

RESOLUTION NO. 204-99
(Adopted December 7, 1999)

**AUTHORIZING THE ADOPTION OF THE "CARD CHECK NEUTRALITY"
POLICY REQUIRING EMPLOYERS OF A HOTEL AND RESTAURANT
DEVELOPMENT TO ABIDE BY CARD CHECK PROCEDURES FOR
DETERMINING EMPLOYEES' PREFERENCE REGARDING UNION
REPRESENTATION WHEN THE AGENCY RETAINS A PROPRIETARY
INTEREST IN A HOTEL OR RESTAURANT DEVELOPMENT;
ALL REDEVELOPMENT PROJECT AREAS**

BASIS FOR RESOLUTION

1. The Redevelopment Agency of the City and County of San Francisco (the Agency) has an ongoing proprietary interest in real property development as landlord, proprietor, lender, or guarantor, facing the same risks and liabilities as other business entities participating in such ventures.
2. The Agency wishes to require that employers operating hotel or restaurant projects agree, as a condition of the Agency's investment or economic participation in such a project, to a process called "Card Check", a non-confrontational and expeditious procedure by which workers can register their preference regarding union representation on a signed authorization card.
3. The goal of the Card Check process is to minimize the risk of the possibility of labor/management conflict arising out of labor union organizing campaigns that might adversely affect the Agency's investment in real estate developments by causing delays in the completion of projects and/or reducing revenue or increasing costs of projects when they are completed.
4. Labor/management organizing campaigns are a potential source of conflict that threaten the economic interest of the Agency as a participant in hotel development projects because of the possibility of economic action taken by labor unions against employers in those developments when labor unions seek to organize their workers over employer opposition to unionization.
5. The Card Check process is not intended to regulate labor/management relations in any way, but is intended only to protect the Agency's proprietary interest in prescribed circumstances where the Agency's economic resources and/or its related interests are put at risk by certain forms of labor/management conflict.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the attached Card Check Neutrality Policy is hereby adopted.

APPROVED AS TO FORM:


ROBERTA A. FIREHOCK
Acting Agency General Counsel

San Francisco Redevelopment Agency

Card Check Neutrality Policy

Section 1. Findings and Declarations.

- (a) In the course of managing real property that it owns or in otherwise carrying out its functions in the public interest, the Redevelopment Agency of the City and County of San Francisco (hereinafter the "Agency") occasionally participates in real property development as landlord, proprietor, lender or guarantor, facing the same risks and liabilities as other business entities participating in such ventures. For example, the Agency sometimes leases its real property under a percentage lease, or otherwise invests or pledges its resources in real estate development projects as a landlord, a lender or a guarantor. When it does, the Agency has an ongoing Proprietary Interest in that development, and, thus, has a direct interest in its performance.
- (b) In such situations, the Agency must make prudent business decisions, as would any private business entity, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk. One of those risks is the possibility of labor/management conflict arising out of labor union organizing campaigns. Such conflict can adversely affect the Agency's investment in real estate development or other circumstances in which it has a Proprietary Interest by causing delay in the completion of projects, and /or by reducing revenues or increasing costs of the project when they are completed.
- (c) Although the Agency relies primarily on tax increment financing to finance redevelopment projects, including hotel and restaurant projects, it often becomes an investor or economic participant in such projects by negotiating lease or revenue participation arrangements. In such circumstances, labor/management conflicts can be particularly debilitating, not only to the specific Hotel or Restaurant Project, but also to the Agency's ability to finance other redevelopment projects. It is extremely important for the hotel and restaurant development in which the Agency is an investor or other economic participant to be free from labor disputes that have the potential of reducing the revenue of the Hotel or Restaurant Project and thereby reducing the value of the transaction to the Agency. If the value of the transaction is affected adversely, the Agency will receive less revenue from the property, which will reduce the Agency's ability to provide financial support to the hotel or restaurant Developer as well as other redevelopment projects.
- (d) In addition, labor strife in hotel and restaurant projects in which the Agency is an investor or other economic participant can jeopardize the operation of related tourist and commercial facilities, as well as San Francisco's national reputation as a tourist and convention destination.
- (e) To minimize that risk in circumstances where costly labor/management conflict has arisen in the past, the Agency enacts this Policy which requires that certain specified Employers in the

hotel and restaurant industry shall agree, as a condition of the Agency's economic involvement in a Hotel or Restaurant Project, to nonconfrontational and expeditious procedures by which their workers can register their preference regarding union representation.

- (f) A major potential source of labor/management conflict that threatens the economic interest of the Agency as a participant in development projects is the possibility of Economic Action taken by labor unions against Employers in those developments when labor unions seek to organize their workers over Employer opposition to unionization. Experience of municipal and other investors has demonstrated that organizing drives pursuant to formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor/management conflict. That conflict potentially can result in construction delays, work stoppages, picketing, strikes and more recently, in consumer boycotts or other forms of "corporate campaigns" that can generate negative publicity and reduced revenues that threaten the interests not only of the immediate "target" of such tactics, i.e., the Employer, but of other investors in the development, and also the Agency's special interests identified herein.
- (g) These risks of potential labor/management conflict are particularly acute when labor unions seek to organize workers in hotels and restaurants, as labor relations in the hospitality industry in San Francisco have proven especially contentious, and have resulted in many protests, boycotts and other activities which have disrupted the business of the hotel or restaurant and the tourist industry and the downtown hotel area.
- (h) In view of these concerns, the Agency deems it necessary to approach with great caution any economic participation in a Hotel or Restaurant Project if the Agency retains a Proprietary Interest, either as landlord, lender or guarantor. The Agency finds that a cautionary approach to be particularly appropriate given other possible factors present in such developments, such as the Agency's sometimes special Proprietary Interests or other special concerns identified herein, and/or their complex financing schemes, the possible use of scarce land resources, as well as the dependence of such projects on public "good will" and the special vulnerability of such projects to consumer boycotts, etc.
- (i) One way to reduce the Agency's risk where it has a Proprietary Interest in a Hotel or Restaurant Project is to require, as a condition of the Agency's investment or other economic participation, that Employers operating in the Hotel or Restaurant Project agree to a lawful, nonconfrontational alternative process for resolving a union organizing campaign. That alternative process is a so-called "Card Check," wherein employee preference regarding whether or not to be represented by a labor union to act as their exclusive collective bargaining representative is determined based on signed authorization cards. Private Employers are authorized under existing federal law to agree voluntarily to use this procedure in lieu of NLRB-supervised election procedures.
- (j) The Agency Commission finds based on the City's history that compliance with these procedures will help reduce the possibility of labor/management conflict jeopardizing the Agency's Proprietary Interest in a Hotel or Restaurant Project. To ensure that card check

procedures are required only to the extent necessary to ensure the goal of minimizing labor/management conflict, an Employer who agrees to such procedures and performs its obligation under a Card Check Agreement will be relieved of further obligation to abide by those procedures if a Labor Organization engages in Economic Action such as striking, picketing or boycotting the Employer in the course of an organizing drive and at a site covered by this Policy.

- (k) The sole purpose of this Policy is to protect the Agency's Proprietary Interest in particular Hotel and Restaurant Projects covered hereby. This Policy is not enacted to favor any particular outcome in the determination of Employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party such determination. Likewise, this Policy is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way, but is intended only to protect the Agency's Proprietary Interest in certain narrowly prescribed circumstances where the Agency commits its economic resources and/or its related interests are put at risk by certain forms of labor/management conflict.

Section 2. Definitions.

For purposes of this Policy, the following definitions shall apply:

- (a) "Card Check Agreement" means a written agreement between an Employer and a Labor Organization providing a procedure for determining employee preference on the subject of whether to be represented by a Labor Organization for collective bargaining, and if so, by which Labor Organization to be represented, which provides, at a minimum, the following:
 - (i) Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;
 - (ii) All disputes over interpretation or application of the parties' Card Check Agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;
 - (iii) Forbearance by any Labor Organization from Economic Action against the Employer at the worksite of an organizing drive covered by this Policy, and in relation to an organizing campaign only (not to the terms of a Collective Bargaining Agreement), so long as the Employer complies with the terms of the Card Check Agreement;
 - (iv) Language and procedures prohibiting the Labor Organization or the Employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.
- (b) "Agency Contract" means a Disposition and Development Agreement, lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the

Agency is a party and in which the Agency has a Proprietary Interest.

- (c) "Collective Bargaining Agreement" means an agreement between an Employer and a Labor Organization regarding wages, hours and other terms and conditions of employment of the Employer's employees. For purposes of this Policy, a Collective Bargaining Agreement does not include a Card Check Agreement as defined herein.
- (d) "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a Hotel or Restaurant Project.
- (e) "Economic Action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an Employer, as part of a campaign to organize employees or prospective employees of that Employer, including such activities as striking, picketing, or boycotting. A lawsuit to enforce this Policy is not "Economic Action."
- (f) "Employer" means any Developer, Manager/Operator or subcontractor who employs individuals in a hotel or restaurant in a Hotel or Restaurant Project.
- (g) "Hotel or Restaurant Project" means a development project or facility in which the Agency has a Proprietary Interest and which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a stadium, hotel or retail store. A Hotel or Restaurant Project, as defined herein, includes a mixed-use development project in which the Agency has a Proprietary Interest which contains a hotel or restaurant, regardless of whether the Agency's Proprietary Interest is in the hotel or restaurant portion of such mixed use development or the mixed-use development project as a whole. Notwithstanding the foregoing or anything else contained herein, the requirement in this Policy that an Employer enter into a Card Check Agreement shall apply only to those Employers who employ employees in a hotel or restaurant and shall not apply to those portions of a mixed-use development project which do not contain a hotel or restaurant.
- (h) "Labor Organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (i) "Manager/Operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including a Developer) that operates or manages a hotel or restaurant in a Hotel or Restaurant Project, or provides any material portion of the services provided by such hotel or restaurant in a Hotel or Restaurant Project, whether by Subcontract or Agency Contract.

- (j) "Proprietary Interest" means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Hotel or Restaurant Project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, in the following circumstances:
- (i) The Agency receives significant ongoing revenue (such as rent payments) under a lease of real property owned by the Agency for the development of a Hotel or Restaurant Project, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (ii)); or
 - (ii) The Agency receives ongoing revenue from a Hotel or Restaurant Project to pay debt service on bonds or loans provided by the Agency to assist the development of such Hotel or Restaurant Project (including incremental tax revenues generated by the Hotel or Restaurant Project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that Hotel or Restaurant Project or the development project in which it is located);
 - (iii) The Agency has agreed to underwrite or guarantee the development or operation of a Hotel or Restaurant Project, or loans related thereto;
 - (iv) The Agency receives a continuing financial payment that is specific to that Hotel or Restaurant Project, which is not a tax or other charge of general applicability or a one-time payment for the land;
 - (v) The Agency receives a share in the profits of a hotel in a negotiated economic participation agreement.
- (k) In addition to the circumstances described in (i) — (v) above, the Agency shall be deemed to have a Proprietary Interest in a Hotel or Restaurant Project if the Agency determines or an interested party demonstrates prior to the effective date of the Subcontract or Agency Contract pursuant to which a hotel or restaurant will be operated in a Hotel or Restaurant Project that there is a significant risk that the Agency's financial or other nonregulatory interest in a Hotel or Restaurant Project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, except that no circumstance or arrangement shall be considered "financial or non-regulatory" under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, section 16 of the California Constitution (except as provided in (ii) above), zoning or the issuance of permits and licenses.
- (l) "Subcontract" means any lease, sublease, management agreement or other similar agreement between a Developer or a Manager/Operator and a subcontractor which contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a Hotel or Restaurant Project.

- (m) "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a Subcontract with a Developer or Manager/Operator.
- (n) "Substantial Amendment" to a pre-existing agreement, for purposes of the exemption for Employers operating before the effective date of Section 4(b)(ii) of this Policy, means an amendment to or renewal or extension of a pre-existing agreement that provides for or permits any of the following:
- (i) a change in use within the scope of this Policy (i.e., which provides for the operation of a hotel or restaurant);
 - (ii) an increase in square footage, seating or rooms of more than 25%; except neither of the following, by themselves, shall constitute a "Substantial Amendment":
 - (I) addition of outside seating or patio dining which increases the total seating or square footage devoted to seating by less than 25%;
 - (II) an increase in space for purpose of parking or storage; or
 - (iii) a new lease period of greater duration than the period provided in the pre-existing agreement.

Section 3. Policy, Requirements and Procedures to Minimize Labor/Management Conflict when the Agency has a Proprietary Interest.

- (a) General Policy. The Agency Commissioners declare as a matter of general policy that when the Agency retains or acquires a Proprietary Interest in a Hotel or Restaurant Project, it is essential for the protection of the Agency's investment and/or business interests to require that Employers operating a hotel or restaurant in such Hotel or Restaurant Project agree to abide by card check procedures for determining employee preference on the subject of labor union representation, as specified in this Policy.
- (b) Primary Obligations. Pursuant to the policy stated in Subsection (a), the following requirements are imposed, except no Employer, Developer or Manager/Operator shall be responsible for obligations under this Policy if that person or entity is otherwise exempt from those obligations pursuant to Section 4(b), or if the Agency does not have a Proprietary Interest in the subject Hotel or Restaurant Project:
- (i) Employers. An Employer of employees working in a hotel or restaurant in a Hotel or Restaurant Project, shall:
 - I. Enter into a Card Check Agreement, as specified in this Policy, with a Labor Organization which requests such an agreement for the purpose of seeking to represent those employees before executing the Subcontract or

Agency Contract pursuant to which it will operate a hotel or restaurant in a Hotel or Restaurant Project;

- II. If the parties are unable to agree to the terms of a Card Check Agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a Card Check Agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model Card Check Agreement provided by the Agency and/or to prevailing practices and the terms of Card Check Agreement(s) in the same or similar industries, except that such Card Check Agreement must include the mandatory terms identified in Section 2(a);
- III. Comply with the terms of that Card Check Agreement and this Policy; and
- IV. Include in any Subcontract which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that Subcontractor to comply with the requirements provided in this Policy. This provision shall be a material and mandatory term of such Subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

“The Redevelopment Agency of the City and County of San Francisco has enacted the Card Check Neutrality Policy, which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Policy, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Policy, and to otherwise fully comply with the requirements of that Policy. [Subcontractor] recognizes that, as required by that Policy, it must enter into a Card Check Agreement with a Labor Organization or Organizations as specified by that Policy before executing this [Subcontract], and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this [Subcontract].”

- 1) Notwithstanding the requirements provided in (I) — (IV), any Employer who has in good faith fully complied with those requirements will be excused from further compliance as to a Labor Organization which has taken Economic Action against that Employer

at that site in furtherance of a campaign to organize that Employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to Economic Action against an Employer at other locations where that Employer does business, or at any location for purposes other than organizing the Employer's employees; nor shall Economic Action by one Labor Organization excuse an Employer from the obligations of this Policy or a Card Check Agreement as to a different Labor Organization.

- (ii) Developers and Manager/Operators. Any Developer or Manager/Operator of a Hotel or Restaurant Project must:
- I. To the extent it employs employees in a hotel or restaurant in a Hotel or Restaurant Project, abide by the requirements stated in Subsection (i);
 - II. Include the provision specified in (i)(IV) in any Subcontract, modified as necessary to accommodate the circumstances of that particular Subcontract;
 - III. Refrain from executing a Subcontract by which an Employer subject to (i) is authorized or permitted to operate a hotel or restaurant in a Hotel or Restaurant Project until that Employer has entered into a Card Check Agreement with a Labor Organization, as required in (i);
 - IV. Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any Employer(s) that will operate a hotel or restaurant in a Hotel or Restaurant Project which may be subject to the requirements of (i), as soon as the Developer or Manager/Operator identifies such hotel(s) or restaurant(s) or Employer(s), but in no event later than 21 days before requiring an Employer to sign a Subcontract. This notification requirement applies only to hotels or restaurants or Employers that will operate in a Hotel or Restaurant Project, as defined herein and only where the Agency's Proprietary Interest is based on a lease, a loan or a guarantee, as specified in Section 2(j)(i)-(v);
 - V. Inform any prospective Subcontractor, that if the Subcontractor acts as an Employer subject to the requirements of (i), it must enter into a Card Check Agreement pursuant to this Policy before it may execute the Subcontract, and as a condition precedent to any rights or obligations under such document;
 - VI. Take reasonable steps to enforce the terms of any Subcontract requiring compliance with this Policy. To the extent a Developer or Manager/Operator is found to have intentionally aided, abetted or encouraged a Subcontractor's failure to comply with such a provision or the terms of this Policy, either by action or inaction, that Developer or

Manager/Operator shall be jointly and severally liable for all damages awarded pursuant to Section 5.

(iii) The Agency.

- I. Agency Contracts. Any Agency Contract which contemplates the use or operation of a hotel or restaurant in a Hotel or Restaurant Project must include a provision requiring that any Developer or operator/manager of a Hotel or Restaurant Project pursuant to that Agency Contract, and any Employer(s) operating in such Hotel or Restaurant Project, agree to comply with the requirements imposed in Subsections (i) and (ii), as essential consideration for the Agency entering into the Agency Contract.
- II. Model Card Check Agreement. To facilitate the requirements imposed by this Section, the Agency or Agency's designee may provide a model recommended Card Check Agreement that includes the mandatory terms identified in Section 2(a) and which provides the maximum protection against labor/management conflict arising out of an organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The Agency may also prepare guidelines establishing standards and procedures related to this Policy. Notwithstanding this provision regarding the preparation of a model Card Check Agreement or related guidelines, this Policy shall be self-executing, and shall apply in all circumstances and to the extent provided in this Policy, in the absence of or regardless of such model Card Check Agreement or guidelines.
- III. Requests for Proposals ("RFPs"). Any request for proposals or invitation to bid or similar document regarding development of Agency property which could result in a proposal contemplating operation of a Hotel or Restaurant Project after the effective date of this Policy, must include in such document a summary description of and reference to the policy and requirements of this Policy. Failure to include description or reference to this Policy in an RFP or similar document shall not exempt any Developer, Manager/Operator or Employer otherwise subject to the requirements of this Policy.

(c) Applicability of This Policy. The Policy and obligations established above shall apply to particular Developers, Manager/Operators and Employers whenever the Agency has a Proprietary Interest in a Hotel or Restaurant Project, except as otherwise provided hereunder. The determination whether or not the Agency has a Proprietary Interest in a Hotel or Restaurant Project, and if so, whether an exemption applies under Section 4(b), shall be made on a case-by-case basis by the Executive Director by applying the standards and principles described herein and any further standards and principles provided in guidelines distributed pursuant to Section 3(b)(iii)(II) hereof. Any party otherwise subject to the terms of this Policy because the Agency has a Proprietary Interest in a Hotel or Restaurant Project defined

in Section 2(j)(i) — (v) above that claims an exemption from the terms of this Policy under Section 4 below shall have the burden of demonstrating that the basis for such exemption is clearly present.

Section 4. Scope and Exemptions.

- (a) Scope. The requirements of this Policy apply only to the procedures for determining employee preference regarding whether to be represented by a Labor Organization for purposes of collective bargaining and/or by which Labor Organization to be represented. Accordingly, this Policy does not apply to the process of collective bargaining in the event a Labor Organization has been recognized as the bargaining representative for employees of Employers subject to this Policy. Moreover, nothing in the Policy requires an Employer or other entity subject to this Policy to recognize a particular Labor Organization; nor does any provision of this Policy require that a Collective Bargaining Agreement be entered into with any Labor Organization, or that an Employer submit to arbitration regarding the terms of a Collective Bargaining Agreement.
- (b) Exemptions. The requirements of this Policy shall not apply to:
- (i) Employers employing fewer than the equivalent of 50 full-time or part-time employees, provided that when a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this Policy.
 - (ii) Employers commencing operation in a hotel or restaurant in a Hotel or Restaurant Project before the effective date of this Policy, or a Hotel or Restaurant Project under any Subcontract or Agency Contract entered into before the effective date of this Policy, ("pre-existing agreement"). This exemption applies to an Employer and to his or her family for the duration of such pre-existing agreement, unless it is amended during its term resulting in a Substantial Amendment, as defined in Section 2(n). This exemption shall apply beyond the expiration of the pre-existing agreement if it is renewed or extended without a change in ownership of the Employer, and without changes resulting in Substantial Amendment, as defined in Section 2(n). For purposes of this exemption, "change in ownership" shall mean a change in ownership, from the effective date hereof, of 25% or more, unless such change is among members of the same family; or
 - (iii) Any Employer which is signatory to a valid and binding Collective Bargaining Agreement covering the terms and conditions of employment for its employees at that Hotel or Restaurant Project, or which has entered into a Card Check Agreement with a Labor Organization regarding such employees which agreement provides at least equal protection from labor/management conflict as provided by the minimum terms provided in Section 2(a); or
 - (iv) Any Hotel or Restaurant Project where the Executive Director determines that the

risk to the Agency's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the Agency's investment or other nonregulatory interest; or

- (v) Any Hotel or Restaurant Project where the Developer, Manager/Operator or Employer, is an agency of the federal government or a statewide agency or entity ("Public Agency") and that Public Agency would prohibit application of this Policy; or
- (vi) Any Hotel or Restaurant Project where the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a Public Agency related to such Hotel or Restaurant Project, or any related rules or regulations.

Section 5. Enforcement.

- (a) The requirement that Employers enter into and comply with Card Check Agreements with Labor Organizations in the circumstances provided in this Policy, and the requirement that Developers and Manager/Operators contractually obligate their successors, assigns or Subcontractors to be bound by that former requirement are essential consideration for the Agency's agreement to any Agency Contract containing that requirement.
- (b) The Agency shall investigate complaints that this Policy has been violated or that a card check provision included in an Agency Contract or Subcontract pursuant to this Policy has been breached, and may take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.
- (c) In the event the Agency brings a civil enforcement action for violation of this Policy, any taxpayer or any person or association by or with a direct interest in compliance with this Policy may join in that enforcement action as a real party in interest. In the event the Agency declines to institute a civil enforcement action for violation of this Policy, a taxpayer or directly interested person or association may bring a civil proceeding on its own behalf and on behalf of the Agency against that Employer and seek all remedies available for violation of this Policy and/or breach of a Card Check Agreement required by this Policy available under state law, including but not limited to monetary, injunctive and declaratory relief. In view of the difficulty of determining actual damages incurred by such a violation, liquidated damages may be awarded at the rate of \$1,000 per day of violation, to be distributed equally between a private plaintiff, if any, and the Agency Fund, unless such liquidated damages award is found to be so excessive in relation to the violator's resources as to constitute a penalty.
- (d) Any action challenging the applicability of this Policy to a particular Employer may be brought only after first seeking an exemption pursuant to Section 4, and must be commenced within 60 days after notification that such exemption has been denied by the Agency.
- (e) Notwithstanding anything else contained herein, in no event shall the remedy for a breach of the terms of this Policy include termination of any such Subcontract or Agency Contract, nor

shall any such breach defeat or render invalid or affect in any manner whatsoever the status priority of the lien of any mortgage, deed of trust or other security interest made for value an encumbering any property affected by such Subcontract or Agency Contract, including, without limitation, any leasehold estate or other interest in such property or improvements on such property.

Section 6. Effective Date and Application.

- (a) This Policy shall become effective immediately after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing agreement to which the Agency is a party, unless such pre-existing agreement has been Substantially Amended after the effective date of this Policy.

Section 7. Severability.

- (a) If any part or provision of this Policy, or the application thereof to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Policy are severable.