



office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

118-0292016-002

Agenda Item No. **5(d)**
Meeting of August 16, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Ground Lease Agreement and an Amended and Restated Loan Agreement, for an aggregate loan amount of \$35,750,000, both with 1300 4th Street Associates, L.P., a California limited partnership, for the development of a 143 unit (including one manager's unit) low-income affordable family rental housing development at Mission Bay South, Block 6 East (626 Mission Bay Boulevard North), a project that is within the scope of the Mission Bay Final Subsequent Environmental Impact Report ("FSEIR"), a Program EIR, and is adequately described in the FSEIR for the purposes of the California Environmental Quality Act; Mission Bay South Redevelopment Project Area

EXECUTIVE SUMMARY

On December 2, 2014, the Commission on Community Investment and Infrastructure ("Commission") approved an Exclusive Negotiations Agreement and a Predevelopment Loan Agreement of \$2.5 million for a 143-unit affordable rental housing project at 626 Mission Bay Boulevard North (Mission Bay South Block 6 East), formerly known as 1300 Fourth Street, (the "Project"). The Project is located on one of the "Agency Affordable Housing Parcels" as defined in the Mission Bay South Owner Participation Agreement. The development team consists of Tenderloin Neighborhood Corporation ("TNDC"), Mithun Architects with Studio VARA Architects, TNDC Property Management and Social Services, and 826 Valencia. The Project will include 29 units (or twenty percent) for formerly homeless households which will be referred by the Department of Homelessness and Supportive Housing ("DHS"). The Project will also include onsite supportive services and associated services space, and will comply with all applicable green building standards.

On August 4, 2015, the Commission conditionally approved a schematic design that includes a 65' building with ground floor retail space along 4th Street, and townhomes and flats facing a pedestrian mews. The Project also includes 41 parking spaces, 136 bicycle parking spaces, and various open courtyards.

Edwin M. Lee
MAYOR

Tiffany Bohee
EXECUTIVE DIRECTOR

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On May 17, 2016, the Commission authorized the Executive Director to enter into an Option to Ground Lease Agreement with 1300 Fourth Street, Associates, L.P. ("Developer") which set forth the terms and conditions for the ground lease. The Option to Ground Lease Agreement was required by California Debt Limit Allocation Committee and Tax Credit Allocation Committee officials as adequate proof demonstrating site control for Mission Bay South Block 6E.

Currently, in preparation for the closing of the construction financing, the Developer is now requesting the OCII Commission authorize the Executive Director to enter into a 75-year Ground Lease ("Ground Lease") (see Attachment A), with one option for 24 additional years, with 1300 Fourth Street Associates, L.P. The annual rent for the site consists of a must-pay base rent of \$15,000 and a residual rent, if any, of \$2,160,000.

Additionally, 1300 Fourth Street, L.P. (the "Sponsor") desires to enter into an Amended and Restated Loan Agreement (Attachment B) in an aggregate amount not to exceed \$35,750,000. On July 29, 2016, the Citywide Affordable Loan Committee approved funding for construction activities, totaling \$33,250,000, for an aggregate total of \$35,750,000. This amount is included in the approved Recognized Obligation Payment Schedule ("ROPS") 15-16B, for the period January 1, 2016-June 30, 2016, as Item #393, which was approved by DOF.

Staff recommends authorizing a Ground Lease Agreement, an Amended and Restated Loan Agreement, and adopting environmental findings pursuant to California Environmental Quality Act.

BACKGROUND

Mission Bay Affordable Housing Development

On September 17, 1998, the SFRA Commission approved the Mission Bay North and South Redevelopment Plans and Owner Participation Agreements ("OPAs") with the Mission Bay Master Developer. Since the initial approval of the South OPA, the document has been amended four times to modify the development plan on several parcels.

The enforcement of the North and South OPA's as amended will result in 6,514 residential units, with 29% or approximately 1,916 units set aside as affordable*. The affordable units are comprised of inclusionary affordable units and units developed by nonprofit housing developers on OCII Affordable Housing parcels. OCII Affordable Housing parcels comprise 15 acres of land that the Master Developer in Mission Bay North and South is required to contribute to OCII. In Mission Bay North, 672 inclusionary and OCII-sponsored units have been completed and the remaining 26 developer-sponsored inclusionary units are under construction at 360 Berry Street (also known as, N4P3, or Eviva Midtown), for a total of 698 affordable units.

In Mission Bay South, 150 affordable units have been constructed at 1180 4th Street and is home to 100 low-income households and 50 formerly homeless families. Another 198 affordable housing units (plus two manager's units) are currently under construction at of affordable 958 affordable units remain to be completed and leased in Mission Bay South, as stated below:

# of Affordable Units	Mission Bay North	Mission Bay South	Mission Bay North and South
BUILT	672	150	822
UNDER CONSTRUCTION OR PLANNED	<u>26</u>	<u>1,068</u>	<u>1,094</u>
TOTAL	698	1,218	1,916

*The MBS OPA requires OCII to construct a base number of 1,108 affordable housing units. In addition, Section 3.6 of the MBS Housing Program (Attachment 3 to the MBS OPA) allows for OCII to construct an additional 110 affordable housing units, pending assessment of the development impacts and any necessary approvals, for a maximum total of 1,218 affordable housing units.

In total and as shown in the table above, 822 affordable units have been completed and 1,094 units (including the additional 110 allowable affordable units) remain to be completed in the Mission Bay Project Area.

The Mission Bay Affordable Housing Policy ("Housing Policy") establishes that rental projects are affordable on average to households earning up to 60% of Area Median Income ("AMI"). As an example and based on 2016 figures, income for a family of four at 50% of AMI as published by the Tax Credit Allocation Committee ("TCAC") would be \$61,500 per year with a monthly rent restricted to no more than \$1,599 for a three-bedroom unit.

Mission Bay South Block 6 East (626 Mission Bay Boulevard North) Background

626 Mission Bay Boulevard North, formerly known as 1300 4th Street, is part of a 303-acre redevelopment district that was administered by the former SFRA. Pursuant to State Assembly Bill 26 ("AB 26") and Assembly Bill 1484 ("AB 1484") (together, "Dissolution Law"), redevelopment agencies throughout the State of California were eliminated on February 1, 2012. OCII is the Successor Agency to the San Francisco Redevelopment Agency (SFRA) and is responsible for implementing SFRA's enforceable obligations. On January 24, 2014, the California Department of Finance ("DOF") determined "finally and conclusively" that the Mission Bay OPAs and tax allocation pledge agreements are enforceable obligations under AB 26 and AB 1484. MBS 6E will be the third Agency Affordable Housing Parcel in the Mission Bay South Redevelopment Project Area, and the seventh affordable housing development in the overall Mission Bay Project Area.

The RFP process for MBS 6E was initiated in the Spring of 2014, and completed in August 2014, which resulted in an Exclusive Negotiations Agreement and Predevelopment Loan Agreement with the selected developer, Tenderloin Neighborhood Corporation ("TNDC").

Upon completion of the Project, OCII's assets related to the site will be transferred to the Mayor's Office of Housing and Community Development ("MOHCD"), which is the designated Housing Successor Agency under Dissolution Law.

The MBS 6E Schematic Design was approved by the Commission on August 4, 2015. The design was reviewed by both OCII staff and the Mission Bay Advisory Committee (the "CAC") in July 2015. The Development team has responded to the Conditions of Approval of the schematic design approval and has created an inviting and safe

environment where qualified lower income families can thrive. Select renderings from the Schematic Design as approved by the Commission as well as a site plan are included as Attachment C. In addition, neighborhood amenities are shown in Attachment C.

Mission Bay South Block 6 East (626 Mission Bay Boulevard North) Project

626 Mission Bay Boulevard North is a 1.45 acre parcel bounded by China Basin Street, 4th Street, Mission Bay Boulevard North and Block 6 West (see Attachment 1 - site/amenities map). The Project will contain 143 units (including 1 manager's unit), affordable to households earning between 20-50% of TCAC Area Median Income ("AMI"), and comprised of 53 one-bedroom, 47 two-bedroom, and 43 three-bedroom units. Features include ground floor retail on 4th Street, 41 off-street parking spaces, 136 bicycle parking spaces, and various open courtyards. Architecturally, 626 Mission Bay Boulevard North includes two distinct components, a 65 foot main building with ground floor retail space along 4th Street featuring a rounded corner element to serve as a focal point and 12 townhouses and 10 flats along the pedestrian mews side of the development.

Project Financing and Loan Terms

On December 2, 2014, the OCII Commission approved a \$2,500,000 predevelopment loan amount to fund predevelopment activities. On July 29, 2016, the Citywide Affordable Housing Loan Committee approved a total OCII subsidy amount of \$35,750,000, which includes the \$2,500,000 in existing predevelopment funding. The Amended and Restated OCII Loan Agreement ("Loan") will have a term of 55 years, and an interest rate of 1.5% that has been requested by the Developer. This reduced interest rate will be vetted and finalized prior to the construction close and the completion of the final financial plan ("FFP") for the Project. The lower interest rate may be necessary to comply with IRS requirements. The additional subsidy is construction funding to allow the Developