OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

118-0112016-002

Agenda Item No. **5(c)**
Meeting of March 15, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a 75-year ground lease with Mercy Housing California 64, L.P, a California limited partnership, for the construction of a 120 unit (including one manager's unit) very low-income affordable family rental housing development at Transbay Block 7 (255 Fremont Street / 222 Beale Street), and adopting findings pursuant to the California Environmental Quality Act; Transbay Redevelopment Project Area

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EXECUTIVE SUMMARY

The Transbay Block 7 Project is a 120-unit affordable family development located on a parcel on the to-be extended Clementina Street between Fremont and Beale Streets in the Transbay Redevelopment Project Area ("Project"). Once complete, the Transbay Block 7 Project will create 120-units serving households earning no more than 50% of the Area Median Income and comprised of 53 one-bedroom units, 43 two-bedroom units, 23 three-bedroom units and 1 manager's unit, a child care facility and open space. In preparation for the construction loan closing of the Project, Mercy Housing California 64, L.P ("the Affordable Developer;" "Mercy") requests the Office of Community Infrastructure and Investment ("OCII") Commission to authorize the Executive Director to enter into a ground lease. The term of the ground lease (see Attachment 1) is 75 years, with one option for 24 additional years.

In 2011, the San Francisco Redevelopment Agency ("Former Agency") issued a Request for Proposal for the development of both Block 7 and neighboring Block 6 in the Transbay Redevelopment Project Area. After a competitive selection process, a development team consisting of a Developer (Golub Real Estate Corp.) and an Affordable Developer (Mercy Housing California) was selected. Because of the dissolution of the Former Agency and a subsequent decrease in funds available for the affordable program for Block 6 and 7, it was decided that the development of the adjacent blocks would be phased, such that Block 6 would be developed first as a mixed-income, mixed-use project and Block 7 would be developed as an

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100% affordable project when enough funding became available. In 2013, a DDA prescribing the development of Block 6 was entered into between OCII, the Developer and the Affordable Developer. This DDA noted that the Affordable Developer will carry out the construction of affordable units, a childcare center and mid-block open space on Block 7 once funds were available. A year later in the spring of 2014, The Affordable Developer, Mercy Housing engaged its design team to develop a concept for the affordable units on Block 7 and requested a predevelopment loan from OCII.

On August 19, 2014, the Commission approved a predevelopment loan in the amount of $3,382,523 to Mercy Housing California 64, L.P. to develop the Transbay Block 7 affordable housing project. Also on August 19, 2014, the Commission approved a revision to the Schematic Design of Block 7, which increased the Project's total units from 77 to 85 units.

In April 2015, the Developer proposed new revised Schematic Design for the Project that added 3 stories to Building 7A, 2 stories to Building 7B, for a total of 35 additional units, bringing the total units from 84 to 120 units, including one manager's unit.

On August 18, 2015, the OCII Commission approved a loan to the Developer for the development of the Project for an amount of $22,177,477 and not to exceed $25,560,000 (the "OCII Loan") through Resolution No. 51-2015. On the same date through Resolution No. 50-2015, the Commission approved the Project's final Schematic Design, which increased the Project to 120 affordable units according to the new design developed in April 2015. The 120 units will include 53 one-bedroom units, 43 two-bedroom units, 23 three-bedroom units and 1 manager's unit rented to families and households earning no more than 50% of the Area Median Income. Amenities will include a 40 slot child care facility and outdoor open space.

Mercy Housing California 64, L.P. has now received all of its financing commitments and has submitted for a building permit for the Transbay 7 Project; as such the closing for the construction financing is scheduled for May of 2016, with construction to begin immediately after. In order to gain access to the site to begin construction and operations, Mercy is requesting that the Commission authorize the Executive Director to enter into a 75 year ground lease, with one option for 24 additional years with Mercy Housing California 64, L.P for Transbay Block 7.

Staff recommends authorization of a ground lease for Transbay Block 7 Housing at 255 Fremont Street / 222 Beale Street.

BACKGROUND

The Transbay Redevelopment Project Area (the "Project Area") was adopted in 2005 with the purpose of redeveloping 10 acres of property owned by the State of California (the "State-owned parcels") to generate funding for the Transbay Joint Powers Authority ("TJPA") to construct the new Transbay Transit Center (the "TTC") and meet the affordable housing requirements of Assembly Bill 812 ("AB 812") (Cal. Pub. Res. Code § 5027.1(b).). AB 812 is an enforceable obligation which requires the Office of Community Investment and Infrastructure ("OCII"), as the Successor Agency to the former San Francisco Redevelopment Agency ("Former Agency"), to ensure 35% of the new housing units built in the Transbay Project Area are affordable, and

occupied by, low- and moderate-income households. OCII is on track to achieve the 35% mandate of affordable housing in the Transbay Project Area.

The Transbay Redevelopment Project Area Implementation Agreement ("Implementation Agreement") is another enforceable obligation that requires OCII to "prepare and sell [certain State-owned parcels that OCII is authorized to acquire] to third parties." (Section 2.1 (a) of the Implementation Agreement on p. 4). On April 15, 2013, the California Department of Finance ("DOF") determined "finally and conclusively" that AB 812 and the Implementation Agreement area enforceable obligations that will not require additional DOF review in the future, although expenditures under these enforceable obligations are subject to DOF review.

On July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the "RFP") to development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Transbay Redevelopment Project Area. The RFP sought proposals that included approximately 550 market-rate and affordable housing units, neighborhood serving retail, and a child-care facility integrated into two master-planned blocks. Development teams were asked to submit qualifications, a basic development concept, and a financial proposal, including a minimum total purchase price of $18 million for the land attributable to the market-rate portion of the project and a maximum Former Agency subsidy of $200,000 per unit for the affordable housing.

On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub and Mercy, along with Solomon Cordwell and Buenz ("SCB") as the lead architect for the market-rate component of the development and Santos Prescott and Associates ("Santos Prescott"), a small business enterprise, as the architect for the affordable component. The proposal from Golub/Mercy included a purchase price of $30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units, and 136 stand-alone affordable units), and a requested subsidy from the Former Agency for the stand-alone affordable units of less than $200,000 per unit.

Due to the dissolution of the Former Agency on February 1, 2012, and funding challenges for the affordable component of the development, the original proposal from Golub/Mercy was revised. Instead of providing 61 inclusionary units in the market-rate component of the project, Golub paid a fee of $24,300,000 ("the "Affordable Housing Fee" or "Fee"), similar to an inclusionary housing in-lieu fee, to cover a portion of the anticipated OCII subsidy for the affordable component. The Fee covers the entire subsidy needed for the Block 6 affordable component ($14,000,000 approved by OCII Commission on April 15, 2014), and a portion ($10,300,000) of the subsidy needed for Block 7.

Based on this revised proposal, OCII and MOHCD staff negotiated the terms of the DDA with Golub/Mercy for the sale of Blocks 6/7 in April 2013. The revised Block 6 development included 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. The DDA does not cover the Block 7 development, which, at that time contemplated 77 affordable units, a child care facility and open space to be constructed at a future date by Mercy. OCII currently owns Block 7 and will continue to through the proposed Ground Lease with Mercy's affiliate. As mentioned above, the DDA authorizes Golub and Mercy to use Block 7 for staging related to the construction of Block 6, the market rate portion of which is near completion. The Block 6 affordable project, known as 280 Beale Street, was completed in July 2015 and is fully

leased. The Commission received the marketing outcomes report for 280 Beale at the March 1, 2016 Commission meeting.

In March of 2014, Mercy proposed a new revised plan for Block 7 that added 8 units and maintained the OCII subsidy (including $10,300,000 of the Fee that is designated for Block 7) at $200,000 per unit, which was the maximum per unit OCII subsidy in the RFP. This increase brought the below market rate percentage for Transbay Blocks 6 and 7 up from 26% in the initial revised plan to 28% in the new revised plan. OCII staff supported this revised unit mix because it both maintained a reasonable OCII funding amount that is within the guidelines established in the original RFP, and provided additional affordable units that will help OCII to achieve the 35% affordable housing for the Project Area as required under the Section 5027.1 of the California Public Resources Code ("AB 812"). In August 2014, the Commission approved this revised Schematic Design increasing the Block 7 unit count from 77 to 85 affordable units.

A year later, in April of 2015, Mercy proposed to add even more units to the Block 7 development. Early pricing estimates for the project from Cahill Contractors showed spiking lumber prices which were driving construction costs to such a high level that Mercy would not be able to complete the development within OCII's maximum subsidy total of $200,000 per unit. In order to achieve financial feasibility of the Project, Mercy and Cahill explored alternate design concepts to better control project costs. They determined if they changed the bulk of the structural design from wood to steel they could build higher, add units, and reduce per unit costs by achieving greater economies of scale. The Pueblo Structural System is based on the efficient use of shop-fabricated steel components when applied to multifamily residential projects from 4 to 12 stories high. The Pueblo System will enable Mercy to construct each of the Block 7 podium buildings to a height of 8 stories. The added building height translates to additional 35 units. However, even with the increased economies of scale the OCII subsidy increased from $200,000 to $213,000 per unit due to extreme current construction cost escalation. OCII determined this per unit subsidy increase was warranted given that Block 7 will deliver 35 more affordable units, increase the overall affordability of Blocks 6/7 from 28% to 32%, and will contribute to meeting the overall 35% affordability mandate in the Project Area. The Department of Finance approved the Recognized Obligation Payment Schedule ("ROPS") for the 15-16A period which included an amount to cover OCII subsidy for the additional units.

The Block 7 Schematic Design was approved by the Commission on August 18, 2015, the same day the Commission approved the OCII Loan for the development of the Project. Prior to approving the Schematic Design OCII reviewed it to ensure conformance to all of the requirements of the Redevelopment Plan, the Development Controls and the Streetscape and Open Space Plan. The designs were also reviewed by the Transbay Citizens Advisory Committee (the "CAC") in April 2015. Consequently, the Development Team has created an attractive project and has responded to all of OCII's and the CAC's comments and suggested revisions to the design for Block 7. Select renderings from the Schematic Design set as well as a site plan are included as Exhibit D. In addition, surrounding projects are shown in Exhibit C Transbay Redevelopment Plan Area Map, neighborhood amenities are shown in Exhibit E Community Asset Map and the many transit lines serving the community are shown in Exhibit F Transit Map.

DISCUSSION

Transbay 7 Project Financing Plan

In addition to the OCII subsidy, the Project is being financed with low income housing tax credit equity and tax exempt bonds. The sources for the OCII gap loan of $22,177,477 ($213,000 / unit) are the remaining Transbay Block 6 Market Rate Project Affordable Housing Fee ($6,917,477), Transbay Jobs Housing Linkage funds ($6,700,000), and a portion of the 181 Fremont Affordable Housing Fee ($8,560,000).

Marketing and Occupancy Preferences

The Project will serve households up to 50% AMI. The OCII Loan Agreement that the Commission approved on August 18, 2015 establishes the marketing and occupancy preferences for the Affordable Project. Consistent with other Transbay affordable housing projects, occupancy preferences for the units are as follows:

1. OCII Certificate of Preference Holders ("COP") under the Property Owner and Occupant Preference Program;
2. Ellis Act Housing Preference ("EAHP") certificate holders;
3. San Francisco residents or workers; and
4. Members of the general public.

A template of the Marketing Plan is attached to the Loan Agreement for the Transbay 7 Project; the Marketing Plan is enforced in that the Loan Agreement is binding and requires Mercy Housing California 64 L.P., also the borrower, to comply with all requirements regarding the marketing process. The Marketing Plan must address how developer intends to market vacant affordable units and ensure the above priority is maintained. The Marketing Plan will be consistent with OCII and MOHCD policies and procedures related to the affordable units, and will include developer's plan to provide assistance to applicants throughout the marketing process. OCII is also adopting more robust procedures to ensure that the developer's proposed Marketing Plan adheres to the requirements set forth in the Loan Agreement before that Marketing Plan is approved, finalized and acted on. Part of these procedures will involve working with the developer to create a Certificate of Preference Outreach Obligation report which will document the developer's outreach to COP holders and the assistance provided to them in filling out and submitting rental applications for the Transbay 7 project.

The OCII Loan Agreement requires that the developer must submit an Early Outreach and Marketing Plan (the "Marketing Plan") to OCII one month after construction commencement and start early outreach within three months of construction commencement. The Borrower may elect to deliver Early Outreach directly, or select a provider from the MOHCD Access to Housing and Rental Readiness preferred provider list. Early Outreach must include comprehensive outreach and marketing services and education, individualized support, group workshops, and peer-support counseling to ensure candidates have the opportunity to apply and secure housing. A list of services includes:

- Outreach and affirmative marketing
- Budgeting and Asset Building
- Credit counseling
- Rental housing counseling including landlord tenant relations
- Tenant counseling and housing rights
- Financial education workshops including eviction prevention curriculum
- Rental application assistance and preparation

Borrower must obtain OCII's approval of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. Borrower must market and rent the units in the manner set forth in the Marketing Plan.

Specifically for COP and EAHP certificate holders, the developer will make available support services staff to provide assistance throughout the application process, as needed, with the goal of maximizing COP and EAHP participation to the extent possible. The developer will ensure that COP and EAHP holders are aware that such assistance is available.

OCII Current Request – Ground Lease Approval

The Project will be built on a parcel to be owned by OCII, and subsequently MOHCD after final Project completion, and leased to Mercy Housing California 64, L.P, via a long term ground lease ("Ground Lease"). The Ground Lease terms provide for an Annual Rent set at 10% of the unrestricted fair market value of the property, determined by a third-party certified appraisal. The Annual Rent is then paid in two ways: first, a Base Rent of $15,000, which comes out of the project's annual operating expenses and accrues if not paid and second, a Residual Rent that is equal to the Annual Rent less the $15,000 Base Rent. Residual Rents are paid for only to the extent that there is surplus cash after a project pays all of its operating expenses, and does not accrue if it is not paid. The Annual Rent for the Project is $1,875,000, therefore the maximum Residual Rent that could be paid in any given year would be $1,860,000, to the extent this amount is supportable by the Project. The Ground Lease structure in essence creates a public land trust that maintains affordability even in the event of an ownership change and offers the best assurance against market rate conversion. The Tenant will be required to begin paying Annual Rent beginning in the year after the Project receives its final Certificate of Occupancy.

The Ground Lease imposes long term affordability restrictions, in this case requiring the Project service very low-income households whose initial income does not exceed 50% of Area Median Income. The Ground Lease also provides for the manner in which rent increases can be applied, limiting them to no more than the change in annual Area Median Income in a given year, as published by MOHCD.

The Ground Lease requires the Tenant to construct the Project in compliance with the approved construction documents and according with an agreed-upon Schedule of Performance. The MOHCD Construction Manager has reviewed the construction documents on behalf of OCII and will continue to monitor progress on the Project through construction and until completion. The Ground Lease requires any changes to the construction plans after construction has commenced must be approved by OCII, and such change requests must be submitted to OCII with a copy to the MOHCD Construction Manager.

Once the project is completed, OCII will transfer the project and the related agreements including the Ground Lease to MOHCD as the Housing Successor, pursuant to Dissolution Law.

Compliance with OCII's Contracting Policies

The Developer will continue to comply with the OCII's Nondiscrimination policies including Small Business Enterprises, Nondiscrimination in Contracts and Benefits, Minimum Compensation, Health Care Accountability, Construction Workforce and Prevailing Wage / Labor Standards. They have been working closely with contract compliance staff to comply with the Small Business Enterprise ("SBE") Program on this development, including pending construction subcontracting as the project enters into the construction phase. To date, the Developer has achieved 96% SBE participation and 93% San Francisco SBE participation for professional services. Please see Attachment B for additional detail on the Project's professional services' SBE participation.

CITIZENS ADVISORY COMMITTEE AND COMMUNITY REVIEW

As stated above, the Transbay CAC approved the Schematic Design of the Block 7 project at its April 2015 meeting. The CAC's provided this approval prior to the Commission's approval of the Schematic Design and Permanent Loan Agreement. OCII Staff has continued to provide updates to the CAC on the Project's progress and timelines and the CAC continues to support the Project.

NEXT STEPS

Since the execution of the Ground Lease amounts to a land disposition by OCII, Section 33433 of the California Health and Safety Code requires San Francisco Board of Supervisors ("the Board") approval. Specifically, Section 33433 states that before any property that was acquired, in whole or in part, with tax increment funds is sold or leased for development, the sale or lease shall first be approved by the legislative body by resolution after a public hearing. The Board is the legislative body for purposes of Section 33433. The Project site was not acquired with tax increment funds. However, the Transbay Redevelopment Plan requires that the Board approves the sale or lease of any property acquired by the Former Agency or OCII, as Successor to the Former Agency, pursuant to the Option Agreement for the Purchase and Sale of Real Property, in a manner consistent with the standards and procedures that govern the disposition of property acquired with tax increment funds and that appear in Section 33433 of the California Health and Safety Code.

Furthermore, the City of San Francisco is issuing tax-exempt bonds to help finance the construction of the Project. OCII staff will introduce the land disposition (33433) and bond issuance requests on March 22, 2016. The Board is scheduled to approve these items on May 3, 2016. Pending approval of both the land disposition and bond issuance, the Block 7 Project is on schedule to begin construction by the end of May 2016.. Construction completion is estimated for the fourth quarter of 2017.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

On April 20, 2004, the Former Agency Commission adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the "Final EIS/EIR") for the Transbay

Redevelopment Project, and on January 25, 2005 adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act ("CEQA"), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the proposed Transbay Terminal, the TJPA also adopted environmental findings.

The Final EIS/EIR includes eight addenda, the first seven of which cover changes to the transportation infrastructure related to the Transbay Terminal and Caltrain Downtown Rail Extension ("DTX") portions of the EIS/EIR. The eighth addresses a proposed increase in town height on Transbay Block 1.

In adopting each Addendum, the lead agencies determined modifications to the Project would not require subsequent environmental review and would not require major revisions to the Final EIS/EIR.

On December 28, 2015, the Federal Transit Administration, in conjunction with the Federal Railroad Administration and the Transbay Joint Power Authority, published a Draft Supplemental Environmental Impact Statement / Environmental Impact Report to EIS/EIR ("Draft SEIS/SEIR") to evaluate refinements to the Caltrain Downtown Rail Extension ("DTX") component of the Transbay Program, as well as other transportation improvements and development opportunities associated with the Transbay Program. The Draft SEIS/SEIR does not contain information that would alter the determination not to require a Subsequent or Supplemental EIR in connection with the Proposed Ground Lease pursuant to CEQA Guidelines in Section 15164.

The Final EIS/EIR is a program EIR under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The Final EIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities, including the Temporary Terminal. The Block 7 Project is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168 (the "Implementing Action").

Staff has reviewed the Ground Lease and related actions for 255 Fremont Street / 222 Beale Street and has considered and reviewed the Final EIS/EIR and addenda and finds the proposed action is an Implementing Action and within the scope of the Project analyzed in the Final EIS/EIR and subsequent addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180 and 15168. The Final EIS/EIR and addenda were distributed to the Commission in advance of the April 16, 2013 Commission Meeting and are available for review on OCII's website at http://sfocii.org/transbay.

STAFF RECOMMENDATION

Staff recommends authorization of a Ground Lease for Transbay Block 7 Housing at 255 Fremont Street/ 222 Beale Street on Transbay Block 7.

(Originated by Gretchen Heckman, Development Specialist)

Tiffany Bohee
Executive Director

Exhibit A:	Transbay Block 7 Project Ground Lease
Exhibit B:	SBE Participation Performance Report
Exhibit C:	Transbay Redevelopment Plan Area Map
Exhibit D:	Site Plans and Schematic Design
Exhibit E:	Community Asset Map
Exhibit F:	Transit Map

EXHIBIT A

GROUND LEASE

TRANSBAY BLOCK 7 AFFORDABLE PROJECT

by and between the

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AS SUCCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY

as Landlord

AND

MERCY HOUSING CALIFORNIA 64, L.P.,

A CALIFORNIA LIMITED PARTNERSHIP

as Tenant

Dated as of _____

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GROUND LEASE

This GROUND LEASE (this "**Ground Lease**" or "**Lease**") is entered into as of _____, ("Agreement Date") by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII" or the "Landlord"), and Mercy Housing California 64, L.P., a California limited partnership (the "Tenant").

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the "CRL"), the former San Francisco Redevelopment Agency ("Former Agency") would undertake programs for the improvement of blighted areas in the City and County of San Francisco (the "City").

B. The Former Agency, acting through the Board of Supervisors of the City, approved a Redevelopment Plan for the Transbay Redevelopment Project Area (the "Project Area") by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the "Redevelopment Plan"). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (the "Official Records").

C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (the "Project Area Declaration of Restrictions").

D. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (the "Pledge Agreement") between the Former Agency, the Transbay Joint Powers Authority (the "TJPA"), and the City and County of San Francisco (the "City"), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (the "State") has been pledged to the TJPA to help pay the cost of building the Transbay

Transit Center. The State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M and T.

E. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation ("Caltrans"), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (the "Cooperative Agreement"). In 2006, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (the "Implementation Agreement") which requires the successor agency to the Former Agency (the "Successor Agency") to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (the "Option Agreement"), which sets forth the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels to private developers.

F. On July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the "RFP") to development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Transbay Redevelopment Project Area. Blocks 6 and 7 comprise two adjacent development sites connected by a proposed extension of Clementina Alley. Block 6 is a 42,625-square-foot parcel on Folsom Street between Fremont and Beale Streets, two blocks south of the future Transbay Transit Center. Block 7 is a 27,728-square-foot parcel located between Fremont and Beale Streets, immediately north of Block 6.

G. The combined RFP sought proposals conforming to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the "Development Controls"), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the "Streetscape Plan") that included approximately 550 market-rate and affordable housing units, neighborhood serving retail, open space parcels at the center of each block, a single shared underground parking facility, a child-care facility integrated into the two master-planned blocks, streetscape improvements, including the extension of Clementina Alley between Fremont and Beale Streets; ground-floor retail spaces along the Folsom Boulevard frontage; and a

minimum LEED Silver level of certification. Development teams were asked to submit qualifications, a basic development concept, and a financial proposal, including a minimum total purchase price of $18 million for the land attributable to the market-rate portion of the project and a maximum Former Agency subsidy of $200,000 per unit for the affordable housing.

H. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub and Company ("Golub") , a developer based in Chicago Illinois and Mercy Housing California ("Mercy"), a regional affiliate of Mercy Housing, Inc., a national nonprofit affordable housing developer, along with Solomon Cordwell and Buenz as the lead architect for the market-rate component of the development and Santos Prescott and Associates, a small business enterprise, as the architect for the affordable component. The proposal from Golub and Mercy included a purchase price of $30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units, and 136 stand-alone Redevelopment Agency sponsored affordable units), and a requested subsidy from the Former Agency for the stand-alone affordable units of less than $200,000 per unit.

I. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26"), codified in relevant part in California's Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (Together, AB 26 and AB 1484 are referred to as the "Dissolution Law.") On December 7, 2015 the California Department of Finance approved OCII's Long-Range Property Management Plan, which provides for the disposition of the Agency parcels in the Transbay Redevelopment Project Area for the purposes of developing affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement.

J. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency's obligations were transferred to the Office of Community Investment and Infrastructure ("OCII"), along with completed non-housing assets as Successor to the Former Agency. The Former Agency's completed housing assets were transferred to the City, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"). The Redevelopment Plan, Development Controls, and other relevant Project Area documents remain in effect.

K. The Department of Finance subsequently approved OCII's Long-Range Property Management Plan on December 7, 2015 the California Department of Finance approved OCII's Long-Range Property Management Plan, which provides for the disposition of the Agency parcels in the Transbay Redevelopment Project Area for the purposes of developing affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement.

L. Under the Redevelopment Dissolution Law, with approval from a successor agency's oversight board and the State of California's Department of Finance, a successor agency may continue to implement "enforceable obligations"—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies' activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines "enforceable obligations" to include bonds, loans, judgments or settlements, and any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy," (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement and Option Agreement meet the definition of "enforceable obligations" under the Redevelopment Dissolution Law.

M. AB 1484 authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts, such as this Lease, if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the

Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). This Lease, providing a site for the development of affordable housing, is part of the Successor Agency's compliance with the pre-existing enforceable obligations under the Implementation Agreement and Option Agreement.

N. On December 6, 2012, the Commission on Community Investment and Infrastructure (the "Commission") unanimously authorized OCII, under its obligations in the Implementation Agreement, to begin drafting an exclusive negotiations agreement with Golub and Mercy for the original development plan of 545 residential units (409 market-rate units, including 61 inclusionary units and 136 stand-alone Redevelopment Agency sponsored affordable units, and a requested subsidy from the Former Agency for the stand-alone affordable units of less than $200,000 per unit.

O. Due to the dissolution of the Former Agency on February 1, 2012, and funding challenges for the affordable component of the development, the original proposal from Golub/Mercy was revised to include 556 residential units, with 409 market rate units, 70 affordable units on Block 6 ("Block 6 Affordable Project"), and 80 affordable units on Block 7 ("Block 7 Affordable Project") and in lieu of providing 61 inclusionary units in the market-rate component of the project, it was agreed that Golub would pay a fee of $24,300,000 ("Affordable Housing Fee") to cover a portion of the anticipated OCII subsidy for the affordable components across Blocks 6 and 7. The Fee covers the entire subsidy needed for the Block 6 Affordable Project ($14,000,000 approved by OCII Commission on April 15, 2014), and a portion ($10,300,000) of the subsidy needed for Block 7.

P. On April 16, 2013, a Disposition and Development Agreement ("DDA") among OCII, Golub and Mercy reflecting the revised development plan for Block 6 was approved by the Commission on Community Infrastructure and Investment ("Commission") and executed. The DDA does not include the development plan for Block 7, which at that time included 77 affordable units, a child care facility and shared open space.

Q. On October 10, 2013 Golub completed the purchase of Block 6 and paid the Affordable Housing Fee. In accordance with the terms of the DDA, Golub agreed to transfer the air rights parcel for the Block 6 Affordable Project back to OCII once created, and OCII in

turn agreed to transfer the air rights parcel to the Tenant via a long term Air Rights Lease which was approved by the Commission on April 15, 2014. Transbay Block 7 is owned by OCII and development rights to construct the Transbay Block 7 project will be delivered to the Tenant through this Ground Lease.

R. In March 2014, Mercy proposed a revised plan for Transbay Block 7 that added 8 units and maintained OCII subsidy at $200,000 per unit for a total of 85-units comprised of 34 one-bedroom units, 32 two-bedroom units, 18 three-bedroom units and 1 manager's unit, a child care facility and open space.

S. On August 19, 2014 the Commission approved Mercy's revised Schematic Design proposal to add 8 units increasing the total unit count for Block 7 to 85 units and approved a predevelopment loan agreement in the amount of $3,382,523 for activities related to the development and construction of the Transbay 7 Project.

T. In April 2015, Mercy proposed to add 35 more units to the Transbay 7 Project by altering the building's structural system to achieve greater economies of scale. The resultant change in construction scope required an increase of OCII subsidy to $213,000 per unit. OCII staff determined that increasing the per unit subsidy from $200,000 per unit to $213,000 per unit was warranted given the additional 35 affordable units that will subsequently be delivered and which will contribute to its meeting the overall 35% mandate in the Project Area. The final design for Block 7 is a 120-unit family project comprised of 53 one-bedroom units, 43 two-bedroom units, 23 three-bedroom units and 1 manager's unit, a child care facility and open space (the "Project").

U. On February 15, 2015 the Oversight Board of the City and County of San Francisco approved an expenditure of up to $25,600,000 for funding for the affordable housing projects on Block 7 through Item No. 239 of the Recognized Obligation Payment Schedule for the period July 1, 2015 through December 31, 2015 ("ROPS15-16A"). The California Department of Finance provided final approval of the expenditure for Item No. 239 through its letter dated April 15, 2015.

V. On July 31, 2015, the Citywide Affordable Housing Loan Committee approved a loan to the Tenant for the development of the Project for an amount of $22,177,477 and not to exceed $25,560,000 (the "OCII Loan"). The OCII Loan will include $3,382,523 of predevelopment expenses (the "Predevelopment Amount") paid by the Affordable

Housing Fee and approved by MOHCD and OCII staff as the previously disbursed portion of the loan amount.

W. On August 18, 2015, the OCII Commission approved the OCII Loan through Resolution No. 51-2015 and on the same date approved the final Schematic Design through Resolution No. 50-2015.

X. OCII now intends to lease Block 7 to Tenant in accordance with the terms of this Lease.

Y. For purposes of implementation and to ensure consistency with the City's overall affordable housing goals and priorities, MOHCD is providing construction monitoring and loan disbursement services in cooperation with OCII. Upon completion of the Project, defined as permanent financing conversion, OCII intends to transfer the affordable housing loan obligation, asset, and Ground Lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law.

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

ARTICLE 1: DEFINITIONS

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

1.01 "Agency" has the meaning set forth in Recital A.

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

1.03 "Area Median Income" (or "AMI") means the area median income as determined by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, adjusted solely for actual household size, and as published annually by MOHCD.

1.04 "Construction Documents" has the meaning given in Section 10.01.

1.05 "Conversion Date" the date that the construction financing on the property

converts to permanent financing.

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

1.07 **"Effective Date"** means the Agreement Date

1.08 **"First Mortgage Lender"** means Wells Fargo Bank, National Association, or a bank or other entity holding the first deed of trust on the Leasehold Estate, and in the event of the bond financing, the bond trustee (if any) and the entity purchasing the bonds shall both be First Mortgage Lender.

1.09 **"First Lease Payment Year"** means the year in which the project receives a Certificate of Occupancy for all residential units.

1.10 **"General Partner"** means Tenant's general partner.

1.11 **"Ground Lease"** means this Ground Lease of the Site to the Tenant from OCII, as amended from time to time.

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

1.13 **"Investor Limited Partner"** means Wells Fargo Affordable Housing Community Development Corporation, its successors and assigns

1.14 **"Lease Year"** means each calendar year during the term hereof, beginning on January 1 and ending on December 31.

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

1.16 **"Leasehold Mortgage"** means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, including but not limited to the deeds of trust securing any Lender, and any assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this Ground Lease and have been approved in writing by the Landlord.

1.17 **"Lender"** means, collectively,Wells Fargo Bank, National Association, California Community Reinvestment Corporation, a California nonprofit public benefit corporation, and any other entity holding a Leasehold Mortgage.

1.18 "Loan Documents" means that certain Loan Agreement, Note, Deed of Trust, Declaration of Restrictions, and any other documents executed or delivered in connection with the OCII Loan, all dated August 18, 2015 as amended as well as the Final Financial Plan.

1.19 "Low Income Households" for the purposes of this Ground Lease means Households earning no more than sixty percent (60%) of Area Median Income as determined by HUD for the San Francisco area, adjusted solely for actual household size, but not high housing cost area.

1.20 "MOHCD" shall have the meaning given in Recital J.

1.21 "Non-Residential Space" means the approximately 4,058 square feet of child care facility space located on the ground floor of the Project. For the term of this Ground Lease and any extended term, this space will be designated for use by a licensed child care operator. The Tenant will enter into a master lease agreement for the Non-Residential Space with the Non-Residential Tenant. The Non-Residential Tenant will sub-lease the space to a licensed child care operator, approved by the Investor Limited Partner. The Non-Residential Tenant will make a good faith effort to resolve any vacancy in the space by leasing to another licensed childcare provider with the ability to offer subsidized slots to low income families.

1.22 "Non-Residential Tenant" means Mercy Commercial California, a California nonprofit public benefit corporation.

1.23 "Occupant" means any person or entity authorized by Tenant to occupy a residential unit on the Site, or any portion thereof.

1.24 "OCII Loan" has the meaning set forth in Recital U.

1.25 "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of Tenant, by and between the General Partner and the Investor Limited Partner, as the same may be amended from time to time.

1.26 "Premises" means the Site together with any Improvements thereon.

1.27 "Project" means the 120 unit affordable rental residential units, including one manager'sunit in a podium building and townhouses along Clementina Street and related amenities and infrastructure. If indicated by context, "Project" means the leasehold interest in the Site and the fee interest in the Improvements on the Site.

1.28 "Residential Units" has the meaning given in Section 9.02.

1.29 "Site" means the real property shown in the Site Legal Description, Attachment

1.

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

1.31 "Tenant" means Mercy Housing California 64, L.P. or its permitted successors as holder of the leasehold estate in the Site and fee ownership of the Improvements, including a Subsequent Owner, where appropriate.

1.32 "Very Low-Income Households" means for the purposes of this Ground Lease, the definition of Qualified Tenant in the OCII Loan Agreement, or "Tenant households earning no more than the maximum permissible annual income level allowed under the OCII Loan Agreement as set forth in [Exhibit A of the OCII Loan Agreement] and as also set forth in Attachment 8 of this Ground Lease.

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

ARTICLE 2: TERM

(a) Initial Term. The term of this Ground Lease shall commence upon the Effective Date (and Tenant shall be entitled to possession of the Site as of such date) and shall end seventy-five (75) years from that date (the "Initial Term"), unless extended pursuant to subsection (b) below.

(b) Option for Extension. Provided that the Tenant is not in default of the terms of its obligations to the City either at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the last day of the Initial Term (the "**Termination Date**"), the term of this Ground Lease may be extended at the option of the Tenant for one twenty-four (24) year period as provided below.

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

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

Article 4.

ARTICLE 3: FINANCING

Tenant shall submit to OCII in accordance with the dates specified in the Schedule of Performance, Attachment 3, for approval by OCII, evidence satisfactory to OCII that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Improvements in accordance with this Ground Lease, as is acceptable to the Executive Director of OCII. By execution of this Agreement, OCII hereby acknowledges and approves that Tenant has complied with the requirements set forth in this Article 3.

ARTICLE 4: RENT

4.01 Annual Rent

(a) Commencing in the First Lease Payment Year, Tenant shall pay OCII One Million and Eight Hundred Seventy-Five Thousand Dollars $1,875,000 per year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Sections 4.02 and 4.03 below and subject to the provisions thereof, without offset of any kind and without necessity of demand, notice or invoice from the Landlord (together, "Annual Rent"). OCII has determined that this rent accurately reflects ten percent (10%) of the unrestricted appraised value of the Site. Annual Rent shall be redetermined on the fifteenth anniversary of the expiration of the First Lease Payment Year and every fifteen (15) years thereafter, and shall be equal to the greater of (i) One Million and Eight Hundred Seventy-Five Thousand Dollars ($1,875,000) and (ii) ten percent (10%) of the appraised value of the Site as determined by an MAI appraiser selected by and at the sole cost of Tenant, provided that, if during the term of this Lease (and regardless of whether or not a redetermination of Annual Rent is then required pursuant to this provision), Tenant fails to operate the Site in accordance with the rent restrictions set forth in Attachment 8 after expiration of the cure periods provided in this Lease and in addition to all remedies available to OCII in this Lease, including those in Section 19.04, OCII may require that the Annual Rent be redetermined within sixty (60) days after the expiration of such cure prior and every fifteen (15) years thereafter in an amount equal to ten percent (10%) of the unrestricted fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Tenant) (the "Redetermined Annual Rent"). Based on the appraised value, the Annual Rent shall be adjusted

based on actual value.

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

4.02 Base Rent

(a) "Base Rent", means, in any given Lease Year commencing with the First Lease Payment Year, Fifteen Thousand Dollars ($15,000). Base Rent shall be due and payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the First Lease Payment Year shall be due on the January 31st of the following calendar year, and shall be equal to Fifteen Thousand Dollars ($15,000) times the number of days in the First Lease Payment Year, divided by three hundred sixty-five (365); and provided, further, that in the event that the Tenant (other than a Subsequent Owner) fails to comply with the provisions of Section 9.02, Base Rent shall be increased to the full amount of Annual Rent until such time as the Project achieves compliance with the provisions of Section 9.02, and in the event that a Subsequent Owner elects pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or any Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without compliance with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

(b) "Project Income" means all income and receipts in any form received by Tenant from the operation of the Project, including rents, fees, deposits (other than tenant security deposits and insurance proceeds used to reconstruct the Project), commercial master lease payments and accrued interest disbursed from any reserve account required under this Lease for a purpose other than that for which the reserve account was established, reimbursements and

other charges paid to Tenant in connection with the Project. Project Income shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances. Except as otherwise provided in Section 26.07(a), if the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of Project Expenses in items (a) through (e) in definition of Project Expenses, below, and OCII has received written notice from Tenant regarding its inability to pay Base Rent from Project Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual shall be due and payable each year, to the extent available from Surplus Cash in accordance with Section 6.02(f).

(c) "Project Expenses" means the following costs, which may be paid from Project Income to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, common area maintenance, real estate taxes and assessments and premiums for insurance required under this Lease or by any Lender; (b) salaries, wages and any other compensation due and payable to the employees or agents of Tenant employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on the senior financing secured by the Site and used to finance the Project that has been approved by OCII; (d) all other expenses actually incurred to cover operating costs of the Project, including, without limitation, maintenance and repairs and the fee of any managing agent; (e) credit adjuster payments including interest, (f) required deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account as required under the Loan Documents or the Partnership Agreement; (g) annual Base Rent payments; (h) the approved annual asset management fees (other than management fees that are defined below as "Project Fees") indicated in the Annual Operating Budget (as such term is defined in the Loan Documents) and approved by the OCII prior to the Effective Date; and (i) any extraordinary expenses approved in advance by the OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

(d) "Project Fees" means (i) a combined annual asset management and partnership management fee in the amount of $38,160, increasing by 3.5% annually, payable to the Tenant's general partner, (ii) an annual investor services fee in the amount of $5,000, increasing annually

by 3.5%, payable to Tenant's limited partners, (iii) an initial issuer fees equal to 25 basis points on the total bond issuance or $87,500 and an annual monitoring fee equal to the greater of 12.5 basis points on the outstanding bond amount or $2,500 per year with no annual increases; and (iv) deferred developer fees approved by OCII pursuant to the Loan Documents.

(e) There shall be a late payment penalty of two percent (2%) for each month or any part thereof if Base Rent payment is delinquent. This penalty shall not apply to Base Rent Accrual pursuant to Section 4.02(b). The Tenant may request in writing that OCII waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to insure that Base Rent will be paid in the future. OCII may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent

"**Residual Rent**" means, in any given Lease Year, commencing with the First Lease Year, an amount equal to One Million and Eight Hundred Sixty Thousand Dollars $1,860,000 subject to adjustment as provided in Sections 4.01(a) and (b). Residual Rent shall be due in arrears on or before June 1st of each Lease Year commencing with the First Lease Payment Year; provided however, Residual Rent for the First Lease Payment Year shall be due on the June 1st of the following calendar year, and shall be equal to an amount equal to Annual Rent – Base Rent One Million and Eight Hundred Sixty Thousand Dollars $1,860,000 times the number of days in the First Lease payment Year divided by three hundred sixty five (365). Except as otherwise provided in Section 26.07(a)(2)(C), Residual Rent for any year shall be payable only to the extent of Surplus Cash for such year as provided in Section 6.02(f), and any unpaid Residual Rent due to insufficient Surplus Cash in any year shall not accrue, shall not be owed to Landlord and shall not become payable from Surplus Cash in any subsequent years. However, in the event that Surplus Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to OCII in writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to OCII any supporting documentation reasonably requested by OCII to allow OCII to verify the insufficiency.

4.04 Surplus Cash

"**Surplus Cash**" means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. Distributions of Surplus Cash shall not exceed the amount of unrestricted cash at the end of Tenant's fiscal year. All permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(f) of this Ground Lease.

4.05 Triple Net Lease

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

ARTICLE 5: OCII COVENANTS

OCII covenants and warrants that the Tenant and its subtenants shall have, hold and enjoy, during the lease term, peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Ground Lease. Landlord represents that it is lawfully acting as the successor public agency to the Agency and is the fee simple owner of the Site. All necessary actions by any board of directors, managers, or other applicable persons necessary for the due authorization, execution, delivery and performance of this Ground Lease by the Landlord have been duly taken.

ARTICLE 6: TENANT COVENANTS

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

6.01 Limited Partnership/Authority

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

6.02 Use of Site and Rents

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

6.02(a) Permitted Uses

Except as provided in Sections 26.06 and 26.08, devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground Lease.

6.02(b) Non-Discrimination

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

6.02(c) Non-Discriminatory Advertising

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

6.02(d) Access for Disabled Persons

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

6.02(e) Lead Based Paint

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

6.02(f) Permitted Uses of Surplus Cash

All annual Project Income shall be used to pay Project Expenses, including, but not limited to Base Rent, and Project Fees. Any cash remaining after payment of each and all of the

above-mentioned obligations shall be deemed Surplus Cash. Provided Tenant is not currently in default (subject to applicable notice and cure periods) under the terms of this Ground Lease, Tenant shall use Surplus Cash to make the following payments:

First, to pay any outstanding deferred developer fee approved by the Lender pursuant to the Loan Documents until paid in full;

Then, one third (1/3) of remaining Surplus Cash may be retained by Tenant and may be used by Tenant to pay distributions or other payments in accordance with Tenant's partnership agreement.

The remaining two-thirds (2/3) of Surplus Cash, shall be applied first to Accrued Base Rent, and then toward repayment of outstanding principal and accrued but unpaid interest on the OCII Loan and repayment of outstanding principal and accrued and unpaid interest on any other debt payable from Surplus Cash until all amounts due and owing on such loans is repaid in full, and then to payment of Residual Rent until paid in full in accordance with the terms of this Lease.

Notwithstanding the above, both Parties agree that the Distribution of Surplus Cash may be modified based on the requirements of other Lenders. Upon cure of any default under this Ground Lease, Tenant shall be permitted to make payments of Surplus Cash as provided in this Section 6.02(f). Subject to the requirement for Tenant to pay Annual Rent to Landlord pursuant to the terms of this Lease and provided that all other payment obligations under this Lease have been met, Tenant shall have the exclusive right to deduct, claim, retain and enjoy any and all rental income appreciation, gain, depreciation, amortization and tax credits for federal and state tax purposes relating to all Improvements and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto and Landlord shall treat Tenant as the tax owner of the Improvements for federal income tax purposes and shall not file any tax returns inconsistent with this treatment.

6.03 OCII Deemed Beneficiary of Covenants

In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that OCII shall be deemed beneficiary of the agreements and covenants provided in this Article 6. Such agreements and covenants shall run in favor of OCII for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether OCII has at any time been, remains, or is an owner of any land or interest

therein to, or in favor of, which such agreements and covenants relate. OCII shall have the right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it may be entitled.

ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION

Forty-five (45) days after recordation of a Notice of Completion by the Tenant for the Project, and on May 31st of each year thereafter, Tenant will furnish to OCII a list of all of the names of the persons who are Occupants of the Improvements, the specific unit which each person occupies, the household income of the Occupants of each unit, the household size and the rent being charged to the Occupants of each unit, subject to all applicable local, state and federal laws limiting or restricting the disclosure of such information. If any state or federal agency requires an income certification for Occupants of the Improvements containing the above-referenced information, OCII agrees to accept such certification in lieu of Attachment 5 as meeting the requirements of this Ground Lease.

ARTICLE 8: CONDITION OF SITE - "AS IS"

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

ARTICLE 9: IMPROVEMENTS AND PERMITTED USES

9.01 Scope of Development and Schedule of Performance

Tenant agrees to undertake and complete all physical construction on the Site as approved by OCII, in accordance with the Schedule of Performance, Attachment 3, subject to force majeure.

9.02 Permitted Uses and Occupancy Restrictions

The permitted uses of the Project are limited to one hundred and twenty (120) residential

dwelling units, including one (1) manager's unit ("Residential Units"), ground floor common areas, open space and the Non-Residential Space. Upon the completion of construction, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the Project shall be occupied or held vacant and available for rental by Very Low Income and Low Income Households. Rent levels shall comply with the rent levels established in Attachment 8. Fifty-five (55) years from the date on which a Certificate of Occupancy is issued for the Project and following the termination of the OCII Loan Agreement and income restrictions therein, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the Project can be occupied or held vacant for rental by Low Income Households as defined in this Ground Lease.

9.03 Marketing

Early outreach and marketing of the units shall comply with the early outreach and marketing requirements established in Article 6 "Marketing" in the Loan Agreement and related attachments S, T-1, T-2 and T-3 and the Tenant Selection Plan Policy. Through the Loan Agreement and related attachments, Tenant is required to submit a marketing plan to OCII and MOHCD that addresses how it intends to affirmatively market units in the Transbay Block 7 Affordable Project to Certificate of Preference ("COP") holders and also requires that Tenant, either through a third-party Access to Housing counseling organization as approved by MOHCD or on its own, conduct outreach to COP Holders, including making "support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP . . . participation to the extent possible" and ensuring that COP holders "are aware that such assistance is available." ("COP Outreach Obligation") In addition to meeting these requirements, Tenant will also provide a report to the OCII Commission on its compliance with the COP Outreach Obligation at least three months prior to construction completion and prior to the initiation of any tenant selection process.

ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS

10.01 General Requirements and Rights of City

Construction documents for the construction of the Improvements by Tenant (the "**Construction Documents**") shall be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with the Loan Documents and this Ground Lease, including any limitations established in OCII's approval of the schematic

drawings, if any, preliminary construction documents, and final construction documents for the Project, and all applicable Federal, State and local laws and regulations. The architect shall use, as necessary, members of associated design professions, including engineers and landscape architects.

10.02 OCII Approvals and Limitation Thereof

The Construction Documents must be approved by OCII in the manner set forth below:

10.02(a) Compliance with Redevelopment Plan and Ground Lease

OCII's approval with respect to the Construction Documents is limited to determination of their compliance with the Loan Documents and this Ground Lease, including, if applicable, the scope of development (these documents are for convenience sometimes called "Redevelopment Requirements"). The Construction Documents shall be subject to general architectural review and guidance by OCII as part of this review and approval process.

10.02(b) OCII Does Not Approve Compliance with Construction Requirements

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

10.02(c) OCII Determination Final and Conclusive

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

10.03 Construction to be in Compliance with Construction Documents and Law

10.03(a) Compliance with City and OCII Approved Documents

The construction shall be in substantial compliance with the OCII-approved Construction Documents.

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

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

10.04 Approval of Construction Documents by OCII

Tenant shall submit and OCII shall approve or disapprove the Construction Documents

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

10.05 Disapproval of Construction Documents by OCII

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

10.06 Closing Construction Documents To Be Approved by OCII

The final Construction Documents, including all drawings, specifications and other related documents necessary for the construction of the Improvements in accordance with the requirements of this Ground Lease must be approved by OCII (the "Closing Construction Documents"). Notwithstanding anything to the contrary contained in this Article 10, OCII hereby acknowledges that the Construction Documents and the Closing Construction Documents were approved by OCII prior to the date of this Ground Lease.

10.07 Issuance of Building Permits

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

(b) The Tenant is advised that the Central Permit Bureau will forward all building permits to OCII for approval of compliance with Redevelopment Requirements. Since OCII's review of Construction Documents is limited (see Section 10.02a, above), its approval of compliance with Redevelopment Requirements is similarly limited and does not include Section 10.02b matters. OCII evidences such compliance by signing the permit and returning the permit

to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

10.08 Performance and Payment Bonds

Prior to commencement of construction of the Improvements, and subject to the reasonable approval of OCII, Tenant shall deliver to OCII performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds shall name, among other parties, OCII as co-obligee, or such other completion security which is acceptable to OCII.

10.09 OCII Approval of Changes after Commencement of Construction

Once construction has commenced, the only Construction Document matters subject to further review by OCII will be requests for any material changes in the Construction Documents which affect matters previously approved by OCII. For purposes of determining materiality in the Construction Documents, any single change order of Ten Thousand Dollars ($10,000) or more in value and any change order which causes the aggregate value of all change orders to exceed One Hundred Thousand Dollars ($100,000) shall be considered material and require OCII's prior written approval unless waived by OCII. Unless otherwise specified by OCII in writing, permission to make such changes shall be requested by Tenant in writing directed to the OCII Housing Manager (or to such other person as may be designated from time to time by OCII), and the MOHCD Construction Manager will provide written approval or disapproval of each change order within ten (10) calendar days after receiving such request. Tenant shall notify MOHCD if a particular change order item impacts the critical path of the construction schedule and the MOHCD Construction Manager will accommodate an expedited review to the extent possible. If no response is provided from the MOHCD Construction Manager in 10 calendar days, the change will be deemed acceptable. If the request is disapproved, the reply must specify the reasons for the disapproval.

10.10 Times for Construction

Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the construction of the Improvements thereon, and that such construction shall in any event commence and thereafter

diligently continue and shall be completed no later than the dates specified in the Schedule of Performance, unless such dates are extended by OCII, force majeure or Landlord's default.

10.11 Force Majeure

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

10.12 Reports

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

10.13 Access to Site

Tenant shall permit access to the Site to OCII whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice of no less than forty-eight (48) hours and subject to the rights of tenants under any applicable leases or subleases.

10.14 Notice of Completion

Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, Tenant shall submit to OCII for approval a Notice of Completion ("NOC"), and record such approved NOC in the San Francisco Recorder's Office. Tenant shall provide OCII with a copy of the recorded NOC.

ARTICLE 11: COMPLETION OF IMPROVEMENTS

11.01 Certificate of Completion – Issuance

Promptly after completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, within fifteen (15) days following the request of Tenant, OCII will furnish Tenant with an appropriate instrument so certifying. Such certification by OCII shall be a conclusive determination of satisfaction and termination of the agreements and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors and assigns, to construct the Improvements in accordance with approved Closing Construction Documents and the dates for the beginning and completion thereof; provided, however, that such certification and such determination shall not constitute evidence of compliance with, or satisfaction of, any obligation of Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that OCII issuance of any Certificate of Completion does not relieve Tenant or any other person or entity from any and all OCII requirements or conditions to occupancy of the Improvements, which requirements or conditions must be complied with separately.

11.02 Certifications to be Recordable

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

11.03 Certification of Completion - Non-Issuance Reasons

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

ARTICLE 12: CHANGES TO THE IMPROVEMENTS

12.01 Post Completion Changes

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

12.02 Definition of Change

"**Change**" as used in this Article means any material alteration, modification, addition and/or substitution of or to the Site, the Improvements, and/or the density of development which differs materially from that which existed upon the completion of construction of the Improvements in accordance with this Ground Lease, and shall include without limitation the exterior design, exterior materials and/or exterior color, and/or relocation or removal of either the control room, the transformer room, or both. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. Notwithstanding the foregoing, nothing in this Section 12.02 shall be construed to restrict the Tenant's and its subtenants right to (i) make non-material interior modifications, including, without limitation, modifications to and substitutions of interior décor, or repairs to or replacements of fixtures, appliances and other equipment

relating to the Site or Improvements in the normal course of operation and maintenance of the Premises as long as such replacements are of similar quality and provide the same level of service, or (ii) make or perform any repairs or modifications in an emergency situation in which a delay in such repairs or modifications could pose a safety hazard to tenants, the public, or adjoining property owners.

12.03 Enforcement

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

ARTICLE 13: TITLE TO IMPROVEMENTS

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

ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE

14.01 Assignment, Sublease or Other Conveyance by Tenant

Subject to Article 26, Tenant may not (i) sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s) or the Non-Residential Tenant, or an Investor Limited Partner pursuant to a tax credit syndication or an OCII-approved re-syndication of the Project, or allow any person or entity to occupy or use all or any part of the Site, other than leases to residential tenants in the ordinary course of business and, as applicable, use of the Non-Residential Space, or (ii) contract or agree to do any of the same, without the prior written approval of OCII, which approval shall not be unreasonably withheld or delayed. Tenant may sell, assign, convey, sublease or transfer its interests in this Ground Lease and in the Improvements to an affiliate of Mercy Housing, Inc. or its successor in interest with thirty (30) days' prior written notice to OCII.

OCII reserves the right to review and approve the form of any leases or subleases for the

Non-Residential Space, which approval shall not be unreasonably withheld, conditioned or delayed. The parties agree that if the uses in the Non-Residential Space changes the parties will meet and confer to determine if the City's Policy of Commercial Space in City/OCII Funded Housing Developments would apply and if so the provisions of the policy will be applied.

Landlord shall not unreasonably withhold or delay its approval of the removal or replacement of a General Partner by the Investor Limited Partner, pursuant to the terms of the Partnership Agreement. Notwithstanding the foregoing, Landlord's approval shall not be required for the replacement of a General Partner by the Investor Limited Partner with the Investor Limited Partner or its affiliate (the "Temporary Replacement General Partner"). Tenant shall have a period of 180 days to replace Temporary Replacement General Partner with a 501(c)(3) tax-exempt nonprofit corporation or a wholly-owned subsidiary thereof, subject to Landlord's approval. If after 180 days, Tenant has made good faith efforts to secure a new 501(c)(3) tax-exempt nonprofit corporation (or a wholly-owned subsidiary thereof), as a replacement General Partner satisfactory to Landlord but Tenant requires additional time for the admission of a replacement General Partner, Landlord may approve an extension granting such additional time; Landlord's approval shall not be unreasonably withheld or delayed. Any other transfers of the General Partner's interest shall be subject to Landlord's approval which shall not be unreasonably withheld or delayed.

14.02 Assignment, Sublease or Other Conveyance by Landlord

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

ARTICLE 15: TAXES

Subject to any exemption available therefor, Tenant agrees to pay, or cause to be paid, prior to delinquency to the proper authority, any and all valid taxes, assessments and similar charges imposed on the Site during the term of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site, which shall be paid by Landlord. Tenant shall not be required to pay or discharge any taxes that are based on net or gross income (including any capital gain) or any value added, franchise, estate, inheritance, capital, doing business or similar taxes of the Landlord. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to OCII. In the event of any such contest, Tenant shall protect, defend and indemnify OCII against all loss, cost, expense or damage resulting therefrom, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. OCII shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that such information is otherwise available to the public. OCII hereby consents to Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Site or on Tenant's interest in the Site.

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

ARTICLE 16: UTILITIES

Tenant shall procure water and sewer service from the City and electricity, telephone, natural gas and any other utility service from the City or utility companies providing such services, and shall pay all connection and use charges imposed in connection with such services. As between OCII and Tenant, Tenant shall be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. OCII shall join in the conveyance of

grants of easement reasonably necessary for such utilities and the development of the Premises.

ARTICLE 17: MAINTENANCE

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

ARTICLE 18: LIENS

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

ARTICLE 19: GENERAL REMEDIES

19.01 Application of Remedies

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

19.02 Notice and Cure Rights for Tenant Limited Partner

(a) OCII may not exercise its remedies under this Ground Lease for a default by the

Tenant unless and until (i) OCII has given written notice of any such default, in accordance with the notice provisions of Article 38, to Tenant and the "Permitted Limited Partner" identified in Article 38 (which includes, without limitation, the Investor Limited Partner), and any other limited partners who have requested notice as set forth below (collectively, the "Permitted Limited Partners"), and (ii) such default has not been cured within sixty (60) days following the giving of such notice or, if such default cannot be cured within such sixty (60) day period, such longer period as is reasonably necessary to cure such default, provided that such cure has been commenced within such sixty (60) day period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot cure a default due to an automatic stay in bankruptcy court because a general partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

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

(c) Any limited partner, other than the limited partner identified in Article 38, wishing to become a Permitted Limited Partner must provide five (5) days written notice to OCII in accordance with the notice provisions of this Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant and the Tenant's general partner. Such limited partner will become a Permitted Limited Partner upon the expiration of the five (5) day period. A limited partner will not be afforded the protections of this section with respect to any default occurring prior to the time such limited partner becomes a Permitted Limited Partner.

19.03 Breach by OCII

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

remedy available at law or equity.

19.04 Breach by Tenant

19.04(a) Default by Tenant

The following events, if not cured in the time periods set forth in Section 19.04(b) or this subparagraph (a) shall each constitute an "Event of Default" hereunder:

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

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

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

(4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the same within ninety (90) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within ninety (90) days;

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

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

If, despite Non-Residential Tenant's good faith efforts to resolve any vacancy in the Non-Residential Space in accordance with the definition of "Non-Residential Space," Non-Residential Tenant is unable to lease the Non-Residential Space to a licensed childcare provider, such vacancy shall not constitute a breach of this Lease.

19.04(b) Notification and OCII Remedies

Upon the occurrence of any Event of Default, OCII shall notify Tenant, the Permitted Limited Partners, and each Lender in writing of the Tenant's purported breach, failure or act, giving Tenant sixty (60) days from receipt of such notice to cure such breach, failure or act. In the event Tenant, the Permitted Limited Partners or any Lender does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.02 and Article 26, OCII thereafter shall be afforded all of its rights at law or in equity, including any or all of the following remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for damages; or (3) seeking specific performance of this Ground Lease; or (4) in the case of an Event of Default under Section 19.04(a)(1), increasing the Base Rent to the full amount of the Annual Rent.

19.04(c) Limitation on OCII Remedies

Notwithstanding the various remedies of OCII pursuant to this Section 19.04 or any other provision of this Ground Lease, OCII shall not have the right to terminate the Ground Lease during the "compliance period" (as defined in Section 42 of the Internal Revenue Code, as amended) of the Project.

ARTICLE 20: DAMAGE AND DESTRUCTION

20.01 Casualty

If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than twenty five percent (25%) of the Improvements are destroyed or are so damaged by fire or other

casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, subject to any consent rights of Lender, if any, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required, or elects, to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease shall, subject to the rights of Lenders, be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by OCII any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right to do so under this Section 20.01, or elects not to restore the Improvements, the insurance proceeds shall be divided among OCII, Tenant and any Lender in accordance with the provisions of Section 20.02. In the event Tenant is required or elects to restore the Improvements, the Tenant is hereby authorized and may enter into a settlement or consent to an adjustment of an insurance award, in its name and/or in the name of the Landlord, relating to such casualty, subject to any Lender's consent rights, if any.

20.02 Distribution of the Insurance Proceeds

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

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

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

(c) The remainder to Tenant.

20.03 Clean Up of Housing Site

In the event the Tenant terminates this Ground Lease pursuant to the provisions of

Sections 20.01 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.02(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

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

21.01 Damage to Person or Property -General Indemnification

OCII shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity or association on or about the Site during the term of this Ground Lease. Tenant shall defend, hold harmless and indemnify the OCII, the City and their respective commissioners, officers, agents, and employees, of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Site, and any of its operations activities thereon or connected thereto; provided, however, that this Article 21 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless OCII, the City or any of their commissioners, officers, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by the person or entity seeking such indemnity.

21.02 Hazardous Substances –Indemnification

(a) Tenant shall indemnify, defend, and hold OCII, the City and their respective commissioners, officers, agents and employees (individually, an " Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (a) a violation of any Environmental Law occurring during the term of this Ground Lease caused by Tenant, its employees, agents, affiliates or contractors, or (b) any Tenant Environmental Condition (as defined herein below); provided, however, that this Section 21.02(a) shall not be deemed or construed to, and shall not impose an obligation on Tenant to indemnify and save harmless the Indemnified Parties from, any claim,

loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party.

(b) Landlord shall indemnify, defend, and hold the Tenant and its successors, employees, affiliates, agents, representatives and contractors (individually, a "Tenant Indemnified Party" and collectively, the "Tenant Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Tenant Indemnified Party in connection with, arising out of, in response to, or in any manner relating to a violation of any Environmental Law or Release of Hazardous Substances at the Site first existing or occurring prior to the Effective Date.

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

(i) "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §25316 and §25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Site at concentrations or levels naturally occurring on the Site or that are customarily used (in compliance with Environmental Laws) in apartment complexes or senior centers.

(ii) "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to construction of the Improvements.

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

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

(iv) "Tenant Environmental Condition" shall mean the Release or threatened Release of Hazardous Substance and any condition of pollution, contamination or Hazardous-Substance-related nuisance at, on, under or from the Site which first exists or first occurs after the Effective Date and is caused by Tenant, or Tenant's employees, agents, affiliates or contractors.

ARTICLE 22: INSURANCE

22.01 Insurance

Subject to approval by the OCII's Risk Manager of the insurers and policy forms Tenant must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below throughout the Compliance Term of this Agreement at no expense to the OCII:

a. Tenant, Contractors.

(a) to the extent Tenant or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars ($1,000,000) each accident and not less than One Million Dollars ($1,000,000) for each employee;

(b) commercial general liability insurance, with limits set forth below, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; broad form property damage; explosion, collapse and underground (XCU); products and completed operations, as follows:

(i) not less than One Million Dollars ($1,000,000) combined single limit per occurrence and Two Million Dollars ($2,000,000) annual aggregate limit before the start of demolition/construction if the Site is unoccupied;

(ii) not less than Five Million Dollars ($5,000,000) combined single limit per occurrence and Ten Million Dollars ($10,000,000) annual aggregate limit during demolition/construction and occupancy of the Site/ongoing operations of the Project;

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

(d) professional liability insurance for all architects employed in connection with the Project, with limits not less than Two Million Dollars ($2,000,000) (or, in the case of any other professionals, $1,000,000) each claim and Four Million Dollars ($4,000,000) annual aggregate limit for architects and Two Million ($2,000,000) annual aggregate for any other professionals with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. Any deductible over Fifty Thousand Dollars ($50,000) each claim must be reviewed by Risk Management; and

(e) crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars ($75,000) each loss, with any deductible not to exceed Five Thousand Dollars ($5,000) each loss, including the OCII as additional obligee or loss payee.

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

b. Property Insurance. Tenant must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

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

(b) after completion of construction, property insurance, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars ($25,000) each loss, including OCII as a named insured;

(c) boiler and machinery insurance, comprehensive form, in the amount of replacement value of all insurable objects, with any deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including OCII as a named insured; and

(d) during construction and/or rehabilitation, performance and payment bonds of contractors, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Tenant as dual obligees, or other completion security approved by OCII in its reasonable discretion.

c. Non-Residential Space. Tenant must require that all NonResidential tenants' liability insurance policies include Tenant and OCII as additional insureds, as their respective interests may appear. Tenant must require Non-Residential tenant to maintain insurance as follows:

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

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

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

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

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

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

d. General Requirements.

(a) General and automobile liability policies of Tenant, contractors, commercial tenants and property managers must include OCII, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to OCII.

(b) Tenant shall provide thirty (30) days' advance written notice to OCII of ofcancellationof all policies required by this Ground Lease for any reason, nonrenewal or reduction in coverage and specific notice mailed to OCII's address with a copy to MOHCD for notices pursuant to Article 38.

(c) With respect to any property insurance, Tenant hereby waives all rights of subrogation against OCII to the extent of any loss covered by Tenant's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Tenant's insurance by OCII will not relieve or decrease the liability of Tenant under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that OCII and its officers, agents and employees will not be liable for any required premium.

(f) OCII reserves the right to require an increase in insurance coverage in the event OCII determines that conditions show cause for an increase, unless Tenant demonstrates to OCII's satisfaction that the increased coverage is commercially unreasonable or unavailable to Tenant.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Tenant must provide OCII with copies of insurance certificates and endorsements for each required insurance policy.

ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS

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

ARTICLE 24: ENTRY

OCII and its authorized agents shall have the right at all reasonable times during normal business hours and after forty-eight (48) hours written notice to Tenant (except in the event of an emergency when no written notice is required) and subject to the rights of tenants under leases or subleases of the Premises, to go on the Site for the purpose of inspecting the same or for the purpose of posting notices of nonresponsibility, or for police or fire protection.

ARTICLE 25: MORTGAGE FINANCING

25.01 No Encumbrances Except for Development or Refinancing Purposes

Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of OCII, which consent shall not be unreasonably withheld or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages or required by Project lenders, equity investors or HUD, including, but not limited to use agreements and regulatory agreements) are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for: (i) financing the acquisition, design, renovation, reconstruction, or construction of the Improvements; (ii) refinancing; and (iii) any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. Landlord approves (i) OCII as a Lender and the deed of trust securing the OCII Loan is deemed an approved Leasehold Mortgage, and (ii) the City and County of San Francisco, and its assignee _____ as trustee for_____, as the bond purchaser and the loan secured by the construction and permanent Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, is deemed an approved Leasehold Mortgage.

25.02 Holder Not Obligated to Construct

The holder of any mortgage, deed of trust or other security interest authorized by Section 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Ground Lease be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee the completion of the construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements authorized under Section 9.02. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, subject to Section 26.06(ii), that Holder or its successors in interest must obtain the written consent of OCII; provided, however, in such event Holder or any Subsequent Owner shall negotiate in good faith revisions to the approved plans, specifications and Schedule

of Performance to the extent necessary or desirable to preserve the economic and practical feasibility of the Project.

25.03 Failure of Holder to Complete Construction

In any case where six (6) months after assumption of obligations pursuant to Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with the resumption or preparatory activities in order to complete construction, OCII shall be afforded the rights against such Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption.

25.04 Default by Tenant and OCII's Rights

25.04(a) Right of OCII to Cure a Default or Breach by Tenant under a Leasehold Mortgage

In the event of an Event of Default or breach by Tenant in or of its obligations under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach in accordance with Section 19.02, Landlord may, at its option, cure such breach or default at any time prior to one hundred nineteen (119) days after the date on which the Lender files a notice of default. In such event, OCII shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by OCII in curing the default or breach. OCII shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements. Any such lien shall be subject to the lien of any then existing Leasehold Mortgage authorized by this GroundLease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable loan documents, if such default shall remain uncured, or if Tenant shall not have begun prosecution of such cure, OCII shall also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to such Lender's and Permitted Limited Partner's written consent, but which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

25.04(b) Notice of Default to OCII

Tenant shall use commercially reasonable efforts to require Lender to give OCII prompt written notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also contain the OCII's right to cure as above set forth.

25.05 Cost of Mortgage Loans to be Paid by Tenant

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

ARTICLE 26: PROTECTION OF LENDER

26.01 Notification to OCII

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this Article 26, each Lender shall give written notice to the OCII of the Lender's address and of the existence and nature of its Leasehold Mortgage. The address of the initial Lenders' address is set forth in Article 38 hereof. Execution of Attachment 7 shall constitute OCII's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. OCII hereby acknowledges that the First Mortgage Lender and OCII are deemed to have given such written Notice.

26.02 Lender's Rights to Prevent Termination

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

26.03 Lender's Rights When Tenant Defaults

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

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

the OCII to Lender; or

(ii) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have failed, within one hundred eighty (180) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default shall be remedied or deemed remedied in accordance with Article 26.04 below.

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

26.04 Default Which Cannot be Remedied by Lender

Any Event of Default under this Ground Lease which in the nature thereof cannot be remedied by Lender (including all amounts due from Tenant to Landlord in respect to damages, indemnifications or other monetary amounts, other than Annual Rent, arising from the action or inactions of Tenant) shall be deemed to be remedied if (i) within one hundred eighty (180) days after receiving notice from the OCII setting forth the nature of such Event of Default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to completion, (iii) Lender shall have fully cured any Event of Default arising from failure to pay or perform any monetary obligation in accordance with the terms of this Ground Lease, and (iv) after gaining possession of the Improvements, Lender shall diligently proceed to perform all other obligations of Tenant as and when the same are due in accordance with the terms of this Ground Lease.

26.05 Court Action Preventing Lender's Action

If Lender is prohibited by any process or injunction issued by any court or by reason of

any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, OCII agrees to enter into a new Ground Lease with the Lender on the same terms set forth in this Ground Lease. And specifically provided that in the event the Lease is terminated for any reason, including, without limitation, a termination or rejection through any bankruptcy proceeding or a foreclosure transferee becomes the legal owner of Tenant's interest in the Property, and upon written request by the most senior Lender or the Subsequent Owner thereof given within sixty (60) days after such termination or acquisition by Subsequent Owner of Tenant's interest in the Project, as applicable, Landlord shall enter into a new lease of the Project (the "New Lease") with such Lender or the Subsequent Owner for the remainder of the Lease term with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained in the Lease and the New Lease shall be recorded with a priority equal to the recording priority of the Lease.

26.06 Lender's Rights to Record, Foreclose and Assign

OCII hereby agrees with respect to any Leasehold Mortgage, that

(i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate created hereby to an assignee from whom it may accept a purchase price; provided however that: (a) except with respect to affiliates of a Lender, Lender obtains prior written approval from OCII with respect to the selection of the assignee, which approval shall not be unreasonably withheld; and (b) if the proposed assignee intends to elect to maintain the use restrictions of Section 9.02, said assignee must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender, or an affiliate, shall become the assignee, may sell and assign said Leasehold Estate subject to OCII approval as to the assignee or purchaser, which shall not be unreasonably

withheld or delayed, and to the OCII's rights under Article 25; and

(ii) each Subsequent Owner shall take the Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, the Subsequent Owner may operate and maintain the one hundred and twenty (120) Residential Units without any limitations on the rents charged or the income of the occupants thereof, subject to any applicable regulatory agreement, restrictive covenant or other encumbrance.

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

(iv) any Permitted Limited Partners of Tenant shall have the same rights as any Lender under Sections 26.02, 26.03, 26.04 and 26.06 (iii), and any reference to a Lender in said section shall be deemed to include such limited partners; provided, however, that the rights of such limited partners shall be subordinate to the rights of any Lender.

26.07 Ground Lease Rent after Lender Foreclosure or Assignment

Upon foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, (i) any accrued Base Rent and any Residual Rent that remains unpaid at the time of such foreclosure or assignment in lieu of foreclosure shall be forgiven by OCII, and shall not be an obligation of the Lender or any other Subsequent Owner, and (ii) Annual Rent shall be set as follows:

(a) For so long as the Project is operated in accordance with the use and occupancy restrictions of Section 9.02, the following shall apply:

(1) The obligations of any Subsequent Owner other than a Lender for payment of Annual Rent shall be as set forth for other Tenants in Article 4;

(2) The obligations for payment of Annual Rent of a Lender (or the affiliate of a Lender) who acquires the Leasehold Estate as a result of foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure shall be as follows:

(A) For 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, the obligations for payment of Annual Rent of the Lender (or such affiliate) shall be as set forth for other Tenants in Article 4;

(B) If, within 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure: (1) the Lender (or such affiliate) identifies as a potential assignee of the Leasehold Estate an entity that is controlled by, or includes a partner or member which is, a California nonprofit public benefit corporation that is exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Leasehold Estate would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code, (2) OCII has approved such entity (which approval shall not be unreasonably withheld or delayed), and (3) Lender (or its affiliate) is engaged, diligently and in good faith, in negotiations with such entity for assignment of the Leasehold Estate, then, if requested by Lender, the obligations for payment of Annual Rent of the Lender (or such affiliate) shall continue to be as set forth for other Tenants in Article 4 for an additional 60 days after the end of the 180-day period set forth in 26.07(a)(2)(A) above;

(C) From and after the date that Lender (or its affiliate) no longer qualifies under paragraph (A) or paragraph (B) of this Section 26.07(a)(2), but continues to operate the Project subject to the use and occupancy restrictions of Section 9.02, Base Rent shall accrue without regard to the amount of Surplus Cash and shall be payable by Lender (or such affiliate) in arrears on each April 15; provided, however, that payment of Base Rent thus accrued may, at the option of the Lender (or such affiliate), be deferred, with simple interest at six percent (6%) per annum until paid, until the first to occur of (x) assignment of the Leasehold Estate to a Subsequent Owner or (y) the date that is sixty days after cessation of operation of the Project in accordance with the use and occupancy restrictions of Section 9.02. If the Lender or Subsequent Owner exercises its rights under Section 26.06(ii) to operate the Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market rental value of the Site, and the Base Rent shall be increased to the new fair market rent pursuant to this Section 26.07(b) and the provisions of Section 6.02(f) shall be suspended; provided, however, that the OCII shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce the aggregate rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low Income and Low Income Households as OCII and the Subsequent Owner shall agree. Lender or Subsequent Owner also has the option to voluntarily agree to affordability

restrictions less strict than those set forth in Section 9.02. In such event, the Base Rent shall not be increased but the Annual Rent shall be set at the fair market rental value of the Site based on the agreed upon affordability restrictions and the Base Rent and Residual Rent shall continue to be eligible for deferral pursuant to Article 4 hereof. The fair market rental value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Lender or Subsequent Owner and OCII, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the neutral third party process, the Lender or Subsequent Owner, in its sole discretion may rescind its written notification of intent to not comply with Section 9.02 of this Ground Lease.

26.08 Permitted Uses after Lender Foreclosure

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Project shall be operated in accordance with the uses specified in the schematic design, preliminary construction documents, final construction documents, and the building permit with all addenda, as approved by the Landlord.

26.09 Preservation of Leasehold Benefits

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

(a) That the Landlord shall not voluntarily cancel or surrender this Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or materially amend this Ground Lease to increase the obligations of the Tenant or the rights of OCII thereunder, without the prior written consent of the Permitted Limited Partner and each Lender (which will not be unreasonably withheld or delayed);

(b) That OCII shall not enforce against a Lender any waiver or election made by the Tenant under this Ground Lease which has a material adverse effect on the value of the Leasehold Estate under this Ground Lease without the prior written consent of the Lender (which

will not be unreasonably withheld or delayed);

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

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

26.10 No Merger

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

26.11 OCII Bankruptcy

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

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

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

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

ARTICLE 27: CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement

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

27.02 Total Taking

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

27.03 Partial Taking

If any portion of the Site is taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to OCII within thirty (30) days after the OCII (or any other governmental entity) notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Ground Lease as provided in this Section 27.03, Tenant also shall notify OCII of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified OCII of its election to terminate; except that this Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall continue in full force and effect.

27.04 Effect on Rent

If any portion of the Improvements is taken by condemnation and this Ground Lease remains in full force and effect, then on the date of taking the rent shall be equitably abated.

27.05 Restoration of Improvements

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

27.06 Award and Distribution

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

(a) First, to the extent required by a Lender in accordance with its loan documents, to pay the balance due on any outstanding Leasehold Mortgages and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals and lease residuals, to the extent provided therein;

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

(c) Third, to the Landlord.

27.07 Payment to Lenders

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

ARTICLE 28: ESTOPPEL CERTIFICATE

OCII or Tenant, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender or Permitted Limited Partner, promptly (but not more than ten days) upon request, its certificate certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent and all other amounts due hereunder has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by OCII or Tenant to be performed or observed and, if so, specifying the

same, (d) whether there are then existing any defaults by Tenant or OCII in the performance or observance by Tenant or OCII of any agreement, covenant or condition hereof on the part of Tenant or OCII to be performed or observed and whether any notice has been given to Tenant or OCII of any default which has not been cured and, if so, specifying the same and (e) such other information as may be reasonably requested by Tenant or any Lender.

ARTICLE 29: QUITCLAIM

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

ARTICLE 30: EQUAL OPPORTUNITY

Tenant agrees to comply with all of the Equal Opportunity Program as described in Attachment 4 and will submit all documents required pursuant to the policies included in Attachment 4.

ARTICLE 31: OCII LABOR STANDARDS PROVISIONS

California Labor Code Section 1720 et seq. requires payment of prevailing wages for developments paid for in whole or in part out of public funds. Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant further acknowledges that the Project may be subject to Labor Code requirements. Tenant agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 4-3 and to comply with applicable provisions of the Labor Code.

ARTICLE 32: OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

OCII finds that it has a significant proprietary interest in the public parcel that is being leased to the Tenant pursuant to this Ground Lease. Tenant agrees that the Tenant and its subtenants, if any, will comply with the applicable provisions of the OCII's Health Care Accountability Policy ("HCAP"), Attachment 4-5, and Minimum Compensation Policy ("MCP"), Attachment 4-6, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly, "Policies"). Notwithstanding this requirement, the Parties recognize that the residential housing component of the Improvements is

not subject to the Policies but the leasing and operations of the Non-residential Space is subject to the Policies.

ARTICLE 33: CONFLICT OF INTEREST

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

ARTICLE 34: NO PERSONAL LIABILITY

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

ARTICLE 35: ENERGY CONSERVATION

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

ARTICLE 36: WAIVER

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

ARTICLE 37: TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as OCII may deem necessary, there shall be made available to OCII and its authorized representatives for examination all records, reports, data and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained herein shall entitle OCII to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by law to do so, OCII will respect the confidentiality requirements of Tenant in regard to the lists furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the residential portion of the Site. OCII's rights pursuant to the preceding provisions of this Article 38 shall be subject in all respects to applicable local, state and federal laws restricting the disclosure of such information.

ARTICLE 38: NOTICES AND CONSENTS

All notices, demands, consents or approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Tenant and OCII as shall from time to time be designated by the parties for the receipt of notices, or upon receipt when sent by express delivery service with a delivery receipt and addressed

To OCII:
Office of Community Investment and Infrastructure
Successor Agency to the San Francisco Redevelopment Agency
1 South Van Ness, 5th Floor
San Francisco, CA 94103
Attn: Executive Director

With a copy to:
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director

To Tenant:

Mercy Housing California 64, L.P.
c/o Mercy Housing Calwest
1360 Mission Street, Suite 300
San Francisco, CA 94103
Attn: Vice President

With a copy to: Gubb & Barshay LLP
505 14th Street, Suite 1050,
Oakland, CA 94612
Attn: Evan Gross

To Lender:

Wells Fargo Bank, National Association
Community Lending and Investment
MAC #A0119-183
333 Market St., 18th Floor
San Francisco, California 94105
Attn: Tim McCannand after Conversion to:

California Community Reinvestment Corporation
225 West Broadway, Suite 120
Glendale, California 91204
Attn: Executive Vice President

To Investor Limited Partner:
Wells Fargo Affordable
Housing Community Development Corporation
MAC D1053-170
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

With a copy to:
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Attention: Philip C. Spahn

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Article 38. Any notice given pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. For purposes of this Article 38 and Article 19.02, the Limited Partner shall include any successors and/or assigns of Wells Fargo Affordable Housing Community Development Corporation that is an affiliate of the Limited Partnership.

ARTICLE 39: COMPLETE AGREEMENT

There are no oral agreements between Tenant and OCII affecting this Ground Lease, and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,

agreements and understandings between Tenant and OCII with respect to the lease of the Site

ARTICLE 40: HEADINGS

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

ARTICLE 41: SUCCESSORS AND ASSIGNS

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

ARTICLE 42: TIME OF THE ESSENCE

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

ARTICLE 43: PARTIAL INVALIDITY

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

ARTICLE 44: APPLICABLE LAW

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

ARTICLE 45: ATTORNEYS' FEES

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

ARTICLE 46: EXECUTION IN COUNTERPARTS

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

ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE

This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall be recorded. The parties shall execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent purchasers and mortgagees. The form of memorandum of Ground Lease is attached hereto as Attachment 2.

ARTICLE 48: ASSIGNMENT

OCII and Tenant hereby acknowledge and agree that, effective upon the date of issuance of the Certificate of Completion, or some later date as determined by OCII, all of OCII's rights, interests and obligations under this Ground Lease shall be assigned to MOHCD pursuant to Dissolution Law. OCII and Tenant hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Article 48. Upon assignment to MOHCD, all references herein to OCII shall be deemed references to MOHCD.

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. Memorandum of Ground Lease
3. Schedule of Performance
4. Equal Opportunity Program
5. Income Computation and Certification
6. City's Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments
7. Consent to Leasehold Mortgage
8. Rent Restrictions

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

OCII:
Office of Community Investment and Infrastructure, Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California

By: _____
Tiffany Bohee
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney
As counsel to OCII

By: _____
Heidi J. Gewertz
Deputy City Attorney

TENANT:

By: Mercy Housing California 64, L.P., a California limited partnership

By: Mercy Housing Calwest, its General partner

By: _____
Douglas Shoemaker,
Its: Vice President

ATTACHMENT 1

Legal Description of the Site

All that real property situated in the city and county of San Francisco, State of California, described as follows:

Parcel A, as said parcel is shown on parcel map 7999 filed for Record October 19, 2015, in book 49 of parcel maps, pages 47 – 49 Inclusive, official records of the city and county of San Francisco, state of California.

Being a portion of assessor's block no. 3738

ATTACHMENT 2

Memorandum of Ground Lease

RECORDING REQUESTED BY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, One South Van Ness Avenue, 5th Floor, San Francisco, California 94103

WHEN RECORDED RETURN TO:

Free Recording Requested Pursuant to Government Code Section 27383
255 Fremont Street / 222 Beale Street
San Francisco, CA 94105

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of this __ day of _____ by and between the Office of Community Investment and Infrastructure, organized and existing under the laws of the State of California (the "Lessor") and Mercy Housing California 64 L.P. (the "Lessee") with respect to that certain unrecorded Ground Lease dated as of _____ (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The Initial Term of the Lease shall commence on _____, and shall end on the date seventy five (75) years thereafter, with an Option for Extension for an additional twenty-four (24) year term to begin at the end of the Initial Term. Lessee is granted a right of first refusal to purchase a fee interest in the Property from Lessor under certain conditions more specifically described in Section 14.02 of the Lease.

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

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease or grant of improvements, of which this is a memorandum.
Executed this ___ day of _____2016, at San Francisco, California.

LESSOR:

Office of Community Investment and Infrastructure
of the City and County of San Francisco,
a public body, organized and existing under the laws of the State of California

By: _____
Tiffany Bohee
Its: Director

LESSEE:

Mercy Housing California 64, L.P., a California limited partnership

By: Mercy Housing Calwest, General partner

By: _____
Douglas Shoemaker,
Its: Vice President

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that real property situated in the city and county of San Francisco, State of California, described as follows:

Parcel A, as said parcel is shown on parcel map 7999 filed for Record October 19, 2015, in book 49 of parcel maps, pages 47 – 49 Inclusive, official records of the city and county of San Francisco, state of California.

Being a portion of assessor's block no. 3738

ATTACHMENT 3

Schedule of Performance

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1	Prop I Noticing (if applicable)		
2	Acquisition/Predev Financing Commitment	N/A	Complete
3	Site Acquisition (DDA)	4/1/13	Complete
4	Development Team Selection		
a.	Architect	N/A	Complete
b.	General Contractor	4/15/14	Complete
c.	Owner's Representative	4/1/13	Complete
d.	Property Manager	N/A	
e.	Service Provider	N/A	
5	Design		
a.	Submittal of Schematic Design & Cost Estimate	4/17/15	Complete
b.	Submittal of Design Development & Cost Estimate	7/20/15	Complete
c.	Submittal of 50% CD Set & Cost Estimate	09/28/15	Complete
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	11/30/15	Complete
6	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	N/A	
b.	NEPA Environ Review Submission	N/A	
c.	CUP/PUD/Variances Submission	N/A	
7	Permits		
a.	Building / Site Permit Application Submitted	Resubmitted on 2/19/15	Complete
b.	Addendum #1 Submitted	8/18/15	Complete
c.	Addendum #2 Submitted	9/29/15	Complete
8	Request for Bids Issued	On going	
9	Service Plan Submission		
a.	Preliminary	10/31/16	1/31/17

b.	Interim	1/31/17	4/30/17
c.	Update	6/30/17	9/30/17
10	Additional City Financing		
a.	Predevelopment Financing Application #2	8/19/14	Complete
b.	Gap Financing Application	6/5/15	Complete
11	Other Financing		
a.	MHP Application	N/A	
b.	Construction Financing RFP	1/08/16	Complete
c.	AHP Application	N/A	N/A
d.	CDLAC Application	10/16/15	Complete
e.	TCAC Application	10/16/15	Complete
f.	HUD 202 or 811 Application	N/A	
g.	Other Financing Application (AHSC)	04/20/15	Complete
12	Closing		
a.	Construction Closing/Execution of Ground Lease	05/23/16	08/31/16
b.	Permanent Financing Closing	12/1/18	3/1/19
13	Construction		
a.	Notice to Proceed	6/1/16	9/1/16
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	2/1/18	5/1/18
14	Marketing/Rent-up		
a.	Marketing Plan Submission	8/1/16	11/1/16
b.	Commence Marketing	8/1/17	11/1/17
c.	95% Occupancy	5/30/18	8/30/18
15	Cost Certification/8609	3/1/19	6/1/19
16	Close Out MOH/OCII Loan(s)	6/1/19	9/1/19

ATTACHMENT 4

1. Equal Opportunity Policies. Tenant shall comply with OCII's Equal Opportunity Policies and execute agreements and declarations attached hereto as part of this Attachment 4which includes::

(i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 43-2015) attached as Attachment 4-1. (ii) Construction Workforce, attached as set forth in Attachment 4-2.
(iii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985) attached as Attachment 4-3.
(iv) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997) attached as Attachment 4-4.
(v) Health Care Accountability Policy (adopted by Resolution No. 168-2001) attached as Attachment 4-5.
(vi) Minimum Compensation Policy (adopted by Resolution No. 168-2001) attached as Attachment 4-6.

Copies of OCII's Equal Opportunity Policies are available on the OCII website at http://sfocii.org/policies-and-procedures.

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*)and implementing regulations.

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Tenant or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Tenant must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Tenant will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Tenant must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Tenant represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 *et seq*. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Tenant certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Tenant at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Tenant agrees that OCII may refuse to consider any future application for funding from Tenant or any entity related to Tenant until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. Disability Access. Tenant must comply with all applicable disability access Laws, including the Americans With Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Tenant is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Tenant must provide to OCII a written reasonable accommodations policy that indicates how Tenant will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Tenant must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq*.) and implementing regulations at 24 CFR part 35. Tenant must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Tenant must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq*.) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Non-Discrimination in OCII Contracts and Benefits Policy.

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

(b) Non-Discrimination in Benefits. Tenant does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the

conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure.

(a) Tenant understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Tenant hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Compliance with Minimum Compensation Policy and Health Care Accountability Policy. Tenant agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health.

10. Limitations on Contributions. Through execution of this Agreement, Tenant acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Tenant agrees to provide to OCII the names of each member of Tenant's general partner's (or, if applicable, general partner's managing members) board of directors; Tenant's general partner's (or, if applicable, general partner's managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant's general partner (or, if applicable, general partner's managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant.

ATTACHMENT 4-1

SMALL BUSINESS ENTERPRISE AGREEMENT

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. PURPOSE. The purpose of entering into this Small Business Enterprise Program agreement ("**SBE Program**") is to establish a set of Small Business Enterprise ("SBE") participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency ("**Agency**") and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

II. APPLICATION. The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract**.**

III. GOALS. The Agency's SBE Participation Goals are:

CONSTRUCTION	**50%**
PROFESSIONAL SERVICES	**50%**
SUPPLIERS	**50%**

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over $100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional's contract as follows:

Trainees	**Design Professional Fees**
0	$ 0 – $99,000
1	$ 100,000 – $249,999
2	$ 250,000 – $499,999
3	$ 500,000 – $999,999
4	$1,000,000 – $1,499,999
5	$1,500,000 – $1,999,999
6	$2,000,000 - $4,999,999
7	$5,000,000 - $7,999,999
8	$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

V. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

VI. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

IX. INCORPORATION. Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

X. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**Policy**") or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, and other similar contracts, and agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

Amendment to a Pre-existing Contract means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy ("SBE Policy") takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

Annual Receipts means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Commercially Useful Function means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco ("City") as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are

required and sought by the Agency.

Contract means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

Office" or "Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an "office." The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an "as needed" basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms' location in a Project Area or Survey Area.

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

San Francisco-based Small Business Enterprise means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as

a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	$20,000,000
Specialty Construction Contractors	$14,000,000
Suppliers (goods/materials/ equipment and general services)	$10,000,000
Professional Services	$2,500,000
Trucking	$3,500,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's three year average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

XI. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise**. Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the ***Small Business Exchange***, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs**. Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost $5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. Subdivide Work. Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. Provide Timely and Complete Information. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. Good Faith Negotiations. Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. Bid Shopping Prohibited. Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. Other Assistance. Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. Delivery Scheduling. Establish delivery schedules which encourage participation of SBEs.

J. **Utilize SBEs as Lower Tier Subcontractors**. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. **Maximize Outreach Resources.** Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XII. ADDITIONAL PROVISIONS

A. **No Retaliation.** No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. **No Discrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

C. **Compliance with Prompt Payment Statute.** Construction contracts and subcontracts awarded for $5,000 or more shall contain the following provision:

> "Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq*. Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."

In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq*.), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

D. **Submission Of Electronic Certified Payrolls**. For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency's Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XIII. PROCEDURES

A. **Notice to Agency**. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. **Affidavit**. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. **Good Faith Documentation**. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance

setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIV. ARBITRATION OF DISPUTES.

A. Arbitration by AAA. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration,** unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fail to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. Parties' Participation. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XIII.B. above.

D. Agency Request to AAA. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in

accordance with Code of Civil Procedure §1283.05.

H. Burden of Proof. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. California Law Applies. Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this SBE Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. Arbitrator's Decision. The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. Default Award; No Requirement to Seek an Order Compelling Arbitration. The

arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

N. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

O. Exculpatory Clause. Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. Severability. The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. Arbitration Notice: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO

SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

_____	_____
Agency	Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

_____	_____
Signature	Date
_____	_____
Print Your Name	Title
_____	
Company Name and Phone Number	

ATTACHMENT 4-2

CONSTRUCTION WORK FORCE AGREEMENT

I. PURPOSE. This Agreement is entered into between the Office of Community Investment and Infrastructure ("OCII" or "Agency"), as successor agency to the San Francisco Redevelopment Agency and _____ (hereinafter "Owner") for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. DEFINITIONS.

The following definitions apply to this Agreement.

A. "CityBuild" means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).

B. "Contract" means any agreement in excess of $10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials.

C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of $10,000 and who employ persons in a Trade for construction of the Owner Improvements.

D. "Owner Improvements" means improvements constructed in the Transbay Area by the Owner.

E. "Project Area Resident" means a San Francisco Resident who resides in a redevelopment area under the management of OCII.

F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. WORK FORCE GOALS.

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed td CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediate advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2)

business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified

payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation

of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls
Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Owner Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Owner Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Owner Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

A. **Arbitration by AAA**. Any dispute regarding this Construction Work Force Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. **Demand for Arbitration**. Where the Owner disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Owner shall have seven**

(7) business days, in which to file a Demand for Arbitration, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Owner fails to file a timely Demand for Arbitration, the Owner shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. **Parties' Participation**. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.

D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. **Burden of Proof**. The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

I. **California Law Applies.** Except where expressly stated to the contrary in this

Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a

temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. **Severability**. The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force

Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.

Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

_____	_____
Agency	Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

_____	_____
Signature	Date
_____	_____
Print Your Name	Title
_____	_____
Company Name	Phone Number

ATTACHMENT 4-3

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability**. These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Lease Agreement between the Tenant and the Agency of which this Attachment and these Labor Standards are a part.

2. **All Contracts and Subcontracts for construction and construction-related improvements shall contain the Labor Standards.**

(a) All specifications relating to the construction of the improvements shall contain these Labor Standards and the Contractor shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Contractor shall supply the Agency with true copies of each contract relating to the construction of the improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.

3. **Definitions**. The following definitions shall apply for purposes of this Attachment:

(a) "Contractor" is the Contractor if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds $10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the improvements.

(b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

(c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

4. **Prevailing Wage**.

(a) All Laborers and Mechanics employed in the construction of the improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of

payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency.

(b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

(c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Contractor that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Contractor to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

(e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

5. **Permissible Payroll Deductions**. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

(a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.

(b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

(c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

(d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:

1. The deduction is not otherwise prohibited by law; and

2. It is either:

   a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

   b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

4. The deduction shall serve the convenience and interest of the employee.

(e) Any authorized purchase of United States Savings Bonds for the employee.

(f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

(h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

6. **Apprentices and Trainees**. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

7. **Overtime**. No Contractor contracting for any part of the construction of the improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

8. **Payrolls and Basic Records**.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the improvements. Such records shall

contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

(b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Contractor acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(c) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

9. **Occupational Safety and Health**. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

10. **Equal Opportunity Program**. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the Agency's equal opportunity program set forth in Attachment 4 of this Lease Agreement.

11. **Nondiscrimination Against Employees for Complaints**. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

12. **Posting of Notice to Employees**. A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Contractor at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. **Violation and Remedies**.

(a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

(b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the improvements to contain the Labor Standards as required by §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

(c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to

the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

(d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

(e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

(a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

(b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

(c) The arbitration shall take place in the City and County of San Francisco.

(d) Arbitration may be demanded by the Agency, the Borrower or the Contractor.

(e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Contractor, or as appropriate to one or the other if the Contractor or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the

Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.

(f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

(g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

(h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Contractor shall pay the Contractor from money withheld.

(i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

15. **Non-liability of the Agency**. The Contractor and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Contractor, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

ATTACHMENT #4-4

OCII office of COMMUNITY INVESTMENT and INFRASTRUCTURE	**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII)** **(Successor to the San Francisco Redevelopment Agency)** **Declaration Form** **Nondiscrimination in Contracts and Benefits**

Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

☐ My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization's policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

• Race	❑ Yes	❑ No
• color	❑ Yes	❑ No
• Creed	❑ Yes	❑ No
• Religion	❑ Yes	❑ No
• ancestry	❑ Yes	❑ No
• national origin	❑ Yes	❑ No
• Age	❑ Yes	❑ No
• sex	❑ Yes	❑ No
• sexual orientation	❑ Yes	❑ No
• gender identity	❑ Yes	❑ No
• marital status	❑ Yes	❑ No
• domestic partner status	❑ Yes	❑ No
• Disability	❑ Yes	❑ No
• AIDS or HIV status	❑ Yes	❑ No

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

❑ Yes ❑ No

If you answered "no" to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

❑ Yes ❑ No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

❑ Yes ❑ No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	❑	❑	❑
• Pension	❑	❑	❑
• Bereavement	❑	❑	❑
• Family leave	❑	❑	❑
• Parental leave	❑	❑	❑
• Employee assistance programs	❑	❑	❑
• Relocation and travel	❑	❑	❑
• Company discounts, facilities, events	❑	❑	❑
• Credit union	❑	❑	❑
• Child care	❑	❑	❑
• Other _____	❑	❑	❑
• Other _____	❑	❑	❑

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

(1) Have you taken all reasonable measures? ❑ Yes ❑ No

(2) Do you provide a cash equivalent? ❑ Yes ❑ No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at _____, _____.
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: __

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____

(if known)

- ❑ Check here if your address has changed.
- ❑ Check here if your organization is a non-profit.
- ❑ Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency), One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

ATTACHMENT #4-5

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to choose between offering health plan benefits to their employees or making payments to OCII or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII $4.50 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed $180 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured (rates and amounts effective July 1, 2015 and subject to annual change).

The OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.

- if a contractor does not provide the HCAP's minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII's contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ _____

Signature Date

_____

Print Name

_____ _____

Company Name Phone

ATTACHMENT #4-6

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (OCII) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on OCII contracts and subcontracts for services: for Commercial Business MCP the wage rate is $13.34 per hour effective January 1, 2016; for Nonprofit MCP the wage rate is $12.25 per hour effective May 1, 2015 and $13.00 per hour effective July 1, 2016. The Minimum Compensation rate is adjusted on January 1 each year. In addition, 12 paid days off per year (or cash equivalent) and 10 days off without pay per year shall be offered.

The OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII's Contract Compliance Department at (415) 749-2400 or http://www.sfocii.org/index.aspx?page=126.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ _____

Signature Date

_____

Print Name

_____ _____

Company Name Phone

ATTACHMENT 5

Income Computation and Certification

TENANT INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other _____

Effective Date: _____

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

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____

Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

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

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	$	$	$	$

Add totals from (A) through (D), above TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$
Enter Column (H) Total		Passbook Rate		

If over $5000	$_____	X	2.00%	= (J) Imputed Income	$
Enter the greater of the total of column I, or J: imputed income				**TOTAL INCOME FROM ASSETS (K)**	$

(L) Total Annual Household Income from all Sources [Add (E) + (K)]	$

HOUSEHOLD CERTIFICATION & SIGNATURES

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

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

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

PART V. DETERMINATION OF INCOME ELIGIBILITY

RECERTIFICATION ONLY:

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

Household Meets Income Restriction at:
☐ 60% ☐ 50%
☐ 40% ☐ 30%
☐ ____%

Current Income Limit x 140%: $

Household Income exceeds 140% at recertification:
☐ Yes ☐ No

Current Income Limit per Family Size: $

Household Income at Move-in: $

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent $

Utility Allowance $

Rent Assistance: $_____

Other non-optional charges: $_____

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

Unit Meets Rent Restriction at:
❑ 60% ❑ 50% ❑ 40% ❑ 30% ❑ ____%

Maximum Rent Limit for this unit: $

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ yes ☐ no

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

Enter 1-4

*Student Explanation:
1 TANF assistance
2 Job Training Program
3 Single parent/dependent child
4 Married/joint return

PART VIII. PROGRAM TYPE

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

a. Tax Credit ☐	b. HOME ☐	c. Tax Exempt ☐	d. AHDP ☐	e. _____ ☐ *(Name of Program)*
See Part V above.	*Income Status* ☐ ≤ 50% AMGI ☐ ≤ 60% AMGI ☐ ≤ 80% AMGI ☐ OI**	*Income Status* ☐ 50% AMGI ☐ 60% AMGI ☐ 80% AMGI ☐ OI**	*Income Status* ☐ 50% AMGI ☐ 80% AMGI ☐ OI**	*Income Status* ☐ _____ ☐ _____ ☐ OI**

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

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant

Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE DATE

INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION

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

Part I - Development Data

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

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
Address	Enter the address of the building.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

Part II - Household Composition

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

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

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

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

Part III - Annual Income

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

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

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

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

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).

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

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

Row (K)	Enter the greater of the total in Column (I) or (J)
Row (L)	Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

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

Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).

Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

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

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

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

Part VIII – Program Type

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

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicting the household's designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.

AHDP — If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicting the household's designation.

Other — If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

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

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

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

ATTACHMENT 6

City's Policy on Inclusion and Funding of Commercial Space in MOH-OCII-Funded Housing Developments

**Please note that this policy is currently under review for updates*

The MOHCD Commercial Space Underwriting Policy applies to all developments seeking City funding, including recapitalization projects with existing MOHCD loans.

A. DEFINITIONS

1. **Commercial Shell:** all components of an unfinished commercial space. Sheet rocked and fire-taped walls and ceiling, rough electrical and plumbing systems and stub-outs, doors and windows, unfinished flooring, and other items that may be required in order to obtain a temporary certificate of occupancy for the housing development shall be considered part of the commercial shell rather than tenant improvements. The Commercial Shell may include utility light fixtures, fire-sprinkler systems, smoke detectors, operable water, gas and sewer lines, standard bathroom plumbing fixtures, and other items associated with ready-to-lease but unfinished commercial space that is an integral part of the housing development. The Commercial Shell may only include elements that might otherwise be considered tenant improvements if those elements must be constructed during the construction of the housing portion of the development (e.g. commercial kitchen flues that must be built into chases that pass through residential spaces above).

2. **Public Benefit:** activities or programs that primarily benefit low-income persons, which are implemented by one or more nonprofit corporations, and have been identified by the City or community as a priority. Examples include, but are not limited to, childcare centers, adult day health centers, nonprofit office space, public libraries and supportive services for the residents of the affordable housing development.

B. UNDERWRITING GUIDELINES

	Commercial Space Owned by LP **Lease Options:** **Direct Lease with Tenant or Master Lease with GP Affiliate**	**Commercial Condo with Ground Lease** **Ownership Separate from LP**
CAPITAL EXPENDITURES		
MOHCD Funds Available for Construction of a Commercial Shell	Yes. Commercial shell costs must be approved by MOHCD as part of the standard loan committee process. Increased	Yes. Commercial shell costs must be approved by MOHCD as part of the standard loan committee process. Increased

	Tenant Improvement Allowance, in lieu of construction funding for the Commercial Shell will be considered on a case-by-case basis.	Tenant Improvement Allowance, in lieu of construction funding for the Commercial Shell will be considered on a case-by-case basis.
MOHCD Funds Available for Construction of Tenant Improvements	Yes, only for public benefit use.	Yes, only for public benefit use.
Capitalized Replacement Reserves	Minimum of 0.06% of shell replacement costs	Minimum of 0.06% of shell replacement costs
Tenant Improvement Reserve	Yes, only for public benefit use. Tenant Improvement Reserves for other uses should be included in the commercial budget, and funded with non-MOHCD sources.	Yes, only for public benefit use. Tenant Improvement Reserves for other uses should be included in the commercial budget, and funded with non-MOHCD sources.
Brokerage Fee Reserve	Yes, only for public benefit use. Tenant Improvement Reserves for other uses should be included in the commercial budget, and funded with non-MOHCD sources.	Yes, only for public benefit use. Tenant Improvement Reserves for other uses should be included in the commercial budget, and funded with non-MOHCD sources.
Operating Reserve (only required for full service leases)	Typical lease is NNN	Typical lease is NNN
Commercial Condos Allowed	N/A	When public funds are used to develop the commercial shell, commercial condos may be allowed, in MOHCD/OCII's discretion, if a commercial subdivision would benefit the overall project.
OPERATIONS		
Debt Service Coverage Ratio	Minimum of 1.20:1 and maximum of 1:40: 1 for entirety of projected 20-year cash flow	Minimum of 1.20:1 and maximum of 1:40: 1 for entirety of projected 20-year cash flow
Vacancy	50% in first year. Between 7%-20% in remaining years of 20-year cash flow	50% in first year. Between 7%-20% in remaining years of 20-year cash flow
Annual Income Growth	Increasing at 2.5% per year	Increasing at 2.5% per year
Annual Operating Expenses	Increasing at 3.5% per year	Increasing at 3.5% per year
Commercial Tenant Rents	Market rents supported by market comps	Market rents supported by market comps
Public Benefit Tenant Rents	No minimum rent, negotiable on a case-by-case basis, but must cover CAM charges.	No minimum rent, negotiable on a case-by-case basis, but must cover CAM charges.

Master Lease Payments	Must-pay master lease payment equal to .50 to $1 / SF (unless the LP needs higher lease payments to underwrite the housing component of the project) and payment of surplus cash to MOHCD described below.	N/A
Ground Lease Payments	N/A	Must-pay ground rent equal to the greater of $15,000 or $1 / SF, and payment of surplus cash to MOHCD described below.
Split of Surplus Cash	33% Developer / 67% MOHCD until the development cost of the commercial space is repaid to MOHCD.	33% Developer / 67% MOHCD until the development cost of the commercial space is repaid to MOHCD.
Term for Master/Ground Lease	Minimum of 30 years	Co-terminus with ground lease for housing parcel.
Rent Concession to Tenant	Yes, for all uses; duration to be approved by MOHCD.	Yes, for all uses; duration to be approved by MOHCD.
Broker's Fees -- Original Term	5-7% for 10 years pursuant to industry standards	5-7% for 10 years pursuant to industry standards
Broker's Fees -- At Lease Renewal	To be negotiated	To be negotiated
Asset Management Fee	To be negotiated depending on the complexity of the commercial financing, including whether a separate mortgage was underwritten with commercial income, necessity for separate audits, etc. The maximum allowable fee is equal to the maximum residential Asset Management fee allowed by MOHCD.	To be negotiated depending on the complexity of the commercial financing, including whether a separate mortgage was underwritten with commercial income, necessity for separate audits, etc. The maximum allowable fee is equal to the maximum residential Asset Management fee allowed by MOHCD.
Allowable Uses	To be approved by MOHCD, but neighborhood serving retail uses are preferred. The design of the commercial space should be reasonably compatible with the design and purpose of the housing development, and should help create and further enhance the character of the neighborhood serving retail corridor. Incompatible uses may include bars, liquor stores, tobacco product stores or other uses that cater exclusively to adults and may lead to problems of public safety and welfare.	To be approved by MOHCD, but neighborhood serving retail uses are preferred. The design of the commercial space should be reasonably compatible with the design and purpose of the housing development, and should help create and further enhance the character of the neighborhood serving retail corridor. Incompatible uses may include bars, liquor stores, tobacco product stores or other uses that cater exclusively to adults and may lead to problems of public safety and welfare.

MOCHD Approval of Initial and Subsequent Commercial Leases/Sub-leases Required?	Yes	Yes
Commercial Space Developer Fee	No	To be negotiated, maximum fee of $150,000

C. Waivers of the Commercial Space Underwriting Guidelines

The Citywide Affordable Housing Loan Committee may recommend a waiver or modification of any portion of this policy for the purpose of assuring project feasibility. All recommendations related to this policy are subject to the Mayor's approval in his or her sole discretion.

D. Policy Implementation

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

ATTACHMENT 7

Consent To Leasehold Mortgage

Date:

Office of Community Investment and Infrastructure, Successor to San Francisco Redevelopment Agency
Attn: Executive Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: _____, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 26.01 of the _____ Ground Lease, dated _____, between the Office of Community Investment and Infrastructure ("Successor Agency") and _____, we are formally requesting the Successor Agency's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the Successor Agency to provide its consent:

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

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

Sincerely,

_____
Printed Name and Title

enc.

_____

By signing this letter, the Successor Agency consents to the leasehold mortgage, pursuant to the terms and conditions of Section 26.01 of the _____ Ground Lease dated _____.

Office of Community Investment and Infrastructure

_____
Printed Name and Title

ATTACHMENT 8

Rent Restrictions

Unit Type	Proposed Number of Units	Proposed Avg. Sq. Feet	Max. City Rent	Max. % City AMI	Target % AMI	Rent or Operating Subsidies	Max TCAC rent
1BR	22	587	$1,019	50%	50%	none	$1,099
2 BR	18	761	$1,146	50%	50%	none	$1,318
3 BR	10	1,090	$1,274	50%	50%	none	$1,523
1 BR	31	587	$1,223	60%	60%	None	$1,319
2 BR	25	761	$1,375	60%	60%	None	$1,582
3 BR	13	1,090	$1,529	60%	60%	None	$1,828
2 BR	1	Mgr Unit					
Total Units	120						

* The maximum rents shown here are for 2015. The Project rents will be established based on established rents for the appropriate year of the commencement of marketing of the Project.
** AMI is based on actual MOHCD established rates.

The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed:

(i) thirty percent (30%) of the applicable Median Income set forth above, adjusted for household size; or

(ii) the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

Maximum Rent and utilities charged to each Qualified Tenant may not exceed the amounts set forth in the table above. Rents for all Units may be increased once annually in accordance with any increase in the rents according to MOHCD's "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco," published on an annual basis, based upon the maximum applicable target AMIs provided in the table above.

With OCII's prior written approval and in accordance with maximum rent limitations set forth above and all applicable restrictions, Rent increases for Units exceeding the amounts permitted above will be permitted in order to recover increases in Project Expenses, but in no event may single or aggregate increases exceed ten percent (10%) per year, unless such an increase is contemplated in a OCII-approved temporary relocation plan or when the increase is caused by an

increase in certified income. OCII approval for such rent increases that are necessary to meet all approved Project Expenses and financial obligations shall not be unreasonably withheld.

Exhibit B - SBE Participation Performance Report

Transbay Block 7
Affordable Housing Project

SBE CONTRACTING DATA

Discipline	Consultant	Fees	SBE Goal Credit*	SBE Participation	SBE - SF	*For Informational Purposes Only* MBE	Ethnicity**	WBE
Architect	Santos Prescott and Associates	$ 1,007,750	$ 1,007,750	$ 1,007,750	$ 1,007,750	$ -		$ 1,007,750
Acoustical Consultant	Vibro Acoustical Consultants	$ 24,620	$ 24,620	$ 24,620	$ 24,620	$ 24,620	Persian American	$ -
Civil Engineer	Urban Design Consulting Eng.	$ 70,640	$ 70,640	$ 70,640	$ 70,640	$ 70,640	Asian	$ -
Electrical	FW Associates	$ 140,820	$ 140,820	$ 140,820	$ 140,820	$ 140,820	Asian	$ -
Environmental	Treadwell + Rollo	$ 15,258	$ -	$ -	$ -	$ -		$ -
Geotechnical	Treadwell + Rollo	$ 43,694	$ -	$ -	$ -	$ -		$ -
Landscape Architect	Merrill Morris	$ 112,792	$ 112,792	$ 112,792	$ 112,792	$ -		$ 112,792
Green Point Rating/Energy Model	Environmental Buildng Systems	$ 63,162	$ 63,162	$ 63,162	$ 63,162	$ -		$ -
MPF Consultant	Tommy Siu Associates	$ 145,950	$ 145,950	$ 145,950	$ 145,950	$ 101,800	Asian	$ -
Signage	Debra Nichols Design	$ 41,800	$ 41,800	$ 41,800	$ 41,800	$ -		$ 41,800
Structural Engineer	DCI / Structural Design Engineers	$ 104,100	$ 104,100	$ 36,435	$ 36,435	$ 36,435	SE Asian	$ -
Structural Engineer	OLMM	$ 170,000	$ 170,000	$ 170,000	$ 170,000	$ 170,000	SE Asian	
Surveyor	Martin Ron	$ 30,000	$ 30,000	$ 30,000	$ 30,000	$ -		$ -
Wind and Envionmental	ESA	$ 15,960	$ -	$ -	$ -	$ -		$ -
Waterproofing	Grossmann Design Group	$ 56,400	$ 56,400	$ 56,400	$ 56,400	$ -		$ -
	Total	**$ 2,042,946**	**$ 1,968,034**	**$ 1,900,369**	**$ 1,900,369**	**$ 544,315**		**$ 1,162,342**
	% of Total Fees		**96.3%**	**93.0%**	**93.0%**	**26.6%**		**56.9%**

* Full SBE credit is granted to joint ventures and associations where the SBE partner performs at least 35% of the joint venture or association agreement.

** Ethnicity and/or gender data were gathered from third-party sources and presented for informational purposes only. Such data have not been verified.

Bio on Key Subconsultants

Santos Prescott and Associates is a San Francisco-based architecture and urban design firm, established in 1991. Its principals, Bruce Prescott and Adèle Naudé Santos, have completed projects internationally and in San Francisco, including the Mission Creek Senior Community and Yerba Buena Gardens Children's Center.

F.W. Associates, Inc., is a San Francisco-based firm established in June 1981. Its principals, Munson Fong and Edward Fong, have been involved in the design engineering of various affordable housing projects, including Hunters View Housing Development, 101 Valencia Street Affordable Housing, and Parkview Terraces Senior Housing.

OLMM Consulting Engineers is a structural engineering firm established since 1986 with offices in San Francisco and Oakland. Its principal, Sunil Gupta, has performed seismic strengthening of the SF Asian Art Museum and structural engineering for the SF International Airport.

Exhibit C

TRANSBAY REDEVELOPMENT PROJECT AREA



Under-Ramp Park
Acres: 2.5
Construction Start: 2018



Block 9
500 Folsom Street

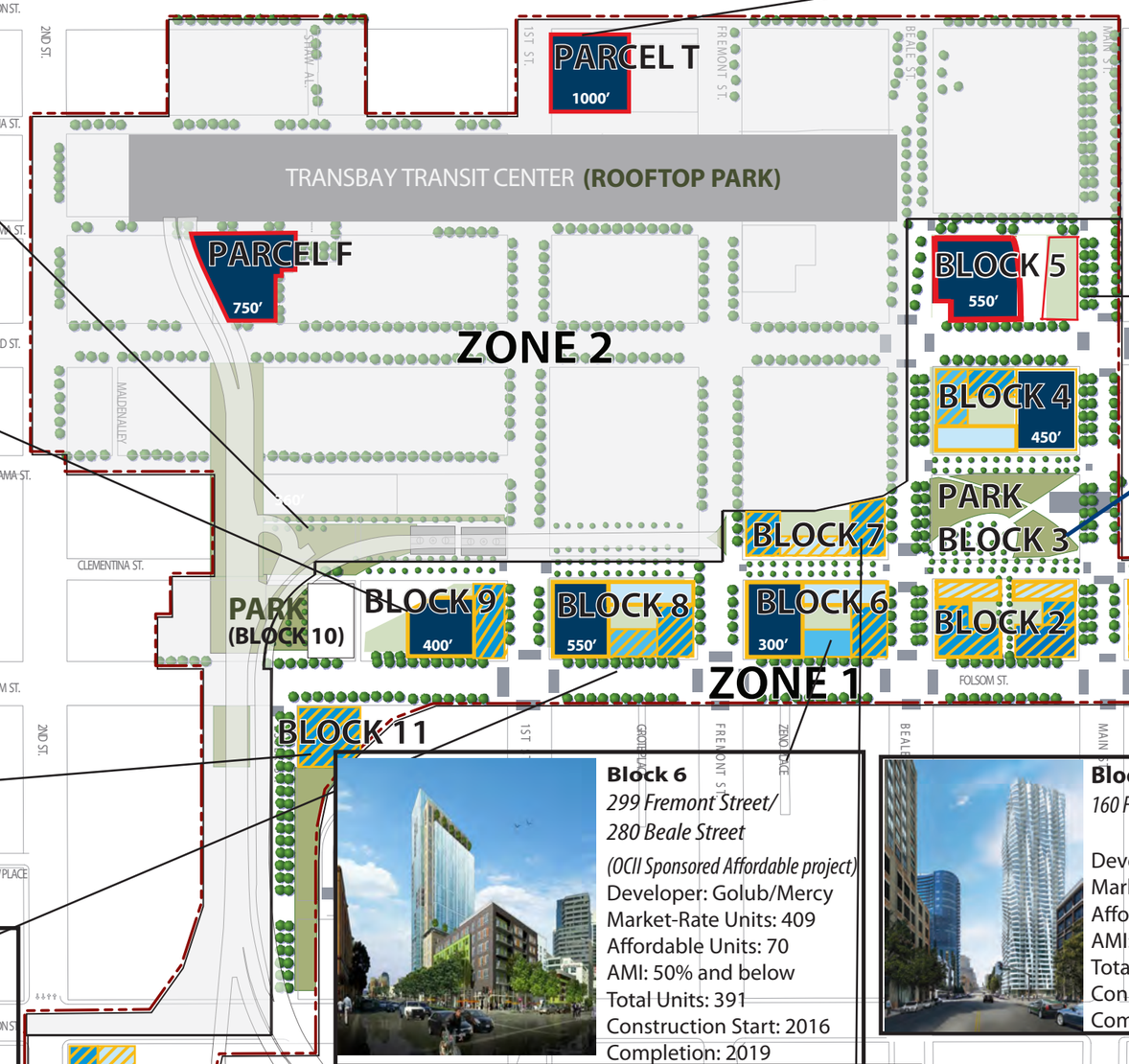
Developer(s): Essex/ BRIDGE
Market-Rate Units: 436
Affordable Units: 109
AMI: 50% and below
Total Units: 545
Construction Start: 2016
Completion: 2019



Block 11A
25 Essex Street
Rene Cazenave Apartments
Developer(s): BRIDGE/CHP
Affordable Units: 120
AMI: 50% and below
Total Units: 120
Construction Start: 2011
Completed: 2013



Block 8
400 Folsom Street
250 Fremont Street
(OCII Sponsored Affordable project)
Developer(s): Related/TNDC
Market-Rate Units: 396
Affordable Units: 150
AMI: 70 inclusionary units @ 50% and below;
80 OCII sponsored units @ 50%
Total Units: 546
Construction Start: 2016
Completion: 2019





Parcel T
101 First Street
Salesforce Tower

Developer(s): Boston Properties/Hines
Office Sq. Ft.: 1.4 Million
Construction Start: 2014
Completion: 2017



Block 5
250 Howard Street
Park Tower

Developer(s): Golub/ John Buck
Office Sq. Ft.: 767,000
Construction Start: 2015
Completion: 2018

Transbay Park
(Block 3)
Construction to start 2017

Block 6
299 Fremont Street/
280 Beale Street
(OCII Sponsored Affordable project)
Developer: Golub/Mercy
Market-Rate Units: 409
Affordable Units: 70
AMI: 50% and below
Total Units: 391
Construction Start: 2016
Completion: 2019

Block 1 (w/ 400' height)
160 Folsom Street

Developer: Tishman Speyer
Market-Rate Units: 235
Affordable Units: 156
AMI: Tiered from 80% -120%
Total Units: 391
Construction Start: 2016
Completion: 2019



Block 7
255 Fremont Street/
222 Beale Street
Developer: Mercy
Affordable Units: 120
AMI: 50% and below
Construction Start : 2016
Completion: 2018

TRANSBAY REDEVELOPMENT PROJECT AREA
ZONE 1 ZONE 2

LAND USE (SUBJECT TO CHANGE)
AFFORDABLE HOUSING
MARKET RATE HOUSING
COMMERCIAL

OPEN SPACE
OPEN SPACE (PUBLICLY OWNED)
OPEN SPACE (PRIVATELY OWNED)

PROPOSED HEIGHT LIMITS (MIN AND MAX)
Townhomes: 35-50'
Podium 1: 40-65'
Podium 2: 50-85'
Mid-Rise: 65-165'
Towers (Height Varies)

0' 150' 300' 600' 1200'

N

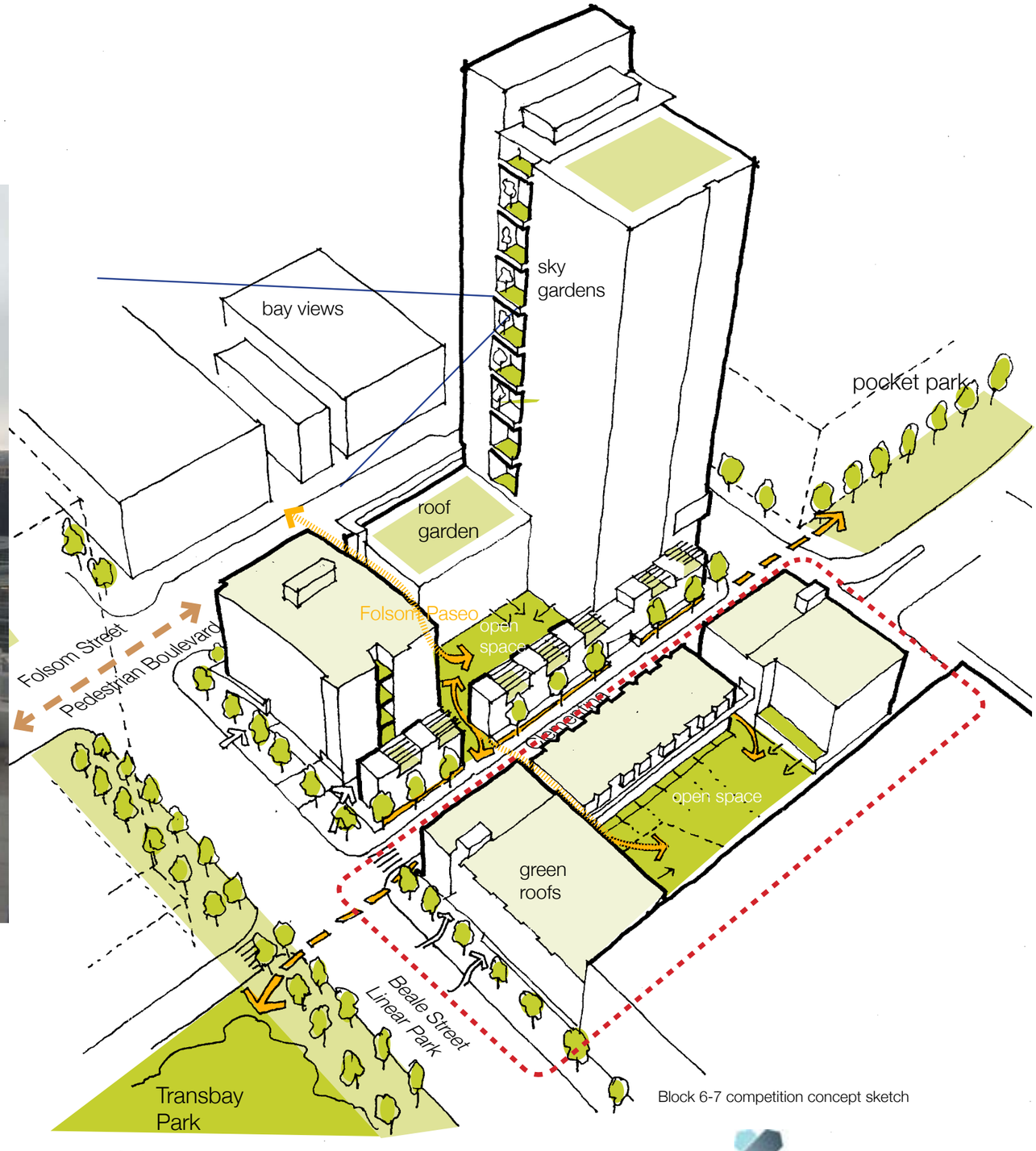
OCII
office of COMMUNITY INVESTMENT and INFRASTRUCTURE
www.sfocii.org

3/10/2016

Transbay Block 7

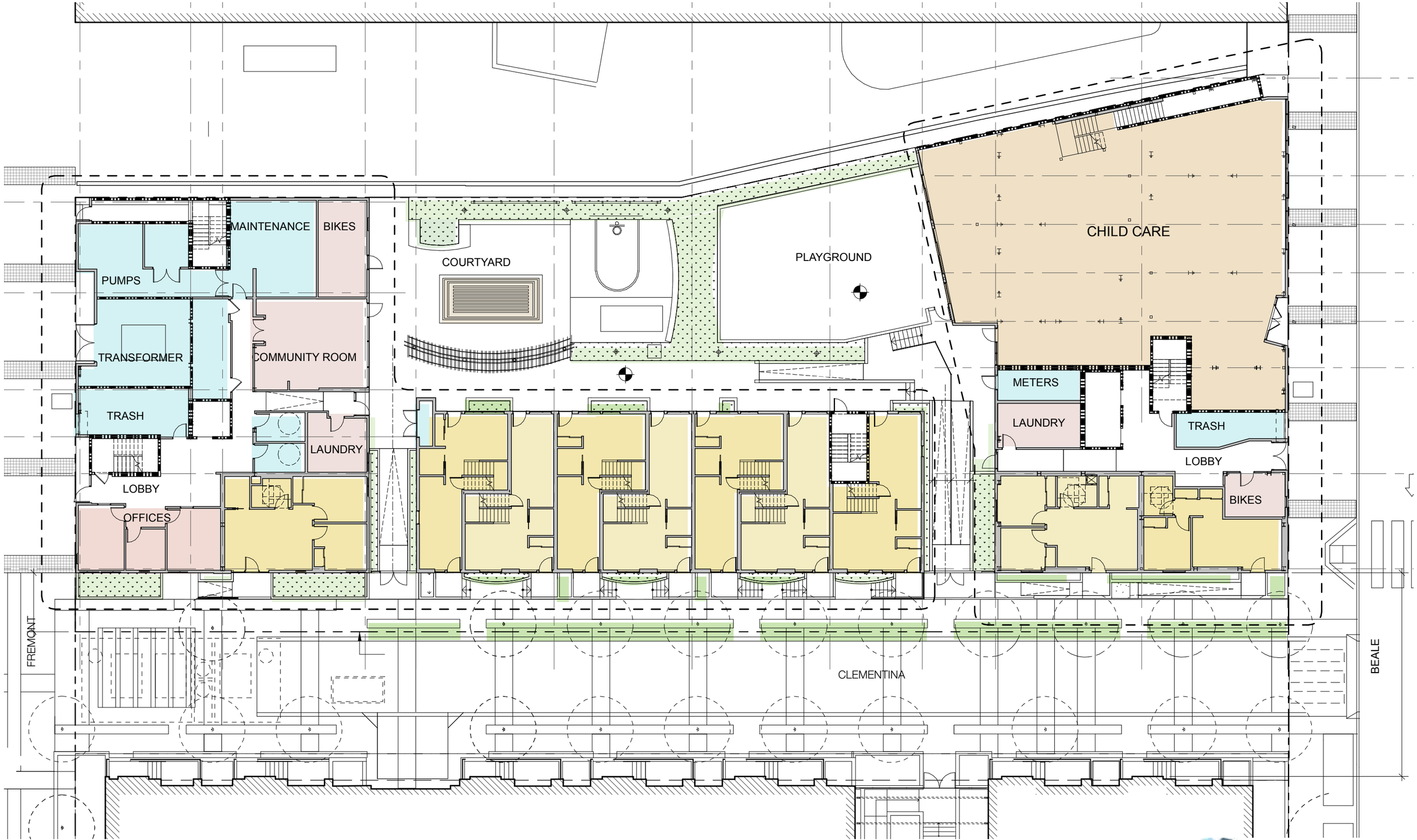


Construction under way on Block 6; Block 7 to the right.



Block 6-7 competition concept sketch

Site Plan



Santos Prescott and Associates

TRANSBAY BLOCK 7

mercy HOUSING

TB-7 DATA 1/15/15

120 Unit scenario

UNITS		Unit type				GFA
Building	Level	1	2	3	Total	
Townhouses	1 & 2			7	7	8,679
	3		1	3	4	4,340
	4		1	3	4	4,190
			2	13	15	17,208
7A	1		1		1	5,620
	2	2	3	1	6	5,605
	3	3	2	1	6	5,605
	4	3	2	1	6	5,605
	5	2	3	1	6	5,605
	6	2	3	1	6	5,606
	7	2	3	1	6	5,607
	8	2	3	1	6	5,608
	PH					914
		16	20	7	43	45,775
7B	1		2		2	7,577
	2	4	3	1	8	7,133
	3	4	3	1	8	7,133
	4	4	3	1	8	7,133
	5	6	3		9	7,133
	6	6	3		9	7,133
	6	6	3		9	7,134
	6	6	3		9	7,135
	PH					850
		36	23	3	62	58,361
TOTAL		52	45	23	**120**	121,344
		43.3%	37.5%	19.2%		

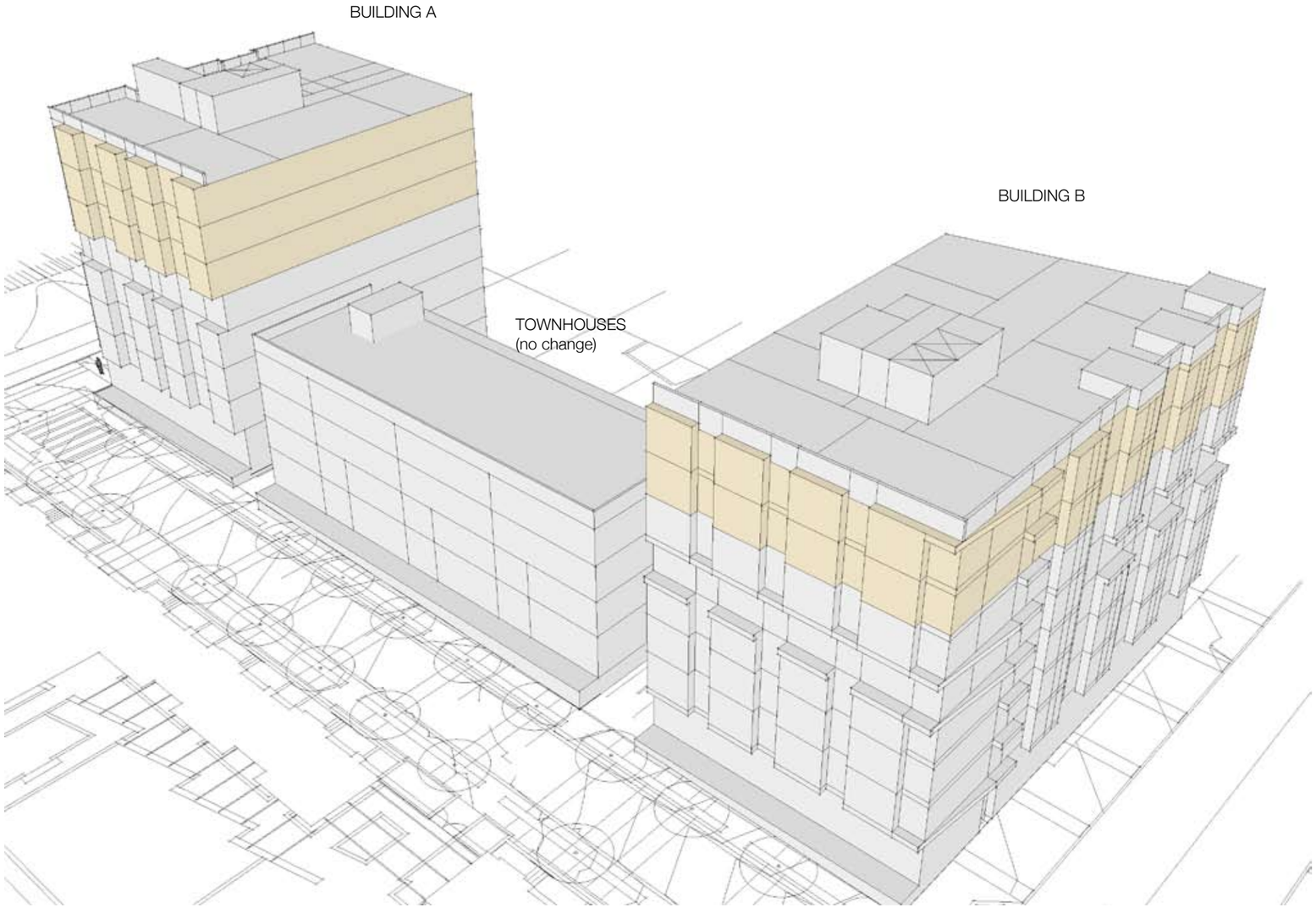
NON-RESIDENTIAL PROGRAM

7A	Community Room (serves all Block 7)		502	
	Lobbt		421	
	pumps and vault		877	
	Management Service Office		403	
	Maintenance Shop		427	
	Bike room (26 spaces stacked)		241	
	Laundries	8	185	
			3,056	
7B	Child Care		4,058	
	Lobby- Criculation		690	
	Bike room (28 spaces stacked)		241	
	Laundry one per 9 units	6	185	
			5,174	
TOTAL			8,230	square feet

OPEN SPACE REQUIRED

Public Open Space per RFP:	5,400
Per unit: 16/sf per unit excluding ground level.	1,728
TOTAL	**7,128**
Provided	7,130
Bikes: 12 + 1:4	42

Total beds 211



We propose to add three stories to Building A (facing Fremont) and two stories to Building B (facing Beale), which will increase the unit count form 85 to 120. Although the construction of the resulting 8-story buildings is more expensive, the cost per dwelling unit is lower, since the high cost of the foundation is divided over a larger number of units. The four story townhouses facing Clementina Street would remain as previously approved.

Yellow shading indicates additional stories

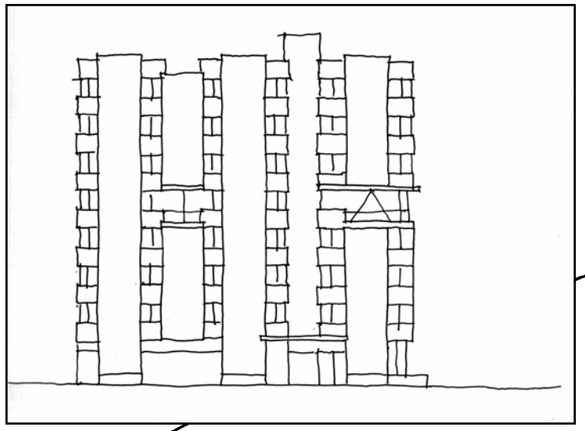


Santos Prescott and Associates

TRANSBAY BLOCK 7

Massing in context. The scale is commensurate with surmounting blocks

mercy HOUSING



For Building A, the vertical alignment of the steel brace frames is expressed with solid panels that emphasize the height of the building

Santos Prescott and Associates

TRANSBAY BLOCK 7

View from Fremont Street

mercy HOUSING

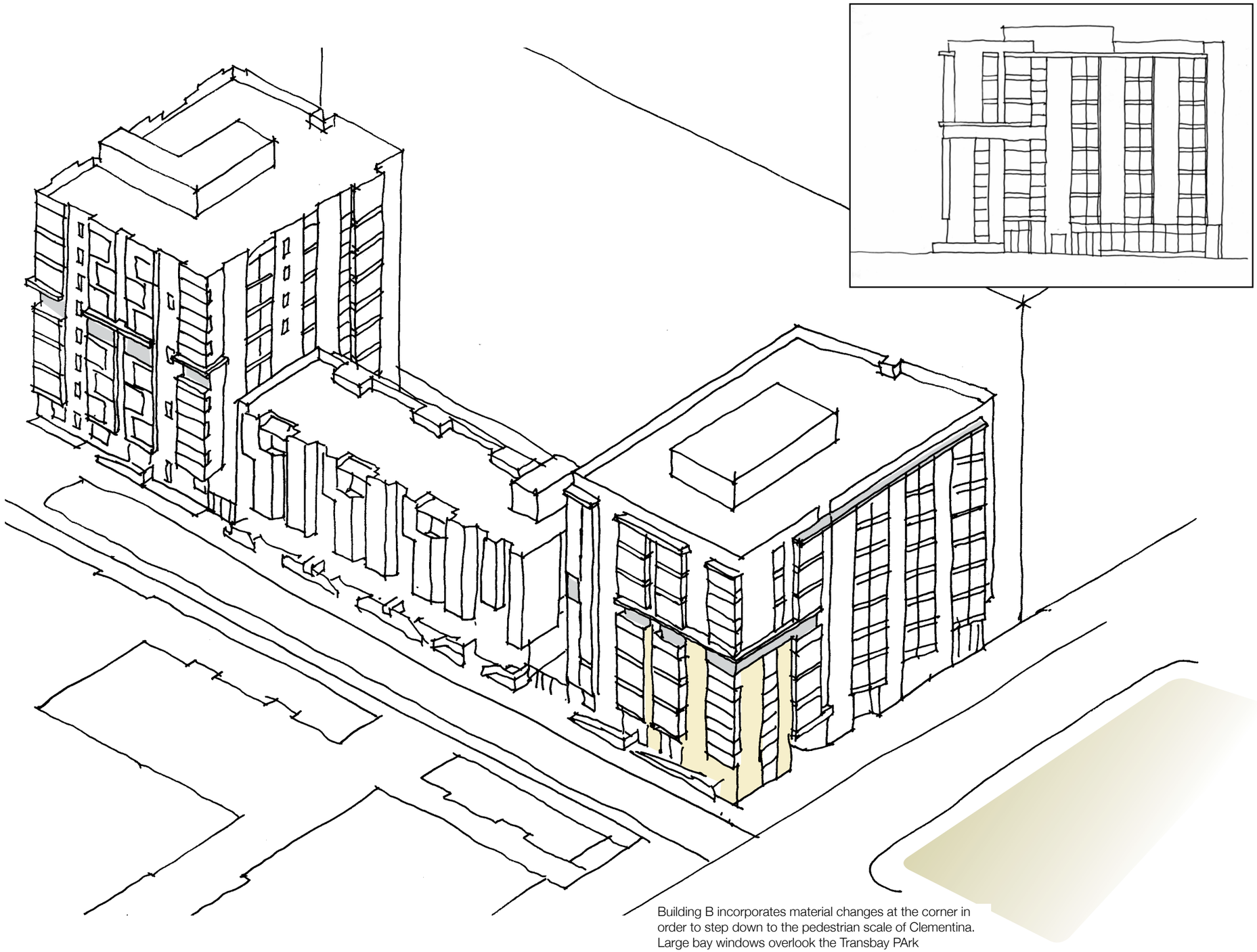


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TRANSBAY BLOCK 7

Building A Facing Fremont Street

mercy HOUSING



Building B incorporates material changes at the corner in order to step down to the pedestrian scale of Clementina. Large bay windows overlook the Transbay PArk

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TRANSBAY BLOCK 7

View from Beale Street

mercy HOUSING



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TRANSBAY BLOCK 7

Building B from Beale Street

mercy HOUSING



Santos Prescott and Associates

TRANSBAY BLOCK 7

Elevation at Clementina Street

mercy HOUSING



Santos Prescott and Associates

TRANSBAY BLOCK 7

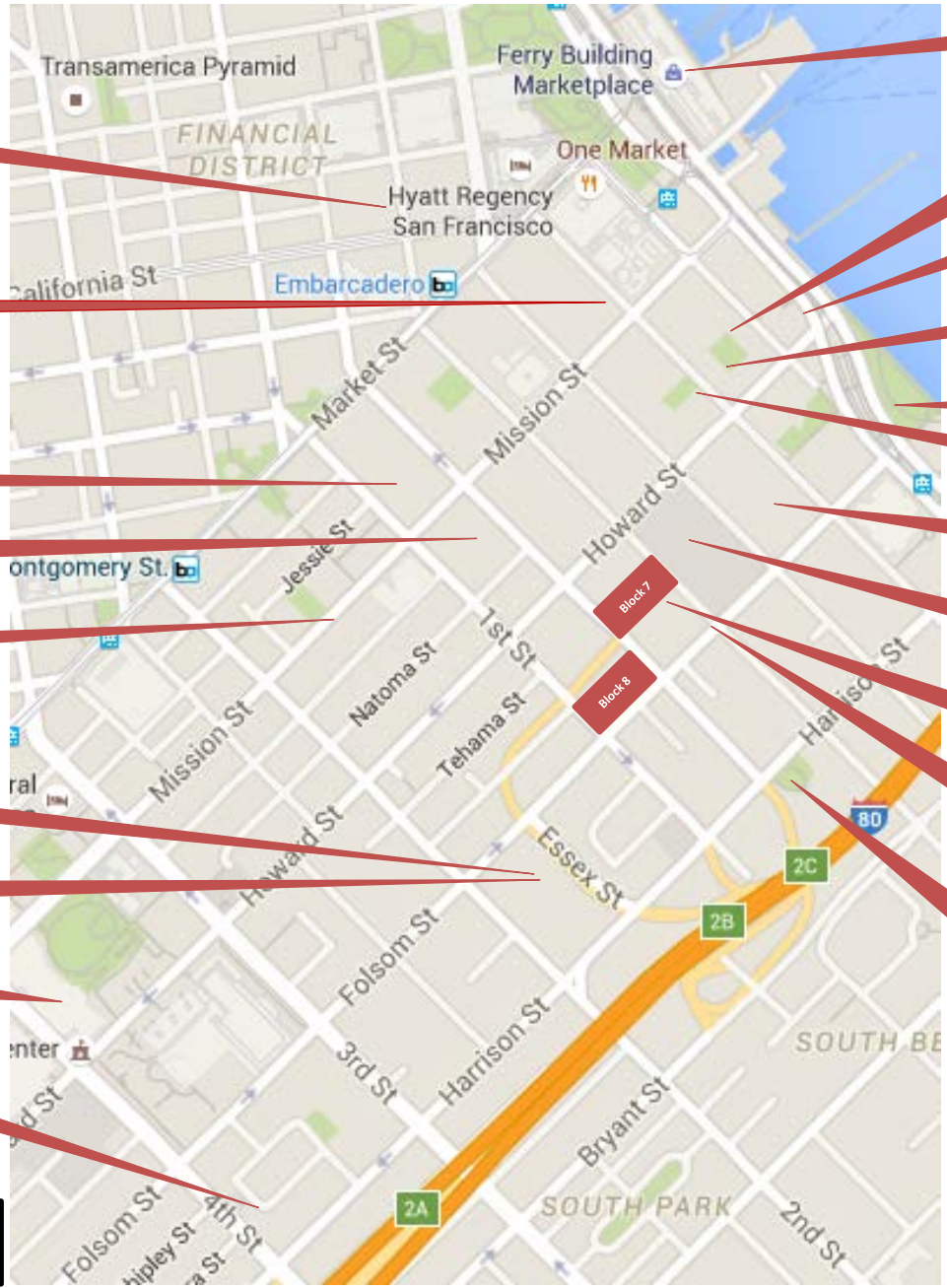
Townhouses on Clementina Street
(no change)

mercy HOUSING

Child Care Space Plan



Exhibit E Community Asset Map



Concentra Urgent Care

Walgreens

Walgreens

City Park (Future)

Chase Bank

Wells Fargo Bank

Private Childcare

AMC Movie Theater

Whole Foods Market

Ferry Buildings

Post office

Embarcadero YMCA

Rincon Market

Rincon Park

Chase Bank

Private Childcare

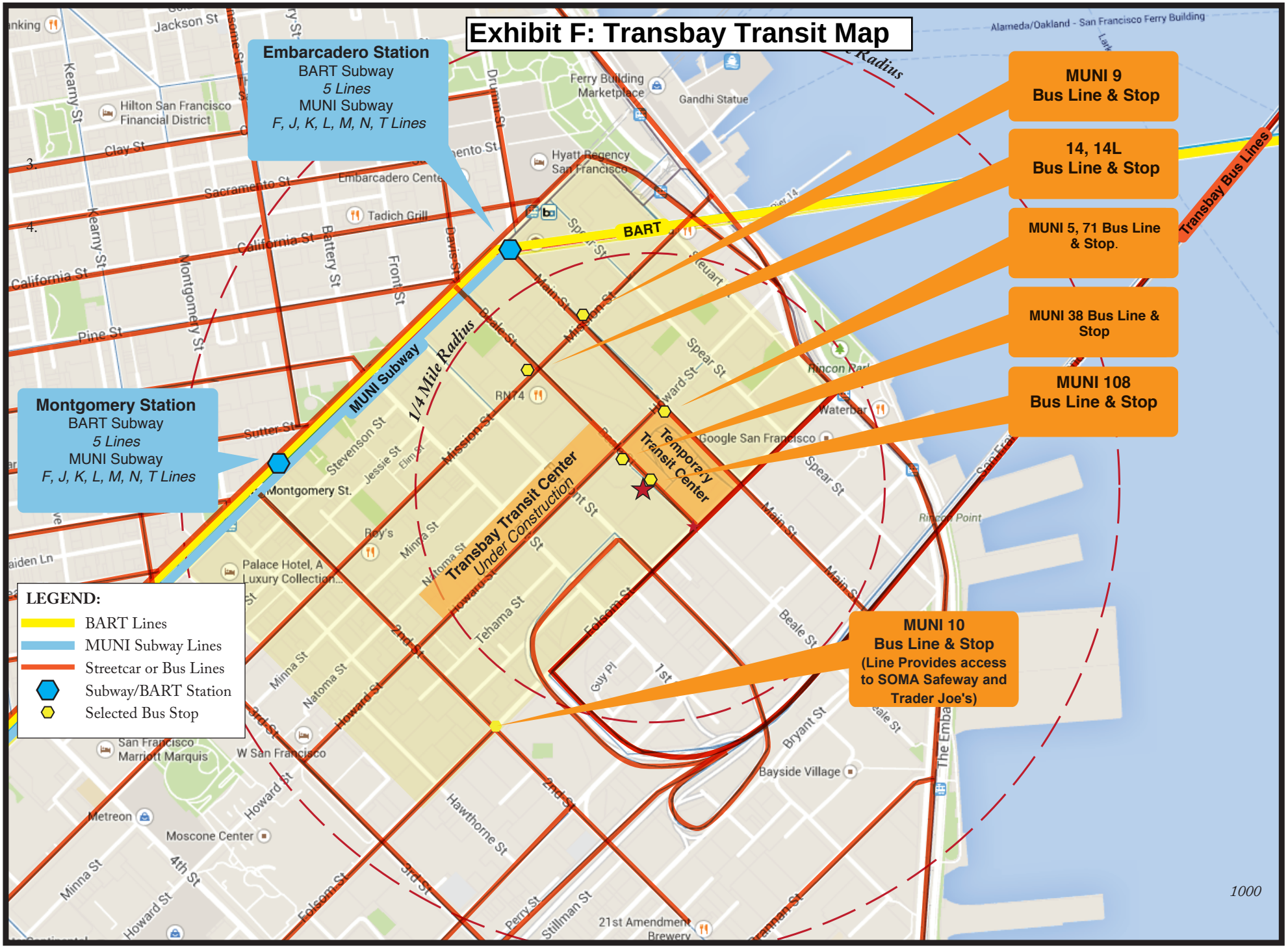
Transbay Park (Future)

Childcare Center (Future)

Philz Coffee

Emerald Park

Bessie Carmichael Elementary 1.2 mi
Gordon Lau Elementary 1.2 mi


Exhibit F: Transbay Transit Map
Embarcadero Station
BART Subway
5 Lines
MUNI Subway
F, J, K, L, M, N, T Lines
Montgomery Station
BART Subway
5 Lines
MUNI Subway
F, J, K, L, M, N, T Lines
MUNI 9
Bus Line & Stop
14, 14L
Bus Line & Stop
MUNI 5, 71 Bus Line
& Stop.
MUNI 38 Bus Line &
Stop
MUNI 108
Bus Line & Stop
MUNI 10
Bus Line & Stop
(Line Provides access
to SOMA Safeway and
Trader Joe's)
Transbay Transit Center
Under Construction
Temporary
Transit Center
1/4 Mile Radius
MUNI Subway
BART
Transbay Bus Lines
LEGEND:
BART Lines
MUNI Subway Lines
Streetcar or Bus Lines
Subway/BART Station
Selected Bus Stop
Alameda/Oakland - San Francisco Ferry Building
Ferry Building
Marketplace
Gandhi Statue
Hyatt Regency
San Francisco
Embarcadero Center
Tadich Grill
Hilton San Francisco
Financial District
Jackson St
Clay St
Sacramento St
California St
Pine St
Sutter St
Montgomery St.
Kearny St
Montgomery St
Battery St
Front St
Davis St
Drumm St
Main St
Beale St
Fremont St
Spear St
Howard St
Mission St
Stevenson St
Jessie St
Ellis St
Minna St
Natoma St
Tehama St
Folsom St
Harrison St
Bryant St
Hawthorne St
Perry St
Stillman St
2nd St
3rd St
4th St
1st
Guy Pl
RN74
Roy's
Palace Hotel, A
Luxury Collection...
San Francisco
Marriott Marquis
W San Francisco
Metreon
Moscone Center
Bayside Village
21st Amendment
Brewery
Waterbar
Google San Francisco
Rincon Point
The Embarcadero
1000