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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

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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(e) Equal Opportunity Marketing Plan**

2 Tenant agrees to apply for, accept and renew the Project’s Section 8 Housing Assistance
3 Payments contract (“HAP”) with the San Francisco Housing Authority or the United States
4 Department of Housing and Urban Development (“HUD”) or the provider of such contracts for
5 so long as such renewals are offered, and to maximize the number of units and rents governed by
6 the terms of such contracts and offers. If a vacancy occurs during the term of any Section 8
7 contract, Tenant agrees to comply with the contract and San Francisco Housing Authority or
8 other relevant guidelines for filling the vacancy. In the event the Project’s Section 8 contract is
9 not renewed, Tenant shall, within 30 days of notification of the termination of the Section 8
10 subsidies to the Project, submit a Fair Housing Marketing Plan to be approved by the Agency.
11 The Fair Housing Marketing Plan must follow HUD Development Guidelines for such plans.

12 **6.02(f) Lead Based Paint**

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

17 **6.02(g) Renewal of Section 8 Contracts**

18 Tenant agrees to apply for, accept and renew the Section 8 contract with the San
19 Francisco Housing Authority or HUD and any other administrator or provider of such contracts
20 for so long as such renewals are offered, in each case at the maximum number of units and rents
21 permitted by the terms of such contracts and offers.

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

1 Improvements, except as permitted by this Ground Lease;

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

14 (4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer
15 in fraud of creditors, or make an assignment for the benefit of creditors, or
16 bring or have brought against Tenant any action or proceeding of any kind
17 under any provision of the Federal Bankruptcy Act or under any other
18 insolvency, bankruptcy or reorganization act and, in the event such
19 proceedings are involuntary, Tenant is not dismissed from the same within
20 sixty (60) days thereafter; or, a receiver is appointed for a substantial part of
21 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 **ATTACHMENT 1**

3 **Legal Description of the Site**

4
5
6
7 All that certain real property situate in the City and County of San Francisco, State of California,
8 being more particularly described as follows:
9

10
11
12 BEGINNING at the point of intersection of the Easterly line of Hampshire Street with the
13 Southerly line of Mariposa Street; running thence Easterly along said Southerly line of Mariposa
14 Street 200 feet to the Westerly line of Potrero Avenue; thence at a right angle Southerly along
15 said Westerly line of Potrero Avenue 262 feet 6 inches; thence at a right angle Westerly 200 feet
16 to the Easterly line of Hampshire Street; thence at a right angle Northerly along said line of
17 Hampshire Street 262 feet 6 inches to the point of beginning.
18

19
20
21 BEING a portion of Potrero Nuevo Block No. 63.
22
|

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
2 **ATTACHMENT 4**
3 **Agency Consent of Leasehold Mortgage**

4 Date:

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.