E. The City now desires to amend and restate the Agency Ground Lease in conjunction with Tenant's refinancing of and certain rehabilitation work at the Project.

F. The City believes that the fulfillment of the terms and conditions of this Ground Lease are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in full accord with the public purposes and provisions of applicable Laws.

NOW THEREFORE, in consideration of the mutual obligations of the parties to this Ground Lease, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as defined in ARTICLE 2), and subject to the terms, covenants, agreements, and conditions set forth below, each and all of which the City and Tenant mutually agree.

ARTICLE 1 DEFINITIONS

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

1.01 **Agency** is defined in Recital A

1.02 **Agency Ground Lease** is defined in Recital C.

1.03 **Agreement Date** means the date first set forth above.

1.04 **Annual Rent** has the meaning set forth in the Section 4.01(a).

1.05 **Area Median Income** (or **AMI**) means median income as published annually by MOHCD, derived from the income limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as "Unadjusted Median Income."

1.06 **Change** has the meaning set forth in Section 12.02.

1.07 **Completion** means the date the Rehabilitation Work is completed and Tenant's architect has issued a certificate of final completion.

1.08 **Effective Date** means the date shown as the Effective Date in the Memorandum of Amended and Restated Ground Lease recorded against the Site, but in no event will the date be before the approval of the Ground Lease by the City's Board of Supervisors and the Mayor.

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

1.10 **Ground Lease** means this Ground Lease, as amended from time to time.

1.11 **Improvements** means all physical construction, including all structures, fixtures, and other improvements, now existing or later constructed on the Site.

1.12 **Indemnification Obligations** means the obligations of Tenant to indemnify Landlord as provided in this Ground Lease or under applicable Laws.

1.13 **Laws** means all statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.

1.14 **Lease Year** means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the “First Lease Year” will commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the “Last Lease Year” will end upon the expiration of the Term.

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

1.16 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits from the Premises, or any portion thereof, that constitutes a lien on the Leasehold Estate and is approved in writing by the City.

1.17 **Lender** means any entity holding a Leasehold Mortgage.

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

1.19 **Low Income Households** means a tenant household with combined initial income that does not exceed sixty percent (60%) of Area Median Income upon occupancy and whose subsequent household income does not exceed One Hundred Twenty percent (120%) of Area Median Income.

1.20 **MOHCD** means the City’s Mayor’s Office of Housing and Community Development.

1.21 **Payment Date** means the date that Base Rent is due and payable under Section 4.02(a).

1.22 **Personal Property** means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Premises and that can be removed from the Premises without substantial economic loss to the Premises or substantial damage to the Premises and that is incident to the ownership, development, or operation of the Improvements on the Premises, belonging to Tenant, any Residential Occupant, or any subtenant or other occupant of the Premises and/or in which Tenant, Residential Occupant, or any subtenant or other occupant has an ownership interest,

together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.

1.23 **Premises** means the Site and all Improvements.

1.24 **Project** is defined in Recital C.

1.25 **Project Expenses** means the following costs, which may be paid from Project Income to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate and/or possessory interest taxes, assessments, and liability, fire, and other hazard insurance premiums; (b) salaries, wages, and other compensation due and payable to the employees or agents of Tenant who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest, principal, or annual servicing fees, if any, on any construction or permanent financing secured by the Project; (d) all other expenses actually incurred by Tenant to cover routine operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (e) annual Base Rent payments; (f) any extraordinary expenses as approved in advance by the City; and (g) deposits to reserves accounts required to be established under the Loan Documents. Project Fees are not Project Expenses.

1.26 **Project Fees** means an asset management fee in the amount of \$21,900, increasing annually according to the asset management fee schedule published by MOHCD, payable to the Tenant's general partner.

1.27 **Project Income** means all revenue, income receipts, and other consideration actually received from the operation of all leasing at the Project. Project Income includes, but is not limited to: all rents, fees, and charges paid by Residential Occupants or users of any portion of the Site; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding, if applicable; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income does not include tenants' security deposits, loan proceeds, capital contributions, or similar advances.

1.28 **Residential Occupant** means any person or entity authorized by Tenant to occupy a residential unit on the Premises, or any portion thereof.

1.29 **Residential Unit** has the meaning set forth in Section 9.01.

1.30 **Rehabilitation Work** is defined in ARTICLE 10 and ATTACHMENT 4.

1.31 **Site** is defined in Recital C.

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

1.33 **Surplus Cash** means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 6.02(g) of this Ground Lease.

1.34 **Tenant** means MHDC Mariposa Gardens Associates LP, a California limited partnership and its successors and assigns (or a Subsequent Owner, where appropriate).

1.35 **Very Low-Income Households** means a tenant household with combined initial income that does not exceed fifty percent (50%) of Area Median Income upon occupancy and whose subsequent household income does not exceed One Hundred Twenty percent (120%) of Area Median Income.

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

ARTICLE 2 AMENDMENT AND RESTATEMENT; TERM

2.01 Amendment and Restatement; Initial Term. As of the Effective Date, this Ground Lease amends and restates the Agency Ground Lease in its entirety. The term of the Agency Ground Lease commenced on February 23, 2004. The term of this Ground Lease is a continuation of the term under the Agency Lease; the term of this Ground Lease will begin on the Effective Date and expire on February 22, 2059 (“**Term**”), unless extended under Section 2.02 below or earlier terminated as provided in this Ground Lease.

2.02 Option for Extension. Provided that the Tenant is not in default under the terms of this Ground Lease and the Loan Documents beyond any notice, grace, or cure period either at the time of giving of an Extension Notice (as defined below), as described in Section 2.03 below, or on the last day of the Term (the “**Termination Date**”), the Term may be extended at the option of the Tenant for one forty-four (44) year period, as provided in this Article below. If the Term is extended pursuant to this Section, all references in this Ground Lease to the “Term” will mean the Term as extended by this extension period.

2.03 Notice of Extension. Not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify the City in writing that it wishes to exercise its option to extend the term of this Ground Lease (an “**Extension Notice**”). Upon Tenant’s exercise of this option, the Initial Term will be extended for forty-four (44) years from the Termination Date for a total Ground Lease term not to exceed ninety-nine (99) years.

2.04 Rent During Extended Term. Rent for any extended term will be as set forth in ARTICLE 4.

2.05 Holding Over. Any holding over after expiration or earlier termination of the Term without the City’s written consent will constitute a default by Tenant and entitle the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City elects to accept one or more payments of Annual Rent. Failure to surrender the Site in the condition

required by this Ground Lease will constitute holding over until the conditions of surrender are satisfied.

ARTICLE 3 FINANCIAL ASSURANCE

Tenant will submit to the City in accordance with the dates specified in the Schedule of Performance, Attachment 2 (the “**Schedule of Performance**”), for approval by the City, evidence satisfactory to the City that Tenant has sufficient equity capital and commitments for the Rehabilitation Work and permanent financing, and/or such other evidence of capacity to proceed with the Rehabilitation Work in accordance with this Ground Lease, as is acceptable to the City. City hereby acknowledges that as of the Agreement Date, Tenant has satisfied this requirement.

ARTICLE 4 RENT

4.01 Annual Rent

4.01(a) Tenant will pay to the City up to Two Million Eight-Hundred and Ninety Thousand Dollars (\$2,890,000.00) (the “**Annual Rent**”) per year for each year of the Term of this Ground Lease. Annual Rent consists of Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as otherwise permitted by this Ground Lease) and without necessity of demand, notice or invoice. Annual Rent will be re-determined on February 23, 2034 (thirty years after the date of the Agency Lease), then every fifteen (15) years thereafter, and will be equal to ten percent (10%) of the appraised fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Tenant. Any such adjustment will be made to the Residual Rent and not to the Base Rent.

4.01(b) If the Tenant elects to extend the term of this Ground Lease pursuant to ARTICLE 2 above, Annual Rent (along with any potential future adjustments) during any such extended term will be set by mutual agreement of the parties; provided, however, that Annual Rent during the extended term will in no event be less than the Annual Rent set forth in Section 4.01(a) above. If the parties cannot agree on Annual Rent for the extended term, either party may invoke a neutral third-party process and the parties will agree on a neutral third-party appraiser to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, after the neutral third party process, Tenant, in its sole discretion, may rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease.

4.02 Base Rent

4.02(a) “**Base Rent**” means, in any given Lease Year, Twenty Thousand Dollars (\$20,000) per annum; provided, however, that if the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.01, then Base Rent will be increased to the full amount of Annual Rent until such time as the failure under Section 9.01 is cured. Base Rent will be due and payable in arrears on January 31st of each Lease Year. The first Base Rent payment will be due on the January 31st of the calendar year

following the Effective Date. Additionally, if a Subsequent Owner elects under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be adjusted as provided in Section 26.07.

4.02(b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of (a) through (d) in the definition of Project Expenses, above, and the City has received written notice from Tenant regarding its inability to pay Base Rent from Project Income at least sixty (60) days before the Base Rent due date, along with supporting documentation for Tenant's position that it is unable to pay Base Rent from Project Income, then the unpaid amount will be deferred and all deferred amounts will accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual will be due and payable each year from and to the extent of available Surplus Cash. Any Base Rent Accrual will be due and payable upon the earlier of (i) sale of the Project (but not a refinancing or foreclosure of the Project); or (ii) termination of this Ground Lease (unless a new lease is entered into with a mortgagee under Section 26.09 below).

4.02(c) If Tenant has not provided City with the required written notice and documentation under Section 4.02(b) in connection with its claim that it cannot pay Base Rent due to insufficient Project Income, and/or the City has reasonably determined that Tenant's claim that it is unable to pay Base Rent is not supported by such documentation, the City will assess a late payment penalty of two percent (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty will not apply to Base Rent Accrual that has been previously approved by the City under Section 4.02(b). The Tenant may request in writing that the City waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to ensure that Base Rent will be paid in the future. The City may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent. "**Residual Rent**" means, in any given Lease Year, Two Million Eight-Hundred and Seventy Thousand Dollars (\$2,870,000), subject to any periodic adjustments under Section 4.01(a). Residual Rent will be due in arrears on May 15th following each Lease Year ("**Residual Rent Payment Date**"). Except as otherwise provided in Section 26.07(a), Residual Rent will be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent will not accrue. If in any year Surplus Cash is insufficient to pay the full amount of the Residual Rent, then Tenant will certify to the City in writing by the Residual Rent Payment Date that available Surplus Cash is insufficient to pay Residual Rent and Tenant will provide to City any supporting documentation reasonably requested by City to allow City to verify the insufficiency. If Base Rent is increased to the full Annual Rent as provided in Section 4.02(a) above, then the Residual Rent will not be payable from Surplus Cash, but will be payable as Base Rent under Section 4.02(a) above for so long as the failure under Section 9.01 remains uncured. Residual Rent has the same meaning as "Residual Receipts" under MOHCD's Residual Receipts Policy effective April 1, 2016, as amended from time to time ("**Residual Receipts Policy**"). Tenant will comply with the Residual Receipts Policy regarding Residual Rent under this Lease.

4.04 Triple Net Lease. This Ground Lease is a triple net lease and the Tenant will be responsible to pay all costs, charges, taxes, impositions, and other obligations related to the Premises accruing after the Effective Date. If the City pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by City. Failure to timely pay the additional rent will be a default by Tenant of this Ground Lease. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Ground Lease, or otherwise relieves Tenant from any of its obligations under this Ground Lease, or gives Tenant any right to terminate this Ground Lease in whole or in part.

ARTICLE 5 CITY COVENANTS

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

ARTICLE 6 TENANT COVENANTS

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

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

6.02 Use of Premises and Rents. During the Term of this Ground Lease, Tenant and its successors and assigns will comply with the following requirements:

6.02(a) Permitted Uses. Except as provided in Sections 26.06 and 26.07 of this Ground Lease, Tenant will devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in ARTICLE 9 below, which are the only uses permitted by this Ground Lease. Tenant acknowledges that that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

6.02(b) Non-Discrimination. Tenant will not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation, or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, or any part thereof, and Tenant or any person claiming under or through it will not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Residential Occupants, subtenants or vendees on the Premises, or any part thereof, except to the extent permitted by Law or required by funding source. Tenant will not discriminate against

tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

6.02(c) Non-Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site must include the legend “Equal Housing Opportunity” in type or lettering of easily legible size and design, or as required by applicable Law.

6.02(d) Access for Disabled Persons. Tenant will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

6.02(e) Equal Opportunity Marketing Plan. Tenant will submit a Fair Housing Marketing Plan to be approved by the City. Any Fair Housing Marketing Plan must follow the City’s marketing requirements for such plans.

6.02(f) Lead Based Paint. Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

6.02(g) Permitted Uses of Surplus Cash. All annual Project Income, before the calculation of Surplus Cash, will be used to pay Project Expenses, including but not limited to Base Rent, and Project Fees. If the Tenant is in compliance with all applicable requirements and agreements under this Ground Lease, Tenant will then use any Surplus Cash to make the following payments in the following order of priority:

- i. First to Base Rent Accrual payments, if any;
- ii. Second, to replenish the operating reserve account, if necessary, up to the amount required by Lenders;
- iii. Third, then one-third (1/3) of remaining Surplus Cash to Tenant as an incentive management fee (“**Incentive Management Fee**”)
- iv. Fourth, pursuant to the Residual Receipts Policy, two-thirds (2/3) of remaining Surplus Cash (after payment of the Incentive Management Fee to Tenant) to the City; provided, however, if the Project includes a deferred developer fee and Tenant is in compliance with any City loan documents, if any, in connection with the Project and MOHCD's policies, then fifty percent (50%) of remaining Surplus Cash to the City beginning on the first Residual Rent Payment Date after the Agreement Date until and including the earlier of the year (i) of the tenth (10th) Residual Rent Payment Date after the Agreement Date, or (ii) in which all deferred developer fees have been paid to Mission Housing Development Corporation, a California nonprofit public benefit corporation. The City’s portion of Surplus Cash will be applied first to repayment of all City loans, if any, in connection with the Project

according to the terms of such City loan documents then to annual Residual Rent; and

- v. Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under Tenant's limited partnership agreement or other contract governing Tenant's use of Surplus Cash.

Notwithstanding the foregoing, Tenant and City agree that the distribution of Surplus Cash may be modified in an amendment to this Ground Lease based on the requirements of other Lenders.

6.03 City Deemed Beneficiary of Covenants. In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that the City will be deemed beneficiary of the agreements and covenants provided in this ARTICLE 6 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of the City for the entire term of those agreements and covenants, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. The City will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 7 ANNUAL INCOME COMPUTATION, AND CERTIFICATION

Forty-five (45) days after recordation of an NOC (as defined in Section 10.09) by the Tenant for the Improvements, Tenant will furnish to the City a list of the persons who are and Residential Occupants of the Improvements, the specific unit that each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in Attachment 6, for each Residential Occupant. In addition, each Residential Occupant must be required to provide any other information, documents, or certifications deemed necessary by the City to substantiate the Residential Occupant's income. If any state or federal agency requires an income certification for Residential Occupants of the Improvements containing the above-referenced information, the City agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to the City regarding each Residential Occupant of the Improvements not later than twenty (20) business days after such Residential Occupant commences occupancy.

ARTICLE 8 CONDITION OF SITE—"AS IS"

8.01 Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in its "as-is" condition, without any improvements or alterations by the City, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Tenant further

represents and warrants that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's intended use. Tenant acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, or the present or future suitability of the Premises for Tenant's use, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Premises is being leased in an "AS IS" condition with respect to all matters.

8.02 Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

8.03 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances. Tenant is advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde, radon, mold, asbestos-containing materials, lead-based paint, and polychlorinated biphenyls (PCBs).

ARTICLE 9 PERMITTED AND PROHIBITED USES

9.01 Permitted Uses and Occupancy Restrictions. The permitted uses of the Project are limited to sixty-two (62) units of affordable rental housing plus one (1) unrestricted manager’s unit (collectively, the “**Residential Units**”) and common areas which include a central courtyard with a playground, laundry facilities, a community room, and a fifty-space parking garage. Each of the current Residential Occupants of the Residential Units (except for the manager’s units) who are temporarily displaced during any Rehabilitation Work will have the right to return to their Residential Unit after the Rehabilitation Work on their Units is complete. Upon the Completion of Rehabilitation Work, with the exception of the manager’s units, forty-three (43) of the Residential Units in the Project will be occupied or held vacant and available for rental by Low Income Households and nineteen (19) of the Residential Units in the project will be occupied or held vacant and available for rental by Very Low Income Households. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease and by Lenders for so long as such restrictions are required by the applicable Lender.

9.02 Prohibited Uses. Except for uses of the Premises directly related to the Rehabilitation Work performed in accordance with this Ground Lease, Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a “**Prohibited Use**” and collectively, “**Prohibited Uses**”), are inconsistent with this Ground Lease, are strictly prohibited and are considered Prohibited Uses:

9.02(a) any activity, or the maintaining of any object, that is not within the Permitted Use;

9.02(b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

9.02(c) any activity or object that will overload or cause damage to the Premises;

9.02(d) any activity that constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;

9.02(e) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

9.02(f) any vehicle and equipment maintenance, including but not limited to, washing, fueling, changing oil, transmission or other automotive fluids;

9.02(g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

9.02(h) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or

9.02(i) bars, retail liquor sales, marijuana sales, or any other uses that cater exclusively to adults.

ARTICLE 10 REHABILITATION WORK

10.01 City acknowledges that Tenant will be performing certain Rehabilitation-related construction work described in the attached ATTACHMENT 4 (the “**Rehabilitation Work**”) at the Premises, ~~as required by Freddie Mac (defined in Section 25.01 below)~~. Tenant will undertake and complete Rehabilitation, as provided in this Ground Lease, in accordance with the Schedule of Performance. Tenant will provide City with regular updates regarding the commencement, progress, and completion of that work and any other information that City may reasonably request. If tenant undertakes the Rehabilitation Work but Tenant fails to complete the Rehabilitation Work in accordance with the requirements of this Ground Lease, such failure will be a material default under this Ground Lease and subject to the provisions of Section 19.03 below.

10.02 Compliance with Local, State and Federal Law. The all work at the Premises, including the Rehabilitation Work, must be in compliance with all applicable Laws. Tenant

understands and agrees that the Rehabilitation Work and Tenant's use of the Premises permitted under this Ground Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and City will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval.

10.03 Issuance of Building Permits. Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection.

10.04 Performance and Payment Bonds. Before commencement of any Rehabilitation Work, Tenant will deliver to City performance and payment bonds, each for the full value of the cost of the Rehabilitation Work, which bonds will name the City as co-obligee, or such other completion security which is acceptable to the City. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and City as co-obligees.

10.05 Times for Construction. Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns will promptly begin and diligently prosecute the Rehabilitation Work to Completion, and that the Rehabilitation Work will be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by the City.

10.06 Force Majeure. For the purposes of any of the provisions of this Ground Lease, and notwithstanding anything to the contrary, neither the City nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and Completion of the Rehabilitation Work, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or labor, or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Ground Lease including those with respect to the Rehabilitation Work, will be extended for the period of the delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and its causes in writing within thirty

(30) days after the beginning of any delay and requested an extension for the reasonably estimated period of the delay;.

10.07 Access to Site. As of the Effective Date and until the Completion of the Rehabilitation Work, Tenant will permit City access to the Premises whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever City believes that emergency access is required. After the Completion of the Rehabilitation Work, access to the Premises will be governed by ARTICLE 24, below.

10.08 Notice of Completion. Promptly upon Completion of the Rehabilitation Work, Tenant will file a Notice of Completion (“**NOC**”) and record the approved NOC in the San Francisco Recorder’s Office. Tenant will provide the City with a copy of the recorded NOC.

10.09 Completion of Rehabilitation Work by New Developer. If a Lender or a successor thereto forecloses, obtains a deed or assignment in lieu of foreclosure, or otherwise realizes upon the Premises and undertakes the Rehabilitation Work (“**New Developer**”) (a) the New Developer will not be bound by the provisions of the schedule of performance previously provided by Tenant with respect to any deadlines for the Completion of the Rehabilitation Work but will only be required to Complete the Rehabilitation Work with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the City, and (b) the New Developer will only be required to Complete the Rehabilitation Work in accordance with all applicable building codes and ordinances.

ARTICLE 11 INTENTIONALLY OMITTED

ARTICLE 12 CHANGES TO THE IMPROVEMENTS

12.01 Changes. The City has a particular interest in the Project and in the nature and extent of the permitted changes to the Improvements. Accordingly, it imposes the following control on the Premises: during the term of this Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, may make or permit any Change (as defined in Section 12.02) in the Improvements, unless the express prior written consent for any change has been requested in writing from the City and received, and, if received, upon such terms and conditions as the City may reasonably require. The City agrees not to unreasonably withhold or delay its response to such a request. City and Tenant acknowledge that the Rehabilitation Work is a Change, and that City has approved the Rehabilitation Work.

12.02 Definition of Change. “**Change**” means any alteration, modification, addition, and/or substitution of or to the Premises, and/or the density of development that differs materially from that which existed upon the Commencement Date in accordance with this Ground Lease. For purposes of the foregoing, “**exterior**” includes the roof of the Improvements. “**Change**” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Project, or as may be required in an emergency to protect the safety and well-being of the Project’s Residential Occupants.

12.03 Enforcement. Subject to ARTICLE 19 hereof, City will have any and all remedies in law or equity (including, without limitation, restraining orders, injunctions, and/or specific performance), judicial or administrative, to enforce the provisions of this ARTICLE 12, including, without limitation, any threatened or actual breach or violation of this Section.

ARTICLE 13 TITLE TO IMPROVEMENTS

City acknowledges that fee title to the Improvements is vested in Tenant for the Term of this Ground Lease. It is the intent of the Parties that this Ground Lease and the Memorandum of Lease will create a constructive notice of severance of the Improvements from the land without the necessity of a deed from Lessor to Lessee. City and Tenant hereby agree that fee title to the Improvements will remain vested in Tenant during the Term, subject to Section 14.01 below; provided, however, that, subject to the rights of any Lenders and as further consideration for the City entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements will vest in the City without further action of any party, without any obligation by the City to pay any compensation to Tenant, and without the necessity of a deed from Tenant to the City. Notwithstanding the foregoing, if requested by the City, upon expiration or sooner termination of this Ground Lease, Tenant will execute and deliver to the City an acknowledged and good and sufficient grant deed conveying to the City Tenant's fee interest in the Improvements. City acknowledges and agrees that any and all depreciation, amortization, and tax credits for federal and state tax purposes relating to the Improvements, fixtures therein, and other property relating thereto will be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

ARTICLE 14 ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE

14.01 Assignment, Sublease, or Other Conveyance by Tenant. Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s) or affiliates of Lender(s) as provided in this Ground Lease, or allow any person or entity to occupy or use all or any part of the Site, other than leases to Residential Occupants and the managers in the ordinary course of business, and it may not contract or agree to do any of the same, without the prior written approval of the City, which approval will not be unreasonably withheld or delayed. Tenant will provide any background or supporting documentation that the City may require in assessing Tenant's request for approval.

14.02 Assignment, Sublease, or Other Conveyance by City. The parties acknowledge that any sale, assignment, transfer, or conveyance of all or any part of the City's interest in the Site, the Improvements, or this Ground Lease, is subject to this Ground Lease. The City will require that any purchaser, assignee, or transferee expressly assume all of the obligations of the City under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease will not be affected by any such sale, and Tenant will attorn to any such purchaser or assignee. For the avoidance of doubt, Landlord may not mortgage its fee estate unless there is an express subordination of the fee mortgage to Tenant's Leasehold Estate. If Landlord mortgages its interest in the fee estate during the term of any Lender's loan, Tenant may not subordinate the Ground Lease to the lien of that mortgage.

ARTICLE 15 TAXES

Tenant agrees to pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges on the Premises that become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant will not permit any such taxes, charges, or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment, or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof is contested by Tenant in good faith and without expense to the City. If Tenant contests a tax, assessment, or other similar charge, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom, and if Tenant is unsuccessful in any such contest, Tenant will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. The City will furnish such information as Tenant may reasonably request in connection with any such contest, provided that such information is in the City's possession or control or is otherwise available to the public. City hereby consents to and will reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, or on Tenant's interest therein.

ARTICLE 16 UTILITIES

From and after the Effective Date, Tenant will procure water and sewer service from the City and electricity, telephone, natural gas, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between the City and Tenant, Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. All electricity necessary for operations in the Premises must be purchased from San Francisco Public Utilities Commission ("SFPUC"), at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant will contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

ARTICLE 17 MAINTENANCE AND OPERATION

17.01 Maintenance. Tenant, at all times during the Term, will maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the City, including the exterior, interior, substructure, and foundation of the Improvements and all fixtures, equipment, and landscaping from time to time located in, on, or under the Premises or any part thereof. The City will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Site or any Improvements. Tenant hereby

waives all rights to make repairs at the City's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

17.02 City's Consent for Work Requiring a Permit. Tenant will not make, or cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard, or regulation without first obtaining the City's prior written consent and a permit therefor.

17.03 Facilities Condition Report. Every five (5) years beginning on the fifth anniversary date of the recording of the NOC, Tenant will deliver to the City a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant and the City, describing at a minimum the condition and integrity of the Premises, including the Improvements, the foundation and structural integrity of the buildings, and all utilities systems serving the buildings (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If the City reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then the City will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address the City's concerns. If Tenant fails to provide a Facilities Condition Report to City every five (5) years, then the City after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of the City's choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by the City.

17.04 City's Right to Inspect. Without limiting ARTICLE 24 below, the City may make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises and other areas as required by this Ground Lease in a condition as good as, or better than, their condition at the Completion of the Rehabilitation Work, excepting ordinary wear and tear.

17.05 City's Right to Repair. If Tenant fails to maintain or to promptly repair any damage as required by this Ground Lease (subject to the notice and cure provisions in Section 19.03, except in the event of an emergency as reasonably determined by City), the City may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse the City for all costs of the repair.

17.06 Operation. Subject to the Rehabilitation Work, Tenant will maintain and operate the Project in a manner consistent with the maintenance and operation of a safe, clean, well-maintained residential project located in San Francisco. Tenant will be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require others to provide), services as necessary and appropriate to the uses to which the Project are put, including (a) repair and maintenance of the Improvements; (b) utility and telecommunications (including internet/Wi-Fi) services to the extent, if any, customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and

garbage removal; (d) landscaping and groundskeeping; (e) security services with on-site personnel for the Premises; and (f) sufficient lighting at night for pedestrians along pathways. Tenant will use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any Residential Unit may remain unoccupied but only to the extent permitted under any applicable regulatory agreements, housing assistance payment contract, and applicable Law.

ARTICLE 18 LIENS

Tenant will use its best efforts to keep the Premises free from any liens arising out of any work performed or materials furnished by itself or its subtenants. If Tenant does not cause a lien to be released of record or bonded around within twenty (20) days following written notice from the City of the imposition of the lien, the City will have, in addition to all other remedies provided in this Ground Lease and by Law, the right (but not the obligation) to cause the lien to be released by any means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it in connection therewith, will be payable to the City by Tenant on demand. Notwithstanding the foregoing, Tenant will have the right, upon posting of an adequate bond or other security, to contest any lien, and the City will not seek to satisfy or discharge the lien unless Tenant has failed so to do within ten (10) days after the final determination of the validity of the lien. If Tenant contests a lien, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom. The provisions of this Section will not apply to any liens arising before the Effective Date that are not the result of Tenant's contractors, consultants, or activities.

ARTICLE 19 GENERAL REMEDIES

19.01 Application of Remedies. The provisions of this ARTICLE 19 govern the parties' remedies for breach of this Ground Lease.

19.02 Breach by City. If Tenant believes that the City has materially breached this Ground Lease, Tenant must first notify the City in writing of the purported breach, giving the City one hundred twenty (120) days from receipt of such notice to cure the breach. If the City does not cure the breach within the 120-day period, or, if the breach is not reasonably susceptible to cure within that one hundred twenty (120) day period, begin to cure within one hundred twenty (120) days and diligently prosecute then cure to completion, then Tenant will have all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law or equity.

19.03 Breach by Tenant.

19.03(a) Default by Tenant

Subject to the notice and cure rights under Sections 19.03(b) and 19.04, any of the following events each constitute a basis for the City to take action against Tenant:

(i) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.01;

(ii) Tenant voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease or otherwise approved by the City;

(iii) From and after the Effective Date, Tenant, or its successor in interest, fails to pay real estate taxes or assessments on the Premises or any part thereof before delinquency, or places on the Site any encumbrance or lien unauthorized by this Ground Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments not have been paid, or the encumbrance or lien removed or discharged within the time period provided in ARTICLE 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in ARTICLE 15 and ARTICLE 18;

(iv) Tenant is adjudicated bankrupt or insolvent or makes a transfer to defraud its creditors, or makes an assignment for the benefit of creditors, or brings or is brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the proceedings within sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days;

(v) Tenant breaches any other material provision of this Ground Lease; or

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

19.03(b) Notification and City Remedies. Upon the happening of any of the events described in Section 19.03(a) above, and before exercising any remedies, the City will notify Tenant and each Lender in writing of the Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 38, giving Tenant sixty (60) days from the giving of the notice to cure such breach, failure, or act. If Tenant does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within that sixty (60) day period, does not begin to cure within sixty (60) days and diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.04 and ARTICLE 26, the City will have all of its rights at law or in equity, including, but not limited to

(i) the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Ground Lease in full force and effect and the City may enforce all of its rights and remedies under this Ground Lease, including the right to collect rent when due. During the period Tenant is in default, the City may enter the Premises without terminating this Ground Lease and relet them, or any part of them, to third

parties for Tenant's account. Tenant will be liable immediately to the City for all reasonable costs that the City incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as the City deems advisable, subject to any restrictions applicable to the Premises. Tenant will pay the City the rent due under this Ground Lease on the dates the rent is due, less the rent the City receives from any reletting. If the City elects to relet, then rentals received by the City from the reletting will be applied in the following order: (1) to reasonable attorneys' and other fees incurred by the City as a result of a default and costs if suit is filed by the City to enforce its remedies; (2) to the payment of any costs of maintaining, preserving, altering, repairing, and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property and Changes; (3) to the payment of rent due and unpaid; (4) the balance, if any, will be paid to Tenant upon (but not before) expiration of the Term. If that portion of the rentals received from any reletting during any month that is applied to the payment of rent, is less than the rent payable during the month, then Tenant must pay the deficiency to the City. The deficiency will be calculated and paid monthly. No act by the City allowed by this Section will terminate this Ground Lease unless the City notifies Tenant that the City elects to terminate this Ground Lease. After Tenant's default and for as long as the City does not terminate Tenant's right to possession of the Premises by written notice, if Tenant obtains the City's consent Tenant will have the right to assign or sublet its interest in this Ground Lease, but Tenant shall not be released from liability and the assignment or subletting will not serve to cure the default;

(ii) the City may terminate Tenant's right to possession of the Premises at any time. No act by the City other than giving notice of termination to Tenant will terminate this Ground Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the City's initiative to protect the City's interest under this Ground Lease will not constitute a termination of Tenant's right to possession. If the City elects to terminate this Ground Lease, then the City has the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including 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 Annual Rent and any additional charges 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. The City's efforts to mitigate the damages caused by Tenant's breach of this Ground Lease will not waive the City's rights to recover damages upon termination;

(iii) The right to have a receiver appointed for Tenant upon application by the 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 the City under this Ground Lease;

(iv) seeking specific performance of this Ground Lease; or

(v) in the case of default under Section 19.03(a)(i), increasing the Base Rent to the full amount of the Annual Rent.

19.04 Reserved.

19.05 City's Right to Cure Tenant's Default. If Tenant defaults in the performance of any of its obligations under this Ground Lease, the City may at any time thereafter after notice and expiration of the applicable cure period (except in the event of an emergency as determined by the City, in which case the may act when the City determines necessary), remedy the default for Tenant's account and at Tenant's expense. Tenant will pay to the City as additional Base Rent, promptly upon demand, all sums expended by the City, or other costs, damages, expenses, or liabilities incurred by the City, including reasonable attorneys' fees, in remedying or attempting to remedy the default. Tenant's obligations under this Section will survive the termination of this Ground Lease. Nothing in this Section implies any duty of the City to do any act that Tenant is obligated to perform under any provision of this Ground Lease, and the City's cure or attempted cure of Tenant's default will not constitute a waiver of Tenant's default or any rights or remedies of the City on account of the default.

19.06 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or the City takes possession of the Premises by reason of any default of Tenant hereunder.

19.07 Remedies Not Exclusive. The remedies set forth in Section 19.03(b) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of the City now or later allowed by Law. Tenant's obligations hereunder will survive any termination of this Ground Lease.

ARTICLE 20 DAMAGE AND DESTRUCTION

20.01 Insured Casualty. If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant under this Ground Lease, Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof before such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to complete the restoration, then Tenant, with the written consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. If Tenant is required or elects to restore the Improvements, then all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease will, subject to any applicable rights of Lenders, be used by Tenant for that purpose and Tenant will make up from its own funds or obtain additional financing as reasonably approved by the City any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost. If Tenant elects to terminate this Ground Lease as provided under this Section 20.01, or elects not to restore the Improvements, then the insurance proceeds will be divided in the order set forth in Section 20.03. If Tenant restores the Improvements as provided in this Section, any

insurance proceeds remaining after restoration is completed shall, subject to the applicable rights of any Lender, be retained by Tenant and be considered Project Income.

20.02 Uninsured Casualty. If (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost to complete the restoration is not covered by insurance required to be carried under this Ground Lease; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender terminate this Ground Lease upon ninety (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant will notify the City promptly and not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval will not be unreasonably withheld or delayed. If Tenant terminates this Ground Lease under this Section 20.02, then all insurance proceeds and damages payable by reason of the casualty will be divided among City, Tenant, and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured or underinsured casualty, then Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition before the damage or destruction in accordance with the provisions of Section 20.01 and will, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds to do so.

20.03 Distribution of the Insurance Proceeds. If Tenant elects to terminate and surrender as provided in either Sections 20.01 or 20.02, then the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder will be as follows:

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

20.03(b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying property, and for the cost of any work or service required by any Law, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

20.03(c) Third, to compensate City for any diminution in the value (as of the date of the damage or destruction) of the Site caused by or arising from the damage or destruction; and

20.03(d) The remainder to Tenant.

20.04 Clean-up of Site. If Tenant terminates this Ground Lease under the provisions of Sections 20.01 or 20.02, then Tenant must all clean up and remove all debris from the Site and adjacent and underlying property and leave the Site in a clean and safe condition and in compliance with all Laws upon surrender, as described in in Section 20.03(b). If the proceeds of

any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.03(b), then Tenant must pay the portion of the costs not covered by the insurance proceeds.

20.05 Waiver. Tenant and the City intend that this Ground Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, the City and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

ARTICLE 21 DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION

21.01 Damage to Person or Property—General Indemnification. City will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Site, unless arising from the active gross negligence or willful misconduct of the City or any of its commissioners, officers, agents, or employees. Tenant will defend, hold harmless, and indemnify the City including, but not limited to, its boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising from the Site, this Ground Lease, Tenant’s or any occupant’s tenancy, its or their use of the Site, including adjoining sidewalks and streets, and any of its or their operations or activities thereon or connected thereto; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Ground Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and the City’s costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within any indemnity provision set forth in this Ground Lease 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 the City and continues at all times thereafter. Tenant’s obligations under this Article will survive the termination or expiration of this Ground Lease.

21.02 Hazardous Substances—Indemnification.

21.02(a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release,

threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site.

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

(i) "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Ground Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include substances that occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a residential development, provided they are used and stored in accordance with all applicable Laws.

(ii) "**Environmental Law**" means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Ground Lease.

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

21.03 Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to the City, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (a) any act or omission of persons occupying adjoining premises or any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Site defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other City property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Ground Lease before the Effective Date and (i) any other acts, omissions, or causes.

21.04 Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Ground Lease might be found later to be other than or

different from the facts now believed to be true, and agrees that the releases in this Ground Lease will remain effective. Therefore, with respect to the Claims released in this Ground Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Ground Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

21.05 Insurance. The Indemnification requirements under this Ground Lease, or any other agreement between the City and Tenant, will in no way be limited by any insurance requirements under any such agreements.

21.06 Survival. The provisions of ARTICLE 21 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 22 INSURANCE

22.01 Insurance. The Tenant must maintain insurance meeting the requirements of this Article.

22.01(a) Insurance Requirements for Tenant. During the term of this Ground Lease, Tenant will procure and maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any work hereunder by the Tenant, its agents, representatives, employees, contractors, or subcontractors and the Tenant's use and occupancy of the Site and the Improvements.

22.01(b) Minimum Scope of Insurance. Coverage must be at least as broad as:

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

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

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

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

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

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

22.01(c) Minimum Limits of Insurance. Tenant must maintain limits no less than:

(i) General Liability: Commercial General Liability insurance with no less than One Million Dollars (\$2,000,000) combined single limit per occurrence and Two Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for blanket contractual liability (including tort liability and of another party and Tenant's liability of injury or death to persons and damage to property set forth in Section 21.01 above); personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on, alteration or improvement to the Site with risk of explosion, collapse, or underground hazards.

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

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

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

(v) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less than Seventy-Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss.

(vi) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year; this coverage must be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant's contractor, provided that the policy must be "claims

made” coverage and Tenant must require Tenant’s contractor to maintain these minimum limits for no less than three (3) years beyond Completion of the Rehabilitation Work.

(vii) Property Insurance:

(1) Before construction:

a. Property insurance, excluding earthquake, in the amount no less than One Hundred Percent (100%) of the then-current replacement cost of all improvements before commencement of any Rehabilitation Work or other construction work and City property in the care, custody, and control of the Tenant or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

b. During the course of construction:

i. Builder’s risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the then-current replacement cost of all completed improvements and City property in the care, custody, and control of the Tenant or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder’s Risk policy, if the Builder’s Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

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

(2) Upon completion of construction:

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

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

22.01(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of \$25,000 must be declared to and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer will reduce or eliminate the deductibles or self-insured retentions with respect to the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Tenant must procure a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

22.01(e) Other Insurance Provisions. The policies must contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage: The "City and County of San Francisco and their respective commissioners, members, officers, agents, and employees" are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of the Tenant related to the Project; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project; and automobiles owned, leased, hired, or borrowed by the Tenant for the operations related to the Project. The coverage may not contain any special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents, or employees.

(ii) Workers' Compensation and Property Insurance: The insured will agree to waive all rights of subrogation against the "City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees" for any losses in connection with this Project.

(iii) Claims-made Coverage: If any of the required insurance is provided under a claims-made form, Tenant will maintain such coverage continuously throughout the term of this Ground Lease and, without lapse, for a period of three years beyond the expiration of this Ground Lease, to the effect that, if occurrences during the contract term give rise to claims made after expiration of the Ground Lease, then those claims will be covered by the claims-made policies.

(iv) All Coverage. Each insurance policy required by this Article must:

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

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

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

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

(5) Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City and its commissioners, members, officers, agents, or employees.

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

(7) The City reserves the right to require an increase in insurance coverage if the City determines that conditions (including, but not limited to, property conditions, market conditions, or commercially reasonable practice) show cause for an increase, unless Tenant demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Tenant.

22.01(f) Acceptability of Insurers. All insurers must have a Best's rating of no less than A-VIII or as otherwise approved by the City's Risk Manager.

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

22.01(h) Contractor, Subcontractors, and Consultants Insurance. Tenant must include all subcontractors and consultants as additional insureds under its policies or furnish separate certificates and endorsements for each. Tenant will require the subcontractor(s) and consultants to provide all necessary insurance and to name the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees and the Tenant as additional insureds. All coverage for subcontractors and consultants will be subject to all of the requirements stated herein unless otherwise approved by the City's Risk Manager.

ARTICLE 23 COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01 Compliance with Legal Requirements. From and after the Effective Date, Tenant will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Site. If Tenant contests any of the foregoing, Tenant will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Tenant indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

23.02 Regulatory Approvals.

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

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

23.02(c) With MOHCD's prior written consent, Tenant will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Ground Lease, Tenant must indemnify, defend, and hold harmless the City and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the active gross negligence or willful misconduct of the City or its agents.

ARTICLE 24 ENTRY

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

24.01(a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);

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

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

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

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

24.02 In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may 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.

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

24.04 Tenant will not be entitled to any abatement in Annual Rent if the City exercises any rights reserved in this Section, subject to Section 24.03 above.

24.05 The City will 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 of the Premises as permitted by this Ground Lease.

ARTICLE 25 MORTGAGE FINANCING

25.01 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the City in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction,

renovation, or reconstruction of the Improvements; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. The City acknowledges and accepts Walker & Dunlop, LLC as the permitted permanent lender and its successor and/or assigns, including, but not limited to, the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), and no further consent from the City is required. The City acknowledges that Tenant intends that Freddie Mac provide permanent financing, provided that there are no material changes to the terms of the permanent loan from what the City has reviewed, the City consents to the Leasehold Mortgage associated with the Freddie Mac permanent loan to Tenant for the Project and no further consent from the City will be required.

25.02 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust, or other security interest authorized by Section 25.01 (“**Holder**” or “**Lender**”), including the successors or assigns of the Holder, is not obligated to Complete the Rehabilitation Work or to guarantee such Completion; and no covenant or any other provision of this Ground Lease may be construed to obligate the Holder. However, if the Holder undertakes to complete or guarantee the Completion of the Rehabilitation Work, except as provided in Section 26.06(b), nothing in this Ground Lease will be deemed or construed to permit or authorize the Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements on the Site, other than those uses or Improvements authorized under Section 9.01 and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion under Section 10.10. Except as provided in Section 26.06(b), to the extent any Holder or its successors in interest wish to change such uses or construct different improvements or materially change the Rehabilitation Work, Holder or its successors in interest must obtain the advance written consent of the City.

25.03 Failure of Holder to Complete Construction. In any case where six (6) months after assumption of obligations under Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City will have all the rights against the Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 10.10 of this Ground Lease.

25.04 Default by Tenant and City's Rights.

25.04(a) Right of City to Cure a Default or Breach by Tenant under a Leasehold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant’s failure to timely commence or diligently prosecute cure of such default or breach, the City may, at its option, cure such breach or default during the one hundred ten (110) days after the date that the Lender files a notice of default. In such event, the City will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. The City will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by

this Ground Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Loan Documents, the City will also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to all Lenders' written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage and the assignee meeting all reasonable underwriting standards of the Leasehold Mortgage.

25.04(b) Notice of Default to City. Tenant will use its best efforts to require Lender to give the City prompt written notice of any default or breach of the Leasehold Mortgage and each Leasehold Mortgage will provide for that notice to the City and s contain the City's right to cure as above set forth.

25.05 Cost of Mortgage Loans to be Paid by Tenant. Tenant covenants and affirms that it will bear all of the costs and expenses in connection with (a) the preparation and securing of any Leasehold Mortgage, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26 PROTECTION OF LENDER

26.01 Notification to City. Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this ARTICLE 26, Tenant will cause each Lender to give written notice to the City of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute City's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The City hereby acknowledges Freddie Mac, as permanent lender, and is deemed to have given written notice as a Lender.

26.02 Lender's Rights to Prevent Termination. Subject to the terms and conditions of Section 26.03 below, each Lender has the right, but not the obligation, at any time before termination of this Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Ground Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions of this Ground Lease to prevent a termination of this Ground Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Lender.

26.03 Lender's Rights When Tenant Defaults. If any event of default under this Ground Lease occurs and is continuing, and is not cured within the applicable cure period, the City will not terminate this Ground Lease or exercise any other remedy unless it first gives written notice of the event of default to Lender; and

26.03(a) If the event of default is a failure to pay a monetary obligation of Tenant, Lender will have sixty (60) days from the date that the written notice is given (or deemed given, each as provided in ARTICLE 38 below) from the City to Lender to cure the default; or

26.03(b) If the event of default is not a failure to pay a monetary obligation of Tenant, Lender will have one hundred twenty (120) days of written notice is given (or deemed given, each as provided in ARTICLE 38 below), by City to Lender to either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default will be remedied or deemed remedied in accordance with Section 26.04 below. If, due to the nature of the default, the default is not capable of cure within one hundred twenty (120) days, then Lender may request from the City an extended period, together with the reasons for its request for extension. City will not unreasonably withhold its approval of such request.

26.03(c) All rights of the City to terminate this Ground Lease as the result of the occurrence of any uncured event of default is subject to, and conditioned upon, the City having first given Lender written notice of the event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 26.03.

26.03(d) If the Ground Lease terminates because of a default by Tenant, then Lender shall have the right to request as new lease as provided in and on the terms and conditions of Section 26.09(c).

26.04 Default That Cannot be Remedied by Lender. Any event of default under this Ground Lease that in the nature thereof cannot be remedied by Lender will be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (a) within one hundred twenty (120) days after receiving notice from the City setting forth the nature of such event of default, Lender has acquired Tenant's Leasehold Estate or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Lender is diligently prosecuting any such proceedings to completion, (c) Lender has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than Indemnification Obligations) in accordance with Section 26.03, and (d) after gaining possession of the Improvements, Lender diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Ground Lease.

26.05 Court Action Preventing Foreclosure. If Lender is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, then the City agrees to enter into a new ground lease with the Lender (or its designee) on the same terms set forth in this Ground Lease. For

purpose of this Article, if there is more than one Lender, the City will offer the new lease to each Lender in the order of priority until accepted.

26.06 Lender's Rights to Record, Foreclose, and Assign. The City hereby agrees with respect to any Leasehold Mortgage, that:

26.06(a) the Lender may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from City, which approval will not be unreasonably withheld, conditioned, or delayed and if the Subsequent Owner has elected to maintain the use restrictions of ARTICLE 9, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code so that the Premises receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available). Furthermore, Lender may acquire title to the Leasehold Estate in any lawful way, and if the Lender becomes the assignee, then Lender may sell and assign said Leasehold Estate subject to City approval (which may not be unreasonably withheld, conditioned, or delayed) and to the City's rights under Section 25.04.

26.06(b) each Subsequent Owner must take the Leasehold Estate subject to all of the provisions of this Ground Lease, and must, so long as and only so long as it is the owner of the Leasehold Estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section 26.07 below, the Subsequent Owner may operate and maintain residential units without any limitations on the rents charged or the income of the occupants thereof, subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance; and

26.06(c) the City will mail or deliver to any Lender that has an outstanding Leasehold Mortgage a duplicate copy of all notices that the City may give to Tenant under this Ground Lease.

26.06(d) Notwithstanding any term to the contrary contained herein, for so long as Freddie Mac is the First Mortgage Lender with respect to the Leasehold Estate, the consent of Landlord shall not be required in connection with commencement of a foreclosure or deed in lieu of foreclosure by the First Mortgage Lender or for the first assignment following the First Mortgage Lender's acquisition of Tenant's interest in the Premises through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, provided, however, that any such assignment shall be to an entity (Subsequent Owner) controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available) and such entity (Subsequent Owner) shall have elected to maintain the use restrictions of ARTICLE 9. Any subsequent assignment or transfer of this Ground Lease shall require the reasonable consent of Landlord.

26.07 Ground Lease Rent after Lender Foreclosure or Assignment. From and after the time that the Subsequent Owner acquires title to the Leasehold Estate, Annual Rent will be set as follows:

26.07(a) Any accrued Annual Rent at the time of foreclosure will be forgiven by the City, and will not be an obligation of the Lender, its assignee, or the Subsequent Owner. After foreclosure or assignment of the Leasehold Estate to the Lender in lieu of foreclosure, if the Lender continues to operate the Project subject to the use and occupancy restrictions of Section 9.01, then Annual Rent otherwise due may, at the option of the Lender, be deferred until the earlier of the date of the Lender's sale or assignment of the Project to a Subsequent Owner that does not agree to operate the Project subject to such restrictions or the date that is sixty (60) days after Lender ceases to operate the Project in accordance with those restrictions. All deferred Annual Rent will accrue, with simple interest at six percent (6%) per annum until paid.

26.07(b) If the Subsequent Owner exercises its rights under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent will be increased to the new fair market rent under this Section 26.07(b) and the provisions of Section 6.02(g) will be suspended; provided, however, that the City will be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low Income Households as the City and the Subsequent Owner may agree. The fair market rental value will be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. But, after the neutral third party process, the Lender, in its sole discretion, may rescind its written notification of intent to not comply with Section 9.01 of this Ground Lease.

26.08 Permitted Uses After Lender Foreclosure. Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the uses specified in the building permit with all addenda, as approved by the City's Department of Building Inspection.

26.09 Preservation of Leasehold Benefits. Until such time as a Lender notifies the City in writing that the obligations of the Tenant under its Loan Documents have been satisfied, the City agrees:

26.09(a) That subject to Section 19.03(b) the City will not voluntarily cancel or surrender this Ground Lease, or accept a voluntary cancellation or surrender of this

Ground Lease by Tenant, or amend this Ground Lease to materially increase the obligations of the Tenant or the rights of the City under this Ground Lease, without the prior written consent of the Lender (which may not be unreasonably withheld or delayed);

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

26.09(c) That, if a Lender makes written request to the City for a new ground lease within fifteen (15) days after Lender receives written notice of termination of this Ground Lease, then the City will enter a new ground lease with the Lender (or its designee) commencing on the date of termination of this Ground Lease and ending on the normal expiration date of this Ground Lease, on substantially the same terms and conditions as this Ground Lease and subject to the rent provisions set forth in Section 26.07, and with the same priority as against any subleases or other interests in the Premises; so long as the Lender (or its designee) cures all unpaid monetary defaults under this Ground Lease (other than Indemnification Obligations), through the date of such termination;

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

26.10 No Merger. The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

26.11 City Bankruptcy.

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

26.11(b) The City acknowledges that (i) the Tenant seeks to perform the Rehabilitation Work on the existing Improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the Leasehold Estate. Therefore, the City waives its right to sell the City's fee interest in the Site under section 363(f) of the Bankruptcy Code, free and clear of the Leasehold Estate.

26.11(c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as follows:

(i) the Tenant will be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the Leasehold Estate;

(ii) if Tenant does not so object, each Lender will have the right to so object on its own behalf or on behalf of the Tenant; and

(iii) in connection with any such sale, the Tenant will not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it has received and paid to each Lender the outstanding balance under its respective loan.

26.11(d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in, or consent to any bankruptcy, insolvency, receivership, or court proceeding concerning the Leasehold Estate.

26.12 Limitation on Liability. The liability of a First Mortgage Lender shall be limited at all times to the value of its respective leasehold interests under this Ground Lease and to the Improvements. In the event of a foreclosure of the Leasehold Mortgage, First Mortgage Lender (i) except for nonmonetary defaults that are continuing after foreclosure or transfer and are capable of cure by the First Mortgage Lender, shall only be liable to Landlord for acts and omissions during the period in which First Mortgage Lender is the holder of title to the Leasehold Estate, and (ii) shall be automatically released by Landlord from the acts and omissions of Tenant occurring prior to its acquisition of title to the Leasehold Estate. This limitation on liability shall not extend to Subsequent Owners, except that if Freddie Mac as the First Mortgage Lender assigns Tenant's interest in the Premises through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, then the foregoing limitation on liability shall extend to Freddie Mac's initial assignee.

26.13 Lender May Exercise Extension. Notwithstanding any default under this Ground Lease (other than those that Subsequent Owner is required to cure under the terms of this Ground Lease) or any default under the Loan Documents, from and after the time that the Subsequent Owner acquires title to the Leasehold Estate, that Subsequent Owner will have the right to extend the Initial Term for the period provided in Section 2.03 upon delivery of the Extension Notice under the terms of Section 2.03.

ARTICLE 27 CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Ground Lease, there is any condemnation of all or any part of the Premises or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this ARTICLE 27, subject to the rights of any Lender. Accordingly, Tenant waives any right to terminate this Ground Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated

27.02 Notice. In case of the commencement of any proceedings or negotiations that might result in a condemnation of all or any portion of the Premises during the Term, the party learning of such proceedings will promptly give written notice of the proceedings or negotiations to the other party. The notice will describe with as much specificity as is reasonable, the nature and extent of such condemnation or the nature of such proceedings or negotiations and of the condemnation that might result, as the case may be.

27.03 Total Taking. If the Site is totally taken by condemnation, this Ground Lease will terminate on the date the condemnor has the right to possession of the Site.

27.04 Partial Taking. If any portion of the Site is taken by condemnation, this Ground Lease will remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate under this paragraph by giving notice to the City within thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. Tenant's termination notice must include the date of termination, which date may not be earlier than thirty (30) days or later than six (6) months after the date of Tenant's notice; except that this Ground Lease will terminate on the date the condemnor has the right to possession of the Site if that date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within the thirty (30) day notice period, this Ground Lease will continue in full force and effect.

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

27.06 Restoration of Improvements. If there is a partial taking of the Improvements and this Ground Lease remains in full force and effect under Section 27.04, then Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

27.07 Award and Distribution. Any compensation awarded, paid, or received on a total or partial condemnation of the Premises or threat of condemnation of the Premises will belong to and be distributed in the following order:

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

27.07(b) Second, to the Tenant in an amount equal to the then fair market value of Tenant's interest in the Improvements and its Leasehold Estate (including, but not limited to, the value of Tenant's interest in all subleases to occupants of the Site), such value to be determined as it existed immediately preceding the earliest taking or threat of taking of the Site; and;

27.07(c) Third, to the Landlord.

27.07(d) Notwithstanding anything to the contrary set forth in this Section, any portion of the compensation awarded that has been specifically designated by the condemning authority or in the judgment of any court to be payable to the City or Tenant on account of any interest in the Premises or the Improvements separate and apart from the

condemned land value, the value of the City's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to the City or Tenant, as applicable, as so designated by the condemning authority or judgment. If, while Freddie Mac is the First Mortgage Lender, a portion of the compensation specifically designated awarded by the condemning authority or in the judgment of a court is payable to the City for amounts in excess of the value of City's interest in the Site, then the City hereby assigns that excess amount to Freddie Mac as First Mortgage Lender for distribution as provided in Section 27.07(a) through 27.07(c) above.

27.08 Payment to Lenders. In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date when any compensation resulting from a condemnation or threatened condemnation is to be paid to Tenant, the award will be disposed of as provided in the Leasehold Mortgages.

27.09 Temporary Condemnation. If there is a condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, this Ground Lease will remain in full force and effect, there will be no abatement of Rent, and the entire award will be payable to Tenant.

27.10 Personal Property; Goodwill. Notwithstanding Section 27.07, the City will not be entitled to any portion of any award payable in connection with the condemnation of the Personal Property of Tenant or any of its subtenants, or any moving expenses, loss of goodwill or business loss or interruption of Tenant, severance damages with respect to any portion of the Premises remaining under this Ground Lease, or other damages suffered by Tenant.

ARTICLE 28 ESTOPPEL CERTIFICATE

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

ARTICLE 29 SURRENDER AND QUITCLAIM

29.01 Surrender.

29.01(a) Upon expiration or earlier termination of this Ground Lease, Tenant will surrender to the City the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for Casualty or Condemnation as described in ARTICLE 20 and ARTICLE 27). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper

maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Ground Lease. The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Ground Lease and any other encumbrances created or approved in writing by the City. On or before the expiration or earlier termination of this Ground Lease, Tenant at its sole cost will remove from the Premises, and repair any damage caused by removal of, Personal Property, including any signage. Improvements and Changes will remain in the Premises as City property and title to the Improvements and any Changes will be conveyed to the City as provided in ARTICLE 13 above.

29.01(b) If the Premises is not surrendered at the end of the Term or sooner termination of this Ground Lease, and in accordance with the provisions of this ARTICLE 29, Tenant will continue to be responsible for the payment of Annual Rent until the Premises is surrendered in accordance with this ARTICLE 29., and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of the City to obtain possession of the Premises; any loss or liability resulting from any Claim against the City made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to the City due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

29.01(c) No act or conduct of the City or MOHCD, including, but not limited to, the acceptance of the keys to the Premises, will constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from the City to Tenant confirming termination of this Ground Lease and surrender of the Premises by Tenant will constitute acceptance of the surrender of the Premises and accomplish a termination of this Ground Lease.

29.02 Quitclaim. Upon the expiration or earlier termination of this Ground Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or the City, become the property of the City, free and clear of all liens and without payment therefor by the City, as provided in ARTICLE 13. Upon expiration or sooner termination of this Ground Lease, Tenant must surrender the Site to the City and, at the City's request, will execute, acknowledge, and deliver to the City a good and sufficient quitclaim deed other instrument disclaiming to any interest of Tenant in the Premises.

29.03 Abandoned Property. Any items, including Personal Property, not removed by Tenant will be deemed abandoned. The City may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Tenant waives all Claims against the City for any damages resulting from the City's retention, removal, and disposition of abandoned Personal Property; provided, however, that Tenant will be liable to the City for all costs incurred in storing, removing, and disposing of abandoned Personal Property and repairing any damage to the Premises resulting from its removal. Tenant agrees that the City may elect to sell abandoned Personal Property and offset against the sales proceeds the City's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

29.04 Survival. Tenant's obligation under this ARTICLE 29 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 30 EQUAL OPPORTUNITY

In the selection of all contractors and professional consultants for the Project, Tenant must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time, and with the requirements of the Small Business Enterprise Program ("**SBE Program**") as set forth in that certain Small Business Enterprise Program manual dated July 1, 2015, as it may be amended from time to time, according to the procedures established by the City's Contract Monitoring Division. The Project must comply with the training, hiring, and contracting requirements of Section 3 of the Housing and Community Development Act of 1968 and of the San Francisco Section 3 program as administered by MOHCD. Federal Section 3 requirements state that contracts and opportunities for job training and employment be given, to the greatest extent feasible, to local low-income residents. Local residents for this project are San Francisco residents. In addition, this project will be required to comply with hiring requirements as incorporated into the local Section 3 program and in conjunction with the City's low-income hiring requirements under San Francisco's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83).

ARTICLE 31 CITY PREFERENCE PROGRAMS

To the extent permitted by applicable Law, Tenant agrees to comply with the requirements of the City's current housing preference programs, as amended from time to time; provided, however, that such requirements will apply only to the extent permitted by the requirements of non-City funding approved by the City for the Project.

ARTICLE 32 LABOR STANDARDS PROVISIONS

Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant agrees that any person performing labor in the construction of the Rehabilitation Work and any other Change to the Premises that Tenant performs or causes to be performed under this Ground Lease, will be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant will include in any contract for construction or demolition at the Project a requirement that all persons performing labor under the contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports for all persons performing labor in the construction at the Project or any Change to the Premises.

ARTICLE 33 CONFLICT OF INTEREST

No commissioner, official, or employee of the City may have any personal or financial interest, direct or indirect, in this Ground Lease, and any such commissioner, official, or

employee may not participate in any decision relating to this Ground Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 34 NO PERSONAL LIABILITY

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

ARTICLE 35 ENERGY CONSERVATION

Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the Rehabilitation Work and any other Change.

ARTICLE 36 WAIVER

The waiver by the City or Tenant of any term, covenant, agreement or condition in this Ground Lease will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition in this Ground Lease, and no custom or practice that may grow up between the parties in the administration of this Ground Lease may be construed to waive or to lessen the right of the City or Tenant to insist upon the performance by the other in strict accordance with the its terms. The subsequent acceptance of rent or any other sum by the City will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement, or condition of this Ground Lease, other than the failure of Tenant to pay the particular rent or other sum accepted, regardless of the City's knowledge of the preceding breach at the time of acceptance of such rent or other sum. Any waiver by the City or Tenant of any term or provision of this Ground Lease must be in writing.

ARTICLE 37 TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as the City may deem necessary, Tenant will make available to the City and its authorized representatives for examination all records, reports, data, and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained in this Ground Lease will entitle the City to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by Law to do so, the City will respect the confidentiality requirements of Tenant in regard to the lists above of the names of Residential Occupants of the Premises furnished by Tenant under to ARTICLE 7 above.

ARTICLE 38 NOTICES AND CONSENTS

All notices, demands, consents, or approvals that may be given or are required to be given by either party to the other under this Ground Lease must be in writing and will be deemed to have been fully given when delivered in person to such representatives of the Tenant, and the

City, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed

if to Tenant at: MHDC Mariposa Gardens Associates LP
c/o Mission Housing Development Corporation
474 Valencia Street, Suite 280
San Francisco, CA 94103
Attn: Executive Director

With a copy to: Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Robert C. Mills

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

or to such other address with respect to either party as that party may from time to time designate by notice to the other given under the provisions of this ARTICLE 38. Any notice given under this ARTICLE 38 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email, but no notice will be deemed binding or given if given solely by email.

ARTICLE 39 HEADINGS

Any titles of the paragraphs, articles, and sections of this Ground Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

ARTICLE 40 SUCCESSORS AND ASSIGNS

This Ground Lease will be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground Lease, it means and includes their respective successors and assigns; provided, however, that the City will have no obligation under this Ground Lease to, and no benefit of this Ground Lease will accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Ground Lease. If and when the City sells the Site to any third party, City will require such third party to assume all of the City's obligations under this Ground Lease arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

ARTICLE 41 TIME

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

ARTICLE 42 PARTIAL INVALIDITY

If any provisions of this Ground Lease are determined to be illegal or unenforceable, that determination will not affect any other provision of this Ground Lease and all the other provisions of this Ground Lease will remain in full force and effect.

ARTICLE 43 APPLICABLE LAW; NO THIRD PARTY BENEFICIARY

This Ground Lease is governed by and construed under the laws of the State of California. Other than the benefits and rights afforded to the Lenders, this Ground Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 44 ATTORNEYS' FEES

If either the City or Tenant fails to perform any of its obligations under this Ground Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Ground Lease, the defaulting party or the party non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Ground Lease (whether or not such action is prosecuted to a judgment). For purposes of this Ground Lease, reasonable attorneys' fees of the City's Office of the City Attorney will 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. The term "attorneys' fees" also includes, without limitation, all fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

ARTICLE 45 EXECUTION IN COUNTERPARTS

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

ARTICLE 46 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 Ground Lease or Leasehold Estate. If any 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 will be responsible for such commission or fee and will

indemnify, defend and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Ground Lease.

ARTICLE 47 RECORDATION OF MEMORANDUM OF GROUND LEASE

This Ground Lease may not be recorded, but a memorandum of this Ground Lease will be recorded in the form attached hereto as Attachment 5 (“**Memorandum of Ground Lease**”). The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent purchasers and mortgagees.

ARTICLE 48 SURVIVAL

Termination or expiration of this Ground Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Ground Lease, the ability to collect any damages or sums due, and it will not affect any provision of this Ground Lease that expressly states it will survive termination or expiration of this Ground Lease.

ARTICLE 49 TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Residential Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion, or (c) any transfer by foreclosure or assignment in lieu of foreclosure. Any other transfer, assignment, encumbrance, or lease without the City's prior written consent will be voidable and, at the City's election, constitute a default under this Agreement. The City's consent to any specific assignment, encumbrance, lease, or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Ground Lease.

ARTICLE 50 CITY PROVISIONS

50.01 Non-Discrimination.

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

50.01(b) Subleases and Other Subcontracts. Tenant must include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to the subtenant or other subcontractor in substantially the form of Section 50.01(a) above. In addition, Tenant must 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 must require all subtenants and other subcontractors to comply with those provisions. Tenant’s failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.01(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits (collectively “**Core Benefits**”), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity under state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

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

50.03 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and

Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, certifies that it knows of no facts that would constitute a violation of those provisions and agrees that if Tenant becomes aware of any such fact during the term of this Ground Lease Tenant will immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, that Tenant believes any officer or employee of the City presently has or will have in this Ground Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, will constitute grounds for City's termination and cancellation of this Ground Lease.

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

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

50.06 Tobacco Product Advertising, Sales, Manufacture, and Distribution Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products will be allowed on the Premises. The foregoing 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, or on any sign. The foregoing prohibition will not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as those capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

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

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

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

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

50.10(a) For each Covered Employee, Tenant must provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan

option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

50.10(b) If Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, Tenant will have no obligation to comply with Section 50.10(a) above.

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

50.10(d) Intentionally Omitted.

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

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

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

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

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

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

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

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

50.12 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant will comply with the applicable provisions of such code sections as those sections may apply to the Premises.

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

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

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

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

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

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

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

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

50.16 Graffiti.

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

50.16(b) Tenant will remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within forty-eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards, and fencing surrounding construction Premises, whether public or private, without the consent of the owner of the property or the owner's authorized

agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code section 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*). Any failure of Tenant to comply with this section of this Ground Lease will constitute an event of default of this Ground Lease.

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

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

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

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

50.20 Criminal History in Hiring and Employment Decisions.

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

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

50.20(c) Tenant and subtenants (if any) may not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

50.20(d) Tenant and subtenants (if any) may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Section 50.20(c) above. Tenant and subtenants (if any) may not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

50.20(e) Tenant and subtenants (if any) will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Site, that the Tenant or subtenant will

consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

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

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

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

50.21 Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

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

Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, contact the City's Office of Labor Standards Enforcement.

50.22 Consideration of Salary History Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Agreement or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

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

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

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

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

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

50.24(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Ground Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Ground Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Ground Lease to the County Assessor will be a default under this Ground Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

50.25 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to

time (the “**Nutritional Standards Requirements**”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 50.25 will be deemed a material breach of this Ground Lease. Without limiting Landlord’s other rights and remedies under this Ground Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

50.26 San Francisco Packaged Water Ordinance. Tenant agrees to comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Tenant shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Tenant obtains a waiver from the City’s Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

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

ARTICLE 51 COMPLETE AGREEMENT

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

ARTICLE 52 AMENDMENTS

Neither this Ground Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by all Lenders and the party against which the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach will affect or alter this Ground Lease, but each and every term, covenant, and condition of this Ground Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Ground Lease, including, without limitation, amendments to or modifications to the exhibits to this Ground Lease, will be subject to the mutual written agreement of City and Tenant and all Lenders, and City’s agreement may be made upon the sole approval of the City’s Director of Property, or his or her designee; provided, however, material amendments, or modifications to this Ground Lease (a) changing the legal description of the Site, (b) increasing the Term, (c)

increasing the Rent, (d) changing the general use of the Site from the uses authorized under this Ground Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Ground Lease will additionally require the approval of the City's Board of Supervisors.

ARTICLE 53 ATTACHMENTS

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

1. Legal Description of Site
2. Schedule of Performance
3. City Consent of Leasehold Mortgage
4. Rehabilitation Work
5. Memorandum of Amended and Restated Ground Lease
6. Form of Income Certification Form

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS GROUND LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS GROUND LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS GROUND LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS GROUND LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS GROUND LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS GROUND LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS GROUND LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

Signatures Appear on the Following Pages

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

TENANT:

MHDC Mariposa Gardens Associates LP,
a California limited partnership

By: MHDC Mariposa Gardens LLC,
a California limited liability company,
its managing general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

By: MHDC Delaware SPE LLC,
a Delaware limited liability company,
its administrative general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

CITY AS LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Eric D. Shaw
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 1

LEGAL DESCRIPTION OF THE SITE

ATTACHMENT 2
SCHEDULE OF PERFORMANCE

ATTACHMENT 3

CITY CONSENT OF LEASEHOLD MORTGAGE

Date: _____

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

Attn: Director

One South Van Ness Avenue, 5th Floor

San Francisco, CA 94103

RE: Leasehold Mortgage, Mariposa Apartments Amended and Restated Ground
Lease, 2445 Mariposa Street, San Francisco

Dear Sir or Madam:

Under Section 25.01 of the Mariposa Apartments Amended and Restated Ground Lease, dated _____, 2021, between the City and County of San Francisco ("City") and MHDC Mariposa Gardens Associates LP, 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.

[Signatures on Following Page]

Sincerely,

MHDC Mariposa Gardens Associates LP,
a California limited partnership

By: MHDC Mariposa Gardens LLC,
a California limited liability company,
its managing general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

By: MHDC Delaware SPE LLC,
a Delaware limited liability company,
its administrative general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

By signing this letter, the City consents to the leasehold mortgage, under the terms and conditions of Section 25.01 of the Mariposa Gardens Apartments Amended and Restated Ground Lease, dated _____, 2021.

Mayor's Office of Housing and Community Development

Eric D. Shaw, Director

ATTACHMENT 4
REHABILITATION WORK

ATTACHMENT 5

MEMORANDUM OF AMENDED AND RESTATED LEASE

Free Recording Requested under
Government Code Section 27383 and 27388.1

When recorded, mail to:

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

MEMORANDUM OF AMENDED AND RESTATED GROUND LEASE

This Memorandum of Amended and Restated Ground Lease ("Memorandum") is entered into as of _____, 2021, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and MHDC MARIPOSA GARDENS ASSOCIATES LP, a California limited partnership ("Tenant"), with respect to that certain Amended and Restated Ground Lease (the "Lease") dated _____, 2021, between City and Tenant.

Under the Lease, City leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). As of the Effective Date of the Lease, the Lease fully amends and restates the Ground Lease from the City as successor-in-interest to the former Redevelopment Agency of the City and County of San Francisco to Tenant, as assignee, dated as of February 23, 2004 (the "Agency Lease"). The Lease term is a continuation of the term of the Agency Lease and will commence on the Effective Date and end on February 22, 2059, subject to a 44-year option to extend, unless terminated earlier or extended under the terms of the Lease.

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

The terms and provisions of the Lease are incorporated into this Memorandum as though fully set forth.

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

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

Executed as of _____, 2021 in San Francisco, California.

TENANT:

MHDC Mariposa Gardens Associates LP,
a California limited partnership

By: MHDC Mariposa Gardens LLC,
a California limited liability company,
its managing general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

By: MHDC Delaware SPE LLC,
a Delaware limited liability company,
its administrative general partner

By: Mission Housing Development Properties III, Inc.,
a California non-profit public benefit corporation,
its sole member and manager

By: _____
Sam Moss
Executive Director

[Signatures continue on following page]

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Eric D. Shaw
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 6
FORM OF TENANT INCOME CERTIFICATION

See attached 7 pages



GENERAL PLAN REFERRAL

January 6, 2021

Case No.: 2020-009700GPR
Block/Lot No.: 4014/001 - 2445 Mariposa Street
Project Sponsor: Mayor's Office of Housing and Community Development (MOHCD)
Applicant: Omar Cortez – (415) 701-4218
Omar.cortez@sfgov.org
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Staff Contact: María De Alva – (628) 652-7453
maria.dealva@sfgov.org

Recommended By: 
Rich Hillis, Director of Planning

Recommendation: Finding the project, on balance, is **in conformity** with the General Plan

Project Description

The Project Site (or the "Site") is owned by the Mayor's Office of Housing Community Development (MOHCD). The Site has a 63-unit multifamily housing development affordable to low-income families (Mariposa Gardens, the "Property"). The owner of the Mariposa Gardens, an affiliate of Mission Housing Development Corporation (MHDC), leases the Site from MOHCD pursuant to an existing ground lease. The owner intends to refinance the senior loan on the Property to obtain the funds necessary to conduct repairs of the Property and other affordable housing developments in need of rehabilitation - also owned by MHDC. The refinance of Mariposa Gardens will require the amendment of the existing ground lease to incorporate and/or amend provisions as required by the new senior lender and to extend the term of the ground lease and existing affordability restrictions.

Environmental Review

The project is a Real Estate transaction and not defined as a project under CEQA Guidelines Sections 15378 and 15060©(2) because it would not result in a direct or indirect physical change in the environment.

General Plan Compliance and Basis for Recommendation

The proposed ground lease amendment is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

Note: General Plan Objectives are shown in **BOLD UPPERCASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

The proposed project, serving low-income families, would preserve and extend affordability on this and other affordable housing developments.

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

Policy 2.4

Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

The proposed project would procure funds to rehabilitate this and other affordable housing sites, ensuring preservation for current and future tenants.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.1

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

Policy 3.2

Promote voluntary housing acquisition and rehabilitation to protect affordability for existing occupants.

The proposed project would secure funds to rehabilitate existing multifamily properties serving low-income residents and prevent their displacement.

OBJECTIVE 4**FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES**

Policy 4.2

Encourage the remodeling of existing housing, for families with children.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

The proposed project would procure funds to rehabilitate the residential structures on this site and other area affordable housing developments, preserving their long-term affordability.

OBJECTIVE 8**BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.**

Policy 8.1

Support the production and management of permanently affordable housing.

The proposed project would provide support to the non-profit Mission Housing Development Corporation for the enhancement and continued operations of its sites, which provide affordable housing for low-income families.

Planning Code Section 101 Findings

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The Project would not have a negative effect on existing neighborhood-serving retail uses and would not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The Project would not have a negative effect on housing or neighborhood character in San Francisco.

3. That the City's supply of affordable housing be preserved and enhanced;

The Project would help preserve the long-term viability and feasibility of the subject and other area multifamily affordable housing properties to prevent displacement of low-income residents.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The Project would not result in commuter traffic impeding MUNI transit service, nor overburden our streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The Project would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The Project would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The Project would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The Project would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Recommendation: Finding the project, on balance, is in conformity with the General Plan

1
2
3
4
5
6
7
8
9
10
11

MARIPOSA GARDENS APARTMENTS GROUND LEASE

by and between

MARIPOSA GARDENS, A CALIFORNIA LIMITED PARTNERSHIP

as Landlord

and

MARIPOSA GARDENS II AFFORDABLE HOUSING

a California Limited Partnership

as Tenant

Dated as of February 23, 2004

1	10.01	General Requirements and Rights of Agency	16
2	10.02	Agency Approvals and Limitation Thereof	17
3	10.03	Construction to be in Compliance with Construction Documents and Law	18
4	10.04	Approval of Construction Documents by Agency	18
5	10.05	Disapproval of Construction Documents by Agency	18
6	10.06	Final Construction Documents to be Approved by Agency	19
7	10.07	Issuance of Building Permits	19
8	10.08	Performance and Payment Bonds	20
9	10.09	Agency Approval of Changes after Commencement of Construction	20
10	10.10	Times for Construction	21
11	10.11	Force Majeure	21
12	10.12	Reports	22
13	10.13	Access to Site	22
14	10.14	Notice of Completion	22
15	<u>ARTICLE 11: COMPLETION OF IMPROVEMENTS</u>		23
16	11.01	Certificate of Completion - Issuance	23
17	11.02	Certifications to be Recordable	23
18	11.03	Certification of Completion - Non-Issuance Reasons	24
19	<u>ARTICLE 12: CHANGES TO THE IMPROVEMENTS</u>		24
20	12.01	Post Acquisition Changes	24
21	12.02	Definition of Change	25
22	12.03	Enforcement	25
23	<u>ARTICLE 13: TITLE TO IMPROVEMENTS</u>		25
24	<u>ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE</u>		25
25	14.01	Assignment, Sublease or Other Conveyance by Tenant	26
26	14.02	Assignment, Sublease or Other Conveyance by Agency	26
27	<u>ARTICLE 15: TAXES</u>		27
28	<u>ARTICLE 16: UTILITIES</u>		28
29	<u>ARTICLE 17: MAINTENANCE</u>		28
30	<u>ARTICLE 18: LIENS</u>		28
31	<u>ARTICLE 19: GENERAL REMEDIES</u>		29
32	19.01	Application of Remedies	29
33	19.02	Notice and Cure Rights for Tenant Limited Partner	29
34	19.03	Breach by Agency	30
35	19.04	Breach by Tenant	31
36	<u>ARTICLE 20: DAMAGE AND DESTRUCTION</u>		33
37	20.01	Insured Casualty	33
38	20.02	Uninsured Casualty	34
39	20.03	Distribution of the Insurance Proceeds	34
40	20.04	Clean Up of Housing Site	34
41	<u>ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;</u>		
42	<u>INDEMNIFICATION</u>		35

1	21.01	Damage to Person or Property -General Indemnification	35
2	21.02	Hazardous Materials -Indemnification	36
3	ARTICLE 22: <u>INSURANCE AND FIDELITY BOND</u>		38
4	22.01	Insurance	38
5	ARTICLE 23: <u>COMPLIANCE WITH LEGAL REQUIREMENTS</u>		42
6	23.01	Compliance with Legal Requirements	42
7	ARTICLE 24: <u>ENTRY</u>		43
8	ARTICLE 25: <u>MORTGAGE FINANCING</u>		43
9	25.01	No Encumbrances Except for Development Purposes	43
10	25.02	Holder Not Obligated to Construct	44
11	25.03	Failure of Holder to Complete Improvements	44
12	25.04	Default by Tenant and Agency's Rights	46
13	25.05	Cost of Mortgage Loans to be Paid by Tenant	46
14	ARTICLE 26: <u>PROTECTION OF LENDER</u>		47
15	26.01	Notification to Agency	47
16	26.02	Lender's Rights to Prevent Termination	47
17	26.03	Lender's Rights When Tenant Defaults	48
18	26.04	Default Which Cannot be Remedied by Lender	49
19	26.05	Court Action Preventing Lender's Action	49
20	26.06	Lender's Rights to Record, Foreclose and Assign	50
21	26.07	Ground Lease Rent After Lender Foreclosure or Assignment	51
22	26.08	Permitted Uses After Lender Foreclosure	53
23	ARTICLE 27: <u>CONDEMNATION AND TAKINGS</u>		53
24	27.01	Parties' Rights and Obligations to be Governed by Agreement	53
25	27.02	Total Taking	53
26	27.03	Partial Taking	53
27	27.04	Effect on Rent	54
28	27.05	Restoration of Improvements	54
29	27.06	Award and Distribution	54
30	27.07	Payment to Lenders	55
31	ARTICLE 28: <u>ESTOPPEL CERTIFICATE</u>		55
32	ARTICLE 29: <u>QUITCLAIM</u>		55
33	ARTICLE 30: <u>EQUAL OPPORTUNITY</u>		56
34	ARTICLE 31: <u>CERTIFICATE AND BUSINESS PREFERENCE PROGRAM</u>		56
35	ARTICLE 32: <u>AGENCY LABOR STANDARDS PROVISIONS</u>		56
36	ARTICLE 33: <u>AGENCY MINIMUM COMPENSATION AND HEALTH CARE</u>		56
37	ACCOUNTABILITY POLICY		56
38	ARTICLE 34: <u>CONFLICT OF INTEREST</u>		57
39	ARTICLE 35: <u>NO PERSONAL LIABILITY</u>		57
40	ARTICLE 36: <u>ENERGY CONSERVATION</u>		57
41	ARTICLE 37: <u>WAIVER</u>		57
42	ARTICLE 38: <u>TENANT RECORDS</u>		58

1	<u>ARTICLE 39: NOTICES AND CONSENTS</u>	58
2	<u>ARTICLE 40: COMPLETE AGREEMENT</u>	59
3	<u>ARTICLE 41: HEADINGS</u>	59
4	<u>ARTICLE 42: SUCCESSORS AND ASSIGNS</u>	59
5	<u>ARTICLE 43: TIME</u>	60
6	<u>ARTICLE 44: PARTIAL INVALIDITY</u>	60
7	<u>ARTICLE 45: APPLICABLE LAW</u>	60
8	<u>ARTICLE 46: ATTORNEYS' FEES</u>	60
9	<u>ARTICLE 47: EXECUTION IN COUNTERPARTS</u>	61
10	<u>ARTICLE 48: RECORDATION OF MEMORANDUM OF GROUND LEASE</u>	61
11	<u>ARTICLE 49: ATTACHMENTS</u>	62

Attachments to Ground Lease

1. Legal Description of Site
2. Intentionally Omitted
3. Schedule of Performance
4. Agency Consent of Leasehold Mortgage
5. Operational Rules for Certificate Holder's Priority
6. Equal Opportunity Program
7. Prevailing Wage Provisions
8. Income Computation and Certification
9. Additional Provisions (Intentionally Omitted)
10. City's Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments
11. Agency's Minimum Compensation Policy
12. Agency's Health Care Accountability Policy

GROUND LEASE

This GROUND LEASE is entered into as of February 23rd, 2004, by and between MARIPOSA GARDENS, a California Limited Partnership, as Landlord, and MARIPOSA GARDENS II AFFORDABLE HOUSING, a California Limited Partnership (the "Tenant" or "Partnership"), as Tenant under this Ground Lease.

RECITALS

- A. Landlord is the fee owner of the land described in Exhibit A attached

1 hereto ("Site"). Landlord desires to lease the Site to retain its use as 62 units of very low income
2 family rental housing plus one manager's unit, parking spaces for the residential units and other
3 ancillary uses (the "Project").

4 B. The Landlord, on the basis of the foregoing and the undertakings of the Tenant
5 pursuant to this Ground Lease, is willing to lease the Site to the Tenant for the purpose of
6 rehabilitating the Project in accordance with the provisions of this Ground Lease.

7 C. Landlord intends to sell the Site to the Redevelopment Agency of the City and
8 County of San Francisco ("Agency"), at which time the Agency will assume all of the rights and
9 obligations of Landlord under this Ground Lease.

10 D. As evidence by this Ground Lease, Landlord has agreed, and will require
11 Tenant, to comply with the Agency requirements as included in this Ground Lease.

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

16 **ARTICLE 1: DEFINITIONS**

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

19 **1.01 Agency** means the Redevelopment Agency of the City and County of San
20 Francisco, a public body, corporate and politic, exercising its functions and powers and organized
21 and existing under the Community Redevelopment Law of the State of California and includes

1 any successor public agency designated by or pursuant to law. The Agency is the owner of the
2 Site.

3 **1.02 Agreement Date** means the date that this Ground Lease is deemed to be entered
4 into and effective, as set forth on the cover page.

5 **1.03 Area Median Income (or "AMI** means the median household or family income
6 for San Francisco County adjusted solely for household size, as determined pursuant to Section
7 50093 of the California Health and Safety Code.

8 **1.04 Critical Activity(ies)** means an activity or item of Work which, if delayed or
9 extended, will delay Substantial Completion or the Final Completion Date.

10 **1.05 Effective Date** means the first date set forth above.

11 **1.06 First Mortgage Lender** means Citibank (West), FSB and its successors, assigns
12 and participants or other entity holding the first deed of trust on the Leasehold estate.

13 **1.07 Ground Lease** means this Ground Lease of the Site to the Tenant from the
14 Landlord, as amended from time to time.

15 **1.08 Improvements** means all physical construction, including all structures, fixtures
16 and other improvements situated on the Site.

17 **1.09 Landlord** means Mariposa Gardens, a California Limited Partnership and its
18 successors and assigns.

19 **1.10 Lease Year** means each calendar year during the term hereof, beginning on
20 January 1 and ending on December 31, provided that the "First Lease Year" shall commence on
21 the Effective Date and continue through December 31st of that same calendar year. Furthermore,
22 the "Last Lease Year" shall end upon the expiration of the term hereof.



1 **1.11 Leasehold Estate** means the estate held by the Tenant pursuant to and created by
2 this Ground Lease.

3 **1.12 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of
4 credit or other security instrument, including but not limited to the deeds of trust securing the First
5 Mortgage Lender and which are part of the such loan documents, and any assignment of the rents,
6 issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold
7 Estate created by this Ground Lease and have been approved in writing by the Landlord.

8 **1.13 Lender** means any entity holding a Leasehold Mortgage.

9 **1.14 Low Income Households** means 43 households earning no more than SIXTY
10 PERCENT (60%) of Area Median Income, based on actual household size, and whose subsequent
11 income does not exceed One Hundred Twenty Percent (120%) of AMI, based on actual household
12 size.

13 **1.15 Occupant** means any person or entity authorized by Tenant to occupy a residential
14 unit on the Site, or any portion thereof.

15 **1.16 Premises** means the Site together with any Improvements thereon.

16 **1.17 Project** means the Mariposa Gardens Apartments which is a Project Based Section
17 8 housing development located on the south side of Mariposa Street between Potrero Avenue and
18 Hampshire Street in the Mission District. The Development is home to 62 families who reside in
19 the two and three-bedroom units. If indicated by context, **Project** means the leasehold interest in
20 the Site and the fee interest in the Improvements on the Site.

21 **1.18 Site** means the real property shown in the Site Legal Description, Attachment 1.

1 **1.19 Subsequent Owner** means any successor (including a Lender or an affiliate or
2 assignee of a Lender as applicable) to the Tenant’s interest in the Leasehold Estate and the
3 Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure,
4 or transfer from a Lender, its affiliate, and any successors to any such person or entity.

5 **1.20 Tenant** means Mariposa Gardens II, a California Limited Partnership (or a
6 Subsequent Owner, where appropriate).

7 Whenever an Attachment is referenced, it means an attachment to this Ground Lease
8 unless otherwise specifically identified. Whenever a section, article or paragraph is referenced, it
9 is a reference to this Ground Lease unless otherwise specifically referenced.

10 **1.21 Very Low Income Households** means 19 households earning no more than
11 FIFTY PERCENT (50%) of Area Median Income based on actual household size, and whose
12 subsequent income does not exceed One Hundred Twenty Percent (120%) of AMI, based on
13 actual household size.

14
15 **ARTICLE 2: TERM**

16 (a) **Initial Term.** The term of this Ground Lease shall commence upon the Agreement
17 Date and shall end fifty-five (55) years from that date, unless extended pursuant to section (b)
18 below.

19 (b) **Option for Extension.** Provided that the Tenant is not in default of the terms of its
20 obligations to the Agency either at the time of giving of an Extension Notice, as described in
21 subparagraph (c) below, or on the last day of the term (the “Termination Date”), the term of this

1 Ground Lease may be extended at the option of the Tenant for one twenty (20) year period as
2 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 Landlord in writing that it wishes to exercise its
5 option to extend the term of this Ground Lease (an "Extension Notice"). The extended term shall
6 be for 20 years from the Termination Date, which option the Tenant may exercise only once, for a
7 total Ground Lease term of not to exceed seventy-five (75) 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, following the term of this Ground Lease, or any
11 extensions of this Ground Lease, the Landlord desires to sell its interest in the Site, to an entity
12 other than the Agency, the City and County of San Francisco, or a nonprofit public benefit
13 corporation, the Tenant will have the right of first refusal to negotiate for the purchase of the Site
14 provided that the Tenant agrees to maintain the Site as a very low income housing development
15 for fifty (50) years from the date of purchase.

16 **ARTICLE 3: FINANCING**

17 Tenant shall submit to the Landlord in accordance with the dates specified in the Schedule
18 of Performance, Attachment 3, for approval by the Landlord, evidence satisfactory to the
19 Landlord that Tenant has sufficient equity capital and commitments for construction and
20 permanent financing, and/or such other evidence of capacity to proceed with the rehabilitation of
21 the Improvements in accordance with this Ground Lease, as is acceptable to the Landlord.

1 **ARTICLE 4: RENT**

2 **4.01 Annual Rent**

3 (a) Tenant shall pay the Landlord ONE HUNDRED SEVENTY NINE THOUSAND
4 TWO HUNDRED DOLLARS (\$179,200) per year for lease of the Site, consisting of Base Rent
5 and Residual Rent, as defined in Sections 4.02 and 4.03 below, without offset of any kind and
6 without necessity of demand, notice or invoice from the Landlord (together, "Annual Rent").
7 Annual Rent shall be redetermined on the fifteenth anniversary of the date of this Ground Lease
8 and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of the appraised
9 value of the Site as determined by an MAI appraiser selected by and at the sole cost of the
10 Landlord.

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

1 **4.02 Base Rent**

2 (a) “Base Rent”, means, in any given Lease Year commencing with the year
3 rehabilitation of the Project is complete as evidenced by a notice of Substantial Completion for all
4 of the residential units (“First Lease Year”), TWENTY THOUSAND DOLLARS (\$20,000).
5 Base Rent shall be due and payable in arrears on January 31st of each Lease Year; provided,
6 however, Base Rent for the First Lease Year shall be due on the January 31st of the following
7 calendar year, and shall be equal to \$20,000 times the number of days in the First Lease Year,
8 divided by 365; and provided, further, that in the event that the Tenant or any Subsequent Owner
9 fails to comply with the provisions of Section 9.02, Base Rent shall be increased to the full
10 amount of Annual Rent.

11 (b) If the Project does not have sufficient operating revenues to pay Base Rent in any
12 given Lease Year after the payment of all ordinary and necessary operating expenses, funding of
13 Landlord-approved reserves, and required debt service to the First Mortgage Lender and the
14 Landlord has received written notice from Tenant regarding its inability to pay Base Rent from
15 operating revenues, the unpaid amount shall be deferred and all such deferred amounts shall
16 accrue without interest until paid (“Base Rent Accrual”). The Base Rent Accrual shall be due and
17 payable each year from and to the extent operating revenue is available to make such payments
18 and, in any event, upon the earlier of sale of the Project or termination of this Ground Lease.

19 (c) There shall be a late payment penalty of two percent (2%) for each month or any
20 part thereof if Base Rent payment is delinquent. The Tenant may request in writing that the
21 Landlord waive such penalties by describing the reasons for Tenant’s failure to pay Base Rent and

1 Tenant's proposed actions to insure that Base Rent will be paid in the future. The Landlord may,
2 in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's
3 failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing
4 reasonable solutions to such failure to pay.

5 **4.03 Residual Rent**

6 "Residual Rent" means, in any given Lease Year, ONE HUNDRED FIFTY NINE
7 THOUSAND TWO HUNDRED DOLLARS (\$159,200). Residual Rent shall be due in arrears on
8 April 15th of each Lease Year payable only to the extent of Surplus Cash as provided in Sections
9 4.04 and 6.02(h) below, and any unpaid Residual Rent shall not accrue. However, in the event
10 that Surplus Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify
11 to the Landlord in writing by April 15 that available Surplus Cash is insufficient to pay Residual
12 Rent and Tenant shall provide to Landlord any supporting documentation reasonably requested by
13 Landlord to allow Landlord to verify the insufficiency.

14 **4.04 Surplus Cash**

15 "Surplus Cash" means all revenue generated from the Premises remaining in any given
16 Lease Year after deduction of all operating expenses including required debt service and reserve
17 deposits as agreed to in writing by Landlord and the Lenders. All permitted uses and distributions
18 of Surplus Cash shall be governed by Section 6.02(h) of this Ground Lease.

19 **4.05 Prepaid Rent**

20 Tenant shall make a one-time prepayment of Base Rent which shall be applied ratably
21 over 20 years as follows: within 10 days of Tenant's receipt of its investor limited partner's final

1 capital contribution, Tenant shall pay Landlord the excess, if any, of development proceeds
2 (capital contributions and permanent loan proceeds) over development uses (as shown in Tenant's
3 cost certification prepared by an independent certified public accountant on the form required by
4 the California Tax Credit Allocation Committee), including but not limited to acquisition costs,
5 all hard and soft construction costs, developer fee, and capitalized reserves. Notwithstanding the
6 foregoing, the aforesaid prepayment of Base Rent shall not become due and payable unless and
7 until the First Mortgage Lender has received the full amount of the "Conversion Paydown" as
8 more particularly described in the Loan Agreement evidencing the First Mortgage Lender's Loan.

9 **4.06 Triple Net Lease**

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

16 **ARTICLE 5: LANDLORD COVENANTS**

17 The Landlord is duly created and validly existing in good standing under the Law, and
18 has full right, power and authority to enter into and perform its obligations under this Ground
19 Lease.

20 **ARTICLE 6: TENANT COVENANTS**

21 Tenant covenants and agrees for itself, and its successors and assigns to or of the Site, or



1 any part thereof, that:

2 **6.01 Limited Partnership/Authority**

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

5 **6.02 Use of Site and Rents**

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

8 **6.02(a) Permitted Uses**

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

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

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

12 **6.02(c) Non-Discriminatory Advertising**

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

16 **6.02(d) Access for Disabled Persons**

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

1 **6.02(h) Permitted Uses of Surplus Cash**

2 All annual rent revenue, prior to the calculation of Surplus Cash, shall be used to
3 pay property expenses in the following order: any and all operating expenses including Base Rent,
4 required debt service to the First Mortgage Lender and required reserves and fees, all as agreed to
5 in writing by Landlord and the Lenders. Any cash remaining after payment of each and all of the
6 above mentioned obligations shall be deemed Surplus Cash. If the Tenant is found by the
7 Landlord to be in compliance with all applicable requirements and agreements, Tenant shall use
8 Surplus Cash to make the following payments:

9 First to Base Rent Accrual, if any, then to a partnership management fee of
10 \$17,500 increasing at an annual rate of three percent (3%) and asset management fee in an
11 aggregate amount of \$3,000 or an asset management fee in an amount to be approved by the
12 Landlord; second to the Limited Partner Asset Management Fee, if any; then one-third (1/3) of
13 remaining Surplus Cash to Tenant as an incentive management fee in an amount not to exceed
14 \$500 per unit per year, to a maximum of \$50,000. The remaining two-thirds (2/3) of Surplus
15 Cash, together with any additional Surplus Cash after payment of the Tenant's \$50,000 incentive
16 management fee, shall be applied to Residual Rent.

17 **6.03 Landlord Deemed Beneficiary of Covenants**

18 In amplification, and not in restriction, of the provisions of the preceding subsections, it is
19 intended and agreed that the Landlord shall be deemed beneficiary of the agreements and
20 covenants provided in this Article 6 for and in its own right and also for the purposes of
21 protecting the interests of the community and other parties, public or private, in whose favor or

1 for whose benefit such agreements and covenants have been provided. Such agreements and
2 covenants shall run in favor of the Landlord for the entire period during which such agreements
3 and covenants shall be in force and effect, without regard to whether the Landlord has any time
4 been, remains, or is an owner of any land or interest therein to, or in favor of, which such
5 agreements and covenants relate. The Landlord shall have the right, in the event of any breach of
6 any such agreements or covenants, in each case, after notice and the expiration of cure periods, to
7 exercise all the rights and remedies and to maintain any actions at law or suits in equity or other
8 proper proceedings to enforce the curing of such breach of covenants, to which it or any other
9 beneficiaries of such agreements or covenants may be entitled.

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

11 Forty-five days after recordation of a Notice of Completion by the Tenant for all
12 residential units, and on May 31st of each year thereafter, Tenant will furnish to the Landlord a
13 list of all of the names of the persons who are Occupants of the Improvements, the specific unit
14 which each person occupies, the household income of the Occupants of each unit, the household
15 size and the rent being charged to the Occupants of each unit. If any state or federal agency
16 requires an income certification for Occupants of the Improvements containing the above-
17 referenced information, the Landlord agrees to accept such certification in lieu of Attachment 8 as
18 meeting the requirements of this Ground Lease. In addition to such initial and annual list and
19 certification, Tenant agrees to provide the same information and certification to the Landlord
20 regarding each Occupant of the Improvements not later than ten (10) business days after such
21 Occupant commences occupancy.

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

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

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

10 **9.01 Scope of Development and Schedule of Performance**

11 Tenant agrees to undertake and complete all physical construction on the Site, if any, as
12 approved by the Landlord, in accordance with the Schedule of Performance, Attachment 3.

13 **9.02 Permitted Uses and Occupancy Restrictions**

14 (a) The permitted uses of the Project are limited to sixty-two (62) residential dwelling
15 units, plus one (1) manager's unit ("Residential Units"), and common areas. Upon the completion
16 of rehabilitation, one hundred percent (100%) of the Residential Units, with the exception of the
17 manager's unit, in the Project shall be occupied or held vacant and available for rental by 19
18 Very Low Income Households and 43 Low Income Households.

19 (b) Sixty-two (62) of the Residential Units shall be occupied and rented through the
20 Project-Based Section 8 Rental Assistance Program, or its successor program, for as long as the
21 Project receives Project-Based Section 8 assistance, in accordance with San Francisco Housing

1 Authority (“SFHA”) and/or HUD requirements. Tenant shall apply for, accept and renew Project-
2 Based Section 8 assistance from SFHA or HUD, or any successor rent subsidy program, for as
3 long as it is offered.

4 (c) Upon vacancy of any of the Residential Units rented through the Project-Based
5 Section 8 Rental Assistance Program, that vacant unit shall be rented to a tenant who qualifies
6 under the Project-Based Section 8 Rental Assistance Program. In the event SFHA or HUD no
7 longer provides Section 8 assistance, rent for that Residential Unit, including utility allowance,
8 shall in no event exceed: FIFTY PERCENT (50%) of Area Median Income for 19 households
9 and SIXTY PERCENT (60%) of Area Median Income for 43 households for the particular unit
10 size, as determined pursuant to Section 33760.5(d) of the California Health and Safety Code.

11 **ARTICLE 10: REHABILITATION OF IMPROVEMENTS**

12 **10.01 General Requirements and Rights of Landlord**

13 Construction documents for the rehabilitation of the Improvements by Tenant (the
14 “Construction Documents”) shall be prepared by a person registered in and by the State of
15 California to practice architecture and shall be in conformity with this Ground Lease, including
16 any limitations established in the Landlord’s approval of the schematic drawings, if any,
17 preliminary construction documents, and final construction documents for the Premises, and all
18 applicable Federal, State and local laws and regulations. The architect shall use, as necessary,
19 members of associated design professions, including engineers and landscape architects

20 **10.02 Landlord Approvals and Limitation Thereof**

21 The Construction Documents must be approved by the Landlord in the manner set

1 forth below:

2 **10.02(a) Compliance with Ground Lease**

3 The Landlord’s approval with respect to the Construction Documents is limited to
4 determination of their compliance with this Ground Lease, including, if applicable, the Scope of
5 Development (these enumerated documents are for convenience sometimes called
6 “Redevelopment Requirements”). The Construction Documents shall be subject to general
7 architectural review and guidance by the Landlord as part of this review and approval process.

8 **10.02(b) Landlord Does Not Approve Compliance with Construction**
9 **Requirements**

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

13 **10.02(c) Landlord Determination Final and Conclusive**

14 The Landlord’s determination respecting the compliance of the Construction
15 Documents with Redevelopment Requirements shall be final and conclusive (except that it makes
16 no determination and has no responsibility for the matters set forth in Section 10.02(b), above).

17 **10.03 Construction to be in Compliance with Construction Documents and Law**

18 **10.03(a) Compliance with Landlord and City Approved**
19 **Documents**

20 The construction shall be in strict compliance with the Landlord-approved and
21 City-approved Construction 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 Approval of Construction Documents by Landlord**

5 Tenant shall submit and the Landlord shall approve or disapprove the Construction
6 Documents referred to in this Ground Lease within the times established in the Schedule of
7 Performance. Failure by the Landlord either to approve or disapprove within the times
8 established in the Schedule of Performance shall entitle Tenant to a day for day extension of time
9 for completion of any Critical Activities delayed as a direct result of Landlord's failure to timely
10 approve or disapprove the Construction Documents.

11 **10.05 Disapproval of Construction Documents by Landlord**

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

20 **10.06 Final Construction Documents to be Approved by Landlord**

21 The Final Construction Documents, including all drawings, specifications and other

1 related documents necessary for the rehabilitation of the Improvements in accordance with the
2 requirements of this Ground Lease must be approved by the Landlord.

3 **10.07 Issuance of Building Permits**

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

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

16 **10.08 Performance and Payment Bonds**

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

21 **10.09 Landlord Approval of Changes after Commencement of Construction**

1 Once construction has commenced, the only Construction Document matters subject to
2 further review by the Landlord will be requests for any material changes in the Construction
3 Documents which affect matters previously approved by the Landlord. For purposes of
4 determining materiality in the Construction Documents, any single change order of \$10,000 or
5 more in value and any change order which causes the aggregate value of all change orders to
6 exceed \$100,000 shall be considered material and require the Landlord's prior written approval
7 unless waived by the Landlord. Permission to make such changes shall be requested by Tenant in
8 writing directed to the Landlord, and if to Agency, Attention: Housing Program Manager, with a
9 copy to the Architecture Division Manager. The Landlord shall reply in writing giving approval
10 or disapproval of the changes within ten (10) business days after receiving such request. If the
11 request is disapproved, the reply must specify the reasons for the disapproval.

12 **10.10 Times for Construction**

13 Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any
14 part thereof, that Tenant and such successors and assigns shall promptly begin and diligently
15 prosecute to completion the redevelopment of the Site through the rehabilitation of the
16 Improvements thereon, and that such construction shall in any event commence and thereafter
17 diligently continue and shall be completed no later than the dates specified in the Schedule of
18 Performance, unless such dates are extended by the Landlord.

19 **10.11 Force Majeure**

20 For the purposes of any of the provisions of this Ground Lease, neither the Landlord nor
21 Tenant, as the case may be, shall be considered in breach or default of its obligations, nor shall

1 there be deemed a failure to satisfy any conditions with respect to the beginning and completion
2 of rehabilitation of the Improvements, or progress in respect thereto, in the event of enforced
3 delay in the performance of such obligations or satisfaction of such conditions, due to
4 unforeseeable causes beyond its control and without its fault or negligence, including, but not
5 restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party,
6 fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of
7 materials and unusually severe weather or delays of subcontractors due to such causes; it being
8 the purposes and intent of this provision that in the event of the occurrence of any such enforced
9 delay, the time or times for the satisfaction of conditions to this Ground Lease including those
10 with respect to rehabilitation of the Improvements, shall be extended for the period of the
11 enforced delay; provided, however, that the party seeking the benefit of the provisions of this
12 paragraph shall have notified the other party thereof in writing of the cause or causes thereof
13 within thirty (30) days after the beginning of any such enforced delay and requested an extension
14 for the period of the enforced delay; and, provided further, that this paragraph shall not apply to,
15 and nothing contained in this paragraph shall extend or shall be construed to extend, the time of
16 performance of any of Tenant's obligations to be performed prior to the commencement of
17 construction, nor shall the failure to timely perform pre-commencement of construction
18 obligations extend or be construed to extend Tenant's obligations to commence, prosecute and
19 complete rehabilitation of the Improvements in the manner and at the times specified in this
20 Ground Lease.

21 **10.12 Reports**

1 Subsequent to commencement of rehabilitation of the Improvements and until completion,
2 Tenant shall make a report in writing to the Landlord every three (3) months, in such detail as
3 may reasonably be required by the Landlord, as to the actual progress of the Tenant with respect
4 to such construction. During such period the work of the Tenant shall be subject to inspection by
5 representatives of the Landlord, at reasonable times and upon reasonable advance notice.

6 **10.13 Access to Site**

7 Tenant shall permit access to the Site to the Landlord and the City whenever and to the
8 extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable
9 times and upon reasonable advance notice.

10 **10.14 Notice of Completion**

11 Promptly upon completion of the rehabilitation of the Improvements in accordance with
12 the provisions of this Ground Lease, Tenant shall submit to Landlord for approval a Notice of
13 Completion (“NOC”), and record such approved NOC in the San Francisco Recorder’s Office.
14 Tenant shall provide Landlord with a copy of the recorded NOC.

15 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

16 **11.01 Certificate of Completion - Issuance**

17 Promptly after completion of the rehabilitation of the Improvements in accordance with
18 the provisions of this Ground Lease, and upon the request of Tenant, the Landlord will furnish
19 Tenant with an appropriate instrument so certifying. Such certification by the Landlord shall be a
20 conclusive determination of satisfaction and termination of the agreements and covenants of this
21 Ground Lease with respect to the obligation of Tenant, and its successors and assigns, to construct

1 the Improvements in accordance with Landlord approved Final Construction Documents and the
2 dates for the beginning and completion thereof; provided, however, that such determination shall
3 only be withheld because of failure to carry out specific requirements of the Redevelopment
4 Requirements or this Ground Lease; provided further, that such certification and such
5 determination shall not constitute evidence of compliance with or satisfaction of any obligation of
6 Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the
7 construction or any part thereof; provided further, that Landlord issuance of any Certificate of
8 Completion does not relieve Tenant or any other person or entity from any and all City
9 requirements or conditions to occupancy of the Improvements, which requirements or conditions
10 must be complied with separately.

11 **11.02 Certifications to be Recordable**

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

14 **11.03 Certification of Completion - Non-Issuance Reasons**

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

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

2 **12.01 Post Completion Changes**

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

11 **12.02 Definition of Change**

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

18 **12.03 Enforcement**

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

1 thereof or any actual breach or violation thereof.

2 **ARTICLE 13: TITLE TO IMPROVEMENTS**

3 Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant
4 during the term of this Ground Lease, subject to Section 14.01 below. Subject to the rights of any
5 Lenders and as further consideration for the Landlord entering into this Ground Lease, at the
6 expiration or earlier termination of this Ground Lease, fee title to all the Improvements shall vest
7 in the Landlord without further action of any party, without any obligation by the Landlord to pay
8 any compensation therefor to Tenant and without the necessity of a deed from Tenant to the
9 Landlord.

10 **ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER**

11 **14.01 Assignment, Sublease or Other Conveyance by**

12 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or
13 any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other
14 than to Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other
15 than leases to residential tenants in the ordinary course of business and, as applicable, commercial
16 tenants, nor may it contract or agree to do any of the same, without the prior written approval of
17 the Landlord, and the City and County of San Francisco through approval by the Board of
18 Supervisors of the City and County of San Francisco (the "Board") consistent with the Board's
19 scope of review under California Health and Safety Code Section 33433, which approval shall not
20 be unreasonably withheld or delayed. Tenant may sell, assign, convey, sublease or transfer its
21 interests in this Ground Lease and in the Improvements to a nonprofit public benefit corporation

1 affiliate of Mission Housing Development Corporation or its successor in interest with prior thirty
2 (30) day written notice to the Landlord.

3 **14.02 Assignment, Sublease or Other Conveyance by Landlord**

4 The parties acknowledge that any sale, assignment, transfer or conveyance of all or any
5 part of the Landlord's interest in the Site, the Improvements, or this Ground Lease, is subject to
6 this Ground Lease. The Landlord will require that any purchaser, assignee or transferee expressly
7 assume all of the obligations of the Landlord under this Ground Lease by a written instrument
8 recordable in the Official Records of the City. This Ground Lease shall not be affected by any
9 such sale, and Tenant shall attorn to any such purchaser or assignee. In the event that the
10 Landlord intends to sell all or any part of the Site to any entity other than the Landlord's
11 successor entity, the City and County of San Francisco, or a nonprofit public benefit corporation,
12 the Landlord shall notify Tenant of the proposed terms of such sale not later than ninety (90) days
13 before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of such
14 notice to exercise a right of first refusal to purchase the Site on the same terms and conditions of
15 such proposed sale.

16 **ARTICLE 15: TAXES**

17 Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all
18 valid taxes, assessments and similar charges on the Site which become effective after the
19 execution of this Ground Lease, including all taxes levied or assessed on the possession, use or
20 occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such
21 taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements

1 thereon; provided, however, that in the event any such tax, assessment or similar charge is
2 payable in installments, Tenant may make, or cause to be made, payment in installments; and,
3 provided further, that Tenant may contest the legal validity or the amount of any tax, assessment
4 or similar charge, through such proceedings as Tenant considers necessary or appropriate, and
5 Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested
6 by Tenant in good faith and without expense to the Landlord. In the event of any such contest,
7 Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage
8 resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall
9 forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar
10 charge. The Landlord shall furnish such information as Tenant shall reasonably request in
11 connection with any such contest provided that such information is otherwise available to the
12 public.

13 **ARTICLE 16: UTILITIES**

14 Tenant shall procure water and sewer service from the City and electricity, telephone,
15 natural gas and any other utility service from the City or utility companies providing such
16 services, and shall pay all connection and use charges imposed in connection with such services.

17 As between the Landlord and Tenant, Tenant shall be responsible for the installation and
18 maintenance of all facilities required in connection with such utility services to the extent not
19 installed or maintained by the City or the utility providing such service.

20 **ARTICLE 17: MAINTENANCE**

21 Tenant, at all times during the term hereof, shall maintain or cause to be maintained the

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

6 **ARTICLE 18: LIENS**

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

20 **ARTICLE 19: GENERAL REMEDIES**

21 **19.01 Application of Remedies**

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

3 **19.02 Notice and Cure Rights for Tenant Limited Partner**

4 (a) The Landlord may not exercise its remedies under this Ground Lease for a default
5 by the Tenant unless and until (i) the Landlord has given written notice of any such default, in
6 accordance with the notice provisions of Article 39, to Tenant and Permitted Limited Partners
7 who have requested notice as set forth below (“Permitted Limited Partners”), and (ii) such default
8 has not been cured within sixty (60) days following the giving of such notice or, if such default
9 cannot be cured within such 60-day period, such longer period as is reasonably necessary to cure
10 such default, provided that such cure has been commenced within such 60-day period and is being
11 prosecuted diligently to completion. If a Permitted Limited Partner cannot cure a default due to
12 an automatic stay in Bankruptcy court because the general partner of the Tenant is in bankruptcy,
13 any cure period will be tolled during the pendency of such automatic stay.

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

18 (c) Any limited partner wishing to become a Permitted Limited Partner must provide
19 five (5) days written notice to the Landlord in accordance with the notice provisions of this
20 Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant
21 and all of the Tenant’s general partner. Such limited partner will become a Permitted Limited

1 Partner upon the expiration of the five-day period. A limited partner will not be afforded the
2 protections of this section with respect to any default occurring prior to the time such limited
3 partner becomes a Permitted Limited Partner.

4 **19.03 Breach by Landlord**

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

14 **19.04 Breach by Tenant**

15 **19.04(a) Default by Tenant**

16 The following events each constitute a basis for the Landlord to take action against
17 Tenant:

- 18 (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions
19 set forth in Section 9.02;
- 20 (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer
21 or assign this Ground Lease or any rights in this Ground Lease, or in the

Improvements, except as permitted by this Ground Lease;

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

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

- 1 (5) Tenant breaches any other material provision of this Ground Lease;
- 2 (6) Tenant fails to pay any portion of Annual Rent when due in accordance
- 3 with the terms and provisions of this Ground Lease.
- 4 (7) Tenant fails to timely comply with its obligations under the Agency
- 5 Standby Payment Agreement by and among the Agency, Citibank West FSB
- 6 and the Tenant to be executed subsequent hereto.

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

8 Upon the happening of any of the events described in Section 19.04(a) above and

9 prior to exercising any remedies, the Landlord shall notify Tenant and Lender in writing of the

10 Tenant's purported breach, failure or act, giving Tenant sixty (60) days from receipt of such

11 notice to cure such breach, failure or act. In the event Tenant does not cure or, if the breach,

12 failure or act is not reasonably susceptible to cure within that sixty (60) day period, begin to cure

13 within sixty (60) days and thereafter diligently prosecute such cure to completion, then, subject to

14 the rights of any Lender and subject to Section 19.02 and Article 26, the Landlord thereafter shall

15 be afforded all of its rights at law or in equity, including any or all of the following remedies: (1)

16 terminating in writing this Ground Lease; (2) prosecuting an action for damages; or (3) seeking

17 specific performance of this Ground Lease; or (4) increasing the Base Rent to the full amount of

18 the Annual Rent.

19 Notwithstanding the foregoing, during the 15-year tax credit compliance period,

20 Landlord may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6)

21 above.

1 **ARTICLE 20: DAMAGE AND DESTRUCTION**

2 **20.01 Insured Casualty**

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

20 **20.02 Uninsured Casualty**

21 If (i) more than 50% of the Improvements are damaged or destroyed and ten percent

1 (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii)
2 in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be
3 completed or operated on an economically feasible basis; and (iii) there is not available to Tenant
4 any feasible source of third party financing for restoration reasonably acceptable to Tenant; then
5 Tenant may, with the written consent of each Lender, terminate this Ground Lease upon ninety
6 (90) days written notice to the Landlord. If it appears that the provisions of this Section 20.02
7 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord
8 promptly and not consent to any settlement or adjustment of an insurance award without the
9 Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In
10 the event that Tenant terminates this Ground Lease pursuant to this Section 20.02, all insurance
11 proceeds and damages payable by reason of the casualty shall be divided among Landlord, Tenant
12 and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the
13 right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured
14 casualty, Tenant shall promptly commence and diligently complete the restoration of the
15 Improvements as nearly as possible to their condition prior to such damage or destruction in
16 accordance with the provisions of Section 20.01.

17 **20.03 Distribution of the Insurance Proceeds**

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

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

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

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

11 (d) The remainder to Tenant.

12 **20.04 Clean Up of Housing Site**

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

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

19 **21.01 Damage to Person or Property -General Indemnification**

20 Landlord shall not in any event whatsoever be liable for any injury or damage to any
21 person happening on or about the Site, for any injury or damage to the Premises, or to any

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

12 **21.02 Hazardous Materials –Indemnification**

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

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

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

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

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

1 **ARTICLE 22:**

2 **22.01 Insurance**

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

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

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

10 **22.01(b) Minimum Scope of Insurance**

11 Coverage shall be at least as broad as:

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

1 for the project have liability insurance covering negligent acts, errors and
2 omissions. Tenant shall provide the Landlord with copies of consultants'
3 insurance certificates showing such coverage.

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

6 **22.01(c) Minimum Limits of Insurance**

7 Coverage shall maintain limits no less than:

- 8 (1) General Liability: \$5,000,000 combined single limit per occurrence for
9 bodily injury, personal injury and property damage. If Commercial
10 General Liability Insurance or other form with a general aggregate limit
11 shall apply separately to this project/location, the general aggregate limit
12 shall be twice the required occurrence limit.
- 13 (2) Automobile Liability: \$1,000,000 combined single limit per accident for
14 bodily injury and property damage.
- 15 (3) Workers' Compensation and Employers Liability: Workers' Compensation
16 limits as required by the Labor Code of the State of California and
17 Employers Liability limits of \$1,000,000 per accident.
- 18 (4) Professional Liability: \$1,000,000 per occurrence during the course of new
19 construction or remodeling in excess of \$100,000.
- 20 (5) Property Insurance:
- 21 (a) During the course of rehabilitation, Full Completed Value of the

1 Project.

2 (b) Following completion of rehabilitation, Full replacement value of
3 the Project with no coinsurance penalty provision.

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

7 **22.01(d) Deductibles and Self-Insured Retentions**

8 Any deductibles or self-insured retentions must be declared to and approved by
9 Landlord. At the option of Landlord, either: the insurer shall reduce or eliminate such deductibles
10 or self-insured retentions as respects the Landlord, its officers, employees and volunteers; or the
11 Tenant shall procure a bond guaranteeing payment of losses and related investigation, claim
12 administration and defense expenses.

13 **22.01(e) Other Insurance Provisions**

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

15 (1) General Liability and Automobile Liability Coverage:

16 (a) The Landlord, the City and County of San Francisco and their
17 respective officers, agents, employees and Commissioners, are to be
18 covered as additional insured as respects: liability arising out of
19 activities performed by or on behalf of the Tenant; products and
20 completed operations of the Tenant, premises owned, occupied or
21 used by the Tenant; or automobiles owned, leased, hired or

1 borrowed by the Tenant. The coverage shall contain no special
2 limitations on the scope of protection afforded to the Landlord, the
3 City and County of San Francisco and their respective officers,
4 agents, employees or Commissioners.

5 (b) The Tenant's insurance coverage shall be primary insurance as
6 respects the Landlord, the City and County of San Francisco and
7 their respective officers, agents, employees and Commissioners.
8 Any insurance or self-insurance maintained by the Landlord, the
9 City and County of San Francisco and their respective officers,
10 agents, employees or Commissioners shall be excess of the Tenant's
11 insurance and shall not contribute with it.

12 (c) Any failure to comply with reporting provisions of the policies shall
13 not affect coverage provided to the Landlord, the City and County
14 of San Francisco and their respective officers, agents, employees or
15 Commissioners.

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

19 (2) Workers' Compensation and Employers Liability Coverage: The insurer
20 shall agree to waive all rights of subrogation against the Landlord, the City
21 and County of San Francisco and their respective officers, agents,

employees and Commissioners for losses arising from work performed by the Tenant for the Landlord.

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

22.01(f) Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII or as otherwise approved by the Landlord.

22.01(g) Verification of Coverage

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

22.01(h) Subcontractors

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

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

2 **23.01 Compliance with Legal Requirements**

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

13 **ARTICLE 24: ENTRY**

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

19 **ARTICLE 25: MORTGAGE FINANCING**

20 **25.01 No Encumbrances Except for Development Purposes**

21 Notwithstanding any other provision of this Ground Lease and subject to the prior written

1 consent of the Landlord in the form attached hereto as Attachment 4, which consent shall not be
2 unreasonably withheld or delayed, Leasehold Mortgages are permitted to be placed upon the
3 Leasehold Estate only for the purpose of securing loans of funds to be used for financing the
4 acquisition, design, renovation or reconstruction of the Improvements and any other expenditures
5 reasonably necessary and appropriate to acquire, own, develop , renovate, or reconstruct the
6 Improvements under this Ground Lease and in connection with the operation of the
7 Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the
8 purposes of this Ground Lease.

9 **25.02 Holder Not Obligated to Construct**

10 The holder of any mortgage, deed of trust or other security interest authorized by Section
11 25.01 (“Holder” or “Lender”), including the successors or assigns of such Holder, is not obligated
12 to complete any construction of the Improvements or to guarantee such completion; nor shall any
13 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.
14 However, in the event the Holder does undertake to complete or guarantee the completion of the
15 construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease shall
16 be deemed or construed to permit or authorize any such Holder or its successors or assigns to
17 devote the Site or any portion thereof to any uses, or to construct any Improvements thereon,
18 other than those uses or Improvements authorized under Section 9.02. To the extent any Holder
19 or its successors in interest wish to change such uses or construct different improvements, subject
20 to Section 26.06(ii), that Holder or its successors in interest must obtain the written consent of the
21 Landlord.

1 **25.03 Failure of Holder to Complete Rehabilitation**

2 In any case where six months after assumption of obligations pursuant to Section 25.02
3 above, a Lender, having first exercised its option to complete the rehabilitation, has not proceeded
4 diligently with completion of the construction, the Landlord shall be afforded the rights against
5 such Holder it would otherwise have against Tenant under this Ground Lease for events or
6 failures occurring after such assumption.

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

2 **25.04(a) Right of Landlord to Cure a Default or Breach by Tenant**
3 **under a 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 Landlord may, at its option, cure such breach or default at any time
7 prior to one hundred nineteen (119) days after the date on which the Lender files a notice of
8 default. In such event, the Landlord shall be entitled to reimbursement from Tenant of all costs
9 and expenses reasonably incurred by the Landlord in curing the default or breach. The Landlord
10 shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of
11 such costs and disbursements. Any such lien shall be subject to the lien of any then existing
12 Leasehold Mortgage authorized by this Ground Lease, including any lien contemplated because
13 of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of
14 default, the Landlord shall also have the right to assign Tenant's interest in the Ground Lease to
15 another entity, subject to such Lender's written consent, but which may be conditioned, among
16 other things, upon the assumption by such other entity of all obligations of the Tenant under the
17 Leasehold Mortgage.

18 **25.04(b) Notice of Default to Landlord**

19 Tenant shall use its best efforts to require Lender to give the Landlord prompt
20 written notice of any such default or breach and each Leasehold Mortgage shall so provide and
21 shall also contain the Landlord'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 Landlord**

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 Landlord of the Lender's address and of the existence and nature of its Leasehold Mortgage.
11 Execution of Attachment 5 shall constitute Landlord's acknowledgement of Lender's having
12 given such notice as is required to obtain the rights and protections of a Lender under this Ground
13 Lease. The Landlord hereby acknowledges that the First Mortgage Lender and the Landlord are
14 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

1 Ground Lease to the same effect as if the same had been made, done and performed by Tenant
2 instead of by Lender.

3 **26.03 Lender's Rights When Tenant Defaults**

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

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

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

17 All rights of the Landlord to terminate this Ground Lease as the result of the occurrence of
18 any such event of default shall be subject to, and conditioned upon, the Landlord having first
19 given Lender written notice of such event of default and Lender having failed to remedy such
20 default or acquire Tenant's Leasehold Estate created hereby or commence foreclosure or other
21 appropriate proceedings in the nature thereof as set forth in and within the time specified by this

1 Section 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted
2 under Sections 19.02(b) or 26.06(iv).

3 **26.04 Default Which Cannot be Remedied by Lender**

4 Any event of default under this Ground Lease which in the nature thereof cannot be
5 remedied by Lender shall be deemed to be remedied if (i) within sixty (60) days after receiving
6 notice from the Landlord setting forth the nature of such event of default, or prior thereto, Lender
7 shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced
8 foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently
9 prosecute any such proceedings to completion, (iii) Lender shall have fully cured any event of
10 default arising from failure to pay or perform any monetary obligation in accordance with the
11 terms of this Ground Lease, and (iv) after gaining possession of the Improvements, Lender shall
12 diligently proceed to perform all other obligations of Tenant as and when the same are due in
13 accordance 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 any
16 action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant
17 from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof,
18 the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such
19 foreclosure or other proceedings shall be extended for the period of such prohibition. If this Ground
20 Lease is terminated or rejected by Tenant in bankruptcy, the Landlord agrees to enter into a new
21 ground lease with the Lender on the same terms set forth in this Ground Lease.

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

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

3 (i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell
4 and assign the Leasehold Estate created hereby to an assignee from whom it may accept a
5 purchase price; subject, however, to Lender's first securing written approval from Landlord,
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. Lender, furthermore,
11 may acquire title to the Leasehold Estate in any lawful way, and if the Lender shall become the
12 assignee, may sell and assign said Leasehold Estate subject to Landlord approval, which shall not
13 be unreasonably withheld, and to the Landlord's rights under Article 25; and

14 (ii) should the Lender acquire the Leasehold Estate hereunder by foreclosure or other
15 appropriate proceedings in the nature of foreclosure or as the result of any other action or remedy
16 provided for by any Leasehold Mortgage, or should Lender sell or assign the same to an Landlord
17 approved purchaser or assignee, Lender or its purchaser or assignee shall take said Leasehold
18 Estate subject to all of the provisions of this Ground Lease, and shall, so long as and only so long
19 as it shall be the owner of such estate, except as provided elsewhere in this Ground Lease, assume
20 all of the obligations of Tenant under this Ground Lease; provided, however, the Lender or its
21 purchaser or assignee may operate and maintain the sixty-three (63) Residential Units without



1 any limitations on the rents charged or the income of the occupants thereof.

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

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

9 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

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

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

21

1 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the
2 Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market
3 rental value taking into account any affordability restrictions agreed to by the Subsequent Owner,
4 if any, and the Base Rent shall be increased to the new fair market rent pursuant to Section
5 26.07(b) and the provisions of Section 6.02(h) shall be suspended; provided, however, that the
6 Landlord shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its
7 sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to
8 tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Low Income
9 Households as the Landlord and the Subsequent Owner shall agree. The fair market rental value
10 shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the
11 Subsequent Owner and the Landlord, with each party paying one half of the appraiser's fee) that
12 will include a market land valuation, as well as a market land lease rent level. Absent a market
13 land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%)
14 of the then appraised market land value. If the parties cannot agree on the joint appraisal
15 instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair
16 market rent in accordance with the then-prevailing practice for resolving similar rent
17 determination disputes in San Francisco or, in the event that there is no then-prevailing practice,
18 in accordance with the rules of the American Arbitration Association. Provided, however, that
19 after the neutral third party process, the Lender, in its sole discretion may rescind its written
20 notification of intent to not comply with Section 9.02 of this Ground Lease.

21

1 **26.08 Permitted Uses After Lender Foreclosure**

2 Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent
3 Owner, the Premises shall be operated in accordance with the uses specified in the building
4 permit with all addenda, as approved by the Landlord.

5 **26.09 Amendment**

6 From the date of this Ground Lease through the 15-year tax credit compliance period,
7 neither Article 19, nor Sections 20, 26.02, 26.03, 26.06 shall be amended without the written
8 consent of Permitted Limited Partner.

9 **ARTICLE 27: CONDEMNATION AND TAKINGS**

10 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

15 **27.02 Total Taking**

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

18 **27.03 Partial Taking**

19 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in
20 effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground
21 Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered

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

11 **27.04 Effect on Rent**

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

16 **27.05 Restoration of Improvements**

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

20 **27.06 Award and Distribution**

21 Any compensation awarded, paid or received on a total or partial condemnation of the Site

1 or threat of condemnation of the Site shall belong to and be distributed in the following order:

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

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

7 **27.07 Payment to Lenders**

8 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
9 when any compensation resulting from a condemnation or threatened condemnation is to be paid
10 to Tenant, such award shall be disposed of as provided in the Leasehold Mortgage.

1 **ARTICLE 28: ESTOPPEL CERTIFICATE**

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

13 **ARTICLE 29: QUITCLAIM**

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

19 **ARTICLE 30: EQUAL OPPORTUNITY**

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

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

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

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

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

7 **ARTICLE 33: AGENCY MINIMUM COMPENSATION AND HEALTH CARE**
8 **ACCOUNTABILITY POLICY**

9 Tenant agrees that the Tenant and its subtenants, if any, will comply with the provisions of
10 the Agency's Minimum Compensation Policy ("MCP") and Health Care Accountability Policy
11 ("HCAP") (together, the "Policies") as set forth in Attachments 11 and 12 respectively.

12 Notwithstanding this requirement, the Agency recognizes that the residential housing component
13 of the Improvements is not subject to the Policies.

14 **ARTICLE 34: CONFLICT OF INTEREST**

15 No commissioner, official, or employee of the Landlord shall have any personal or
16 financial interest, direct or indirect, in this Ground Lease, nor shall any such commissioner,
17 official, or employee participate in any decision relating to this Ground Lease which affects his or
18 her personal interests or the interests of any corporation, partnership, or association in which he or
19 she is directly or indirectly interested.

20 **ARTICLE 35: NO PERSONAL LIABILITY**

21 No commissioner, official, or employee of the Agency shall be personally liable to Tenant

1 or any successor in interest in the event of any default or breach by the Agency or for any amount
2 which may become due to Tenant or its successors or on any obligations under the terms of this
3 Ground Lease.

4 **ARTICLE 36: ENERGY CONSERVATION**

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

8 **ARTICLE 37: WAIVER**

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

19 **ARTICLE 38: TENANT RECORDS**

20 Upon reasonable notice during normal business hours, and as often as the Landlord may
21 deem necessary, there shall be made available to the Landlord and its authorized representatives

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

6 **ARTICLE 39: NOTICES AND CONSENTS**

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

13 if to Tenant at: Mariposa Gardens II Affordable Housing
14 474 Valencia Street, Suite 280
15 San Francisco, CA 94103
16 Attn: Executive Director
17

18 if to the Landlord at:
19 Mariposa Gardens
20 474 Valencia Street, Suite 280
21 San Francisco, CA 94103
22 Attn.: Executive Director

23 or to such other address with respect to either party as that party may from time to time
24 designate by notice to the other given pursuant to the provisions of this Article 39. Any notice
25 given pursuant to this Article 39 shall be effective on the date of delivery or the date delivery is
26 refused as shown on the delivery receipt.

1 **ARTICLE 40: COMPLETE AGREEMENT**

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

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

20 **ARTICLE 43: TIME**

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

1 **ARTICLE 44: PARTIAL INVALIDITY**

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

5 **ARTICLE 45: APPLICABLE LAW**

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

8 **ARTICLE 46: ATTORNEYS' FEES**

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

12 **ARTICLE 47: EXECUTION IN COUNTERPARTS**

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

16 **ARTICLE 48: RECORDATION OF MEMORANDUM OF GROUND LEASE;**

17 **ESTOPPEL**

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

1 purchasers and mortgagees.

2 This Ground Lease is subject to the terms and provisions of that certain Estoppel

3 Certificate and Agreement Re: Mariposa Gardens dated as of February 1, 2004 among Landlord,

4 Tenant, Agency and First Mortgage Lender.

ARTICLE 49: ATTACHMENTS

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

1. Legal Description of Site
2. Intentionally Omitted
3. Schedule of Performance
4. Agency Consent of Leasehold Mortgage
5. Operational Rules for Certificate Holder's Priority
6. Equal Opportunity Program
7. Prevailing Wage Provisions
8. Income Computation and Certification
9. Intentionally Omitted
10. Intentionally Omitted
11. Agency's Minimum Compensation Policy
12. Agency's Health Care Accountability Policy

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

3 **TENANT:**

4 **MARIPOSA GARDENS II AFFORDABLE HOUSING, a**
5 **California Limited Partnership**

6
7 **By: Maria Alicia, Inc., its general partner**

8
9 **By:** _____
10 **Its:** _____
11

12 **By:** _____

13 **Its:** _____

14 **LANDLORD:**

15 **MARIPOSA GARDENS, a California Limited Partnership**

16 **By: Mission Housing Development Corporation, its general partner**

17
18 **By:** _____

19 **Its:** _____

20 **By:** _____

21 **Its:** _____
22
23
24

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

ATTACHMENT 1

Legal Description of the Site

All that certain real property situate in the City and County of San Francisco, State of California, being more particularly described as follows:

BEGINNING at the point of intersection of the Easterly line of Hampshire Street with the Southerly line of Mariposa Street; running thence Easterly along said Southerly line of Mariposa Street 200 feet to the Westerly line of Potrero Avenue; thence at a right angle Southerly along said Westerly line of Potrero Avenue 262 feet 6 inches; thence at a right angle Westerly 200 feet to the Easterly line of Hampshire Street; thence at a right angle Northerly along said line of Hampshire Street 262 feet 6 inches to the point of beginning.

BEING a portion of Potrero Nuevo Block No. 63.

1

ATTACHMENT 2

2

Intentionally Omitted

3

1
2
3
4
5
6
7

ATTACHMENT 3
Schedule of Performance

	Performance Milestone	Estimated or Actual Date	Contractual Deadline
	<i>Entitlements</i>		
1.	HazMat Investigation(s) Complete/Phase I	<u>1/03</u>	<u>5/03</u>
2.	Design Review Complete	<u>8/03</u>	<u>11/03</u>
3.	Building Permit Obtained	<u>9/03</u>	<u>12/03</u>
B.	<i>Financing Milestones (Acquisition Financing)</i>		
1.	<i>Construction Financing Obtained</i>	<u>9/03</u>	<u>1/2004</u>
2.	<i>Permanent Bank Financing Obtained</i>	<u>9/03</u>	<u>1/2004</u>
3.	<i>AHP Commitment Obtained</i>	<u>4/03</u>	<u>10/2003</u>
4.	<i>CDLAC/TCAC Allocation Obtained</i>	<u>7/03</u>	<u>10/2003</u>
5.	<i>10% of Project Costs Incurred</i>	<u>9/03</u>	<u>12/2003</u>
C.	<i>Partnership Acquisition/Construction Milestones</i>		
1.	Site Acquisition Complete	<u>6/03</u>	<u>6/03</u>
2.	Construction/Rehabilitation Begins	<u>2/04</u>	<u>4/04</u>
3.	Construction/Rehabilitation Complete	<u>10/04</u>	<u>12/04</u>
4.	Certificate of Completion Obtained	<u>11/04</u>	<u>1/05</u>
5.	Occupancy of 95% of Units	<u>On-going</u>	<u>On-going</u>

8

1 ATTACHMENT 4
2 Agency Consent of Leasehold Mortgage

3 Date:

4
5 San Francisco Redevelopment Agency
6 Attn: Executive Director
7 770 Golden Gate Avenue
8 San Francisco, CA 94102
9

10 RE: 2445 Mariposa Street, San Francisco (LEASEHOLD MORTGAGE)

11 Dear Sir or Madam:

12
13 Pursuant to Section 25.01 of Mariposa Gardens Apartments Ground Lease, dated February _____, 2004,
14 between the Redevelopment Agency of the City and County of San Francisco ("Agency") and Mariposa
15 Gardens II, we are formally requesting the Agency's consent to our placing a leasehold mortgage upon the
16 leasehold estate of the above referenced development. The following information is provided in order for
17 the Agency to provide its consent:
18

19
20 Lender: _____
21 Principal Amount: _____
22 Interest: _____
23 Term: _____
24

25 Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and
26 all associated security agreements, which we understand are subject to the review and approval by the
27 Agency. Furthermore, we are willing to supply any additional documentation related to the leasehold
28 mortgage, which the Agency deems necessary.
29

30 Sincerely,

31
32
33 _____
34 Printed Name and Title
35

36 enc.
37

38
39 By signing this letter, the Agency consents to the leasehold mortgage, pursuant to the terms and conditions
40 of Section 25.01 of the Mariposa Gardens Apartments Ground Lease dated February _____, 2004.
41

42 San Francisco Redevelopment Agency
43
44
45 _____
46 Printed Name and Title

1 | .
2
3 **ATTACHMENT 5**
4 **Operational Rules for**
5 **Certificate Holders' Policy**

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 "I". Final acceptance or rejection of Certificate
11 Holders lies with the Owner. The Owner shall notify the Agency and applicant in writing of the
12 reason for rejection. In order to implement this Attachment "I":
13

14 A. The Agency 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 Agency ninety (90) days prior to accepting lease applications with
24 the information listed below. This information shall not be changed without
25 providing the Agency 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 Agency shall
39 approve or disapprove the selection process criteria within ten (10)
40 working days after submission thereof to the Agency.
41 (4) Amount of security deposit and all other fees, as well as refund
42 policy regarding same.



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210187

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Omar Cortez	415-701-4218
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MYR MYR's Office of Comm. Dev.	omar.cortez@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR MHDC Mariposa Gardens LLC	TELEPHONE NUMBER 415-864-6432
STREET ADDRESS (including City, State and Zip Code) 474 Valencia St., Suite 280, San Francisco, CA 94103	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210187
DESCRIPTION OF AMOUNT OF CONTRACT \$2,890,000		
NATURE OF THE CONTRACT (Please describe) Amended and Restated Ground Lease of City-owned land located at 2445 Mariposa Street to facilitate the refinance and rehabilitation of an affordable housing development at the same address (also known as "Mariposa Gardens"), San Francisco, California 94110. Base ground lease rent (\$20,000) and residual rent (\$2,870,000 subj. to avail of cash)		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Arce	Joshua	Board of Directors
2	Gonzales	Irving	Board of Directors
3	Gomez-Benitez	Fernando	Board of Directors
4	So	Musetta	Board of Directors
5	Layman	Jon	Board of Directors
6	Rosales	Mara	Board of Directors
7	Ahn	Eddie	Board of Directors
8	Moss	Sam	Other Principal Officer
9	Contreras	Marcia	Other Principal Officer
10	Bautista-Ong	Marizza	Other Principal Officer
11			
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

From: [Peacock, Rebecca \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Kittler, Sophia \(MYR\)](#); [Chan, Amy \(MYR\)](#)
Subject: Mayor -- Resolution -- Ground Lease — MHDC Mariposa Gardens Associates LP — 2445 Mariposa Street — \$20,000 Annual Base Rent
Date: Tuesday, February 23, 2021 4:34:56 PM
Attachments: [1. Mariposa Gardens Resolution Re Ground Lease Amendment.docx](#)
[2. Mariposa Gardens Amended Ground Lease 2021.pdf](#)
[3. Mariposa Gardens General Plan Referral Final Letter \(2020-009700GPR\).pdf](#)
[4. 2004-02-23_GroundLease.PDF](#)
[5. Mariposa Gardens Amended Ground Lease 2021 SFEC Form 126f4BOS.pdf](#)
[6. Mariposa Gardes Approval of Resolution Re Ground Lease Amendment MOHCD.pdf](#)
[6. Mariposa Gardes Approval of Resolution Re Ground Lease Amendment RED.pdf](#)

Attached for introduction to the Board of Supervisors is an **resolution approving and authorizing a long term amended and restated ground lease with MHDC Mariposa Gardens Associates LP, on City owned land at 2445 Mariposa Street, Assessor’s Parcel Block No. 4014, Lot 001 (the “Land”), for a term of 38 years, to commence following approval by the Board of Supervisors, with one 44-year option to extend, and with an annual base rent of \$20,000 in order to rehabilitate a 100% affordable, 62-unit multifamily rental housing development (plus one staff unit) for low-income persons; adopting findings that the amended and restated ground lease is consistent with the California Environmental Quality Act, the City’s General Plan, and the priority policies of Planning Code, Section 101.1; and authorizing the Director of Property and Director of the Mayor’s Office of Housing and Community Development to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution, as defined herein.**

This is the final piece of legislation from the Mayor’s Office. Please let me know if you have any questions.

Rebecca Peacock ([they/them](#))
(415) 554-6982 | Rebecca.Peacock@sfgov.org
Office of Mayor London N. Breed
City & County of San Francisco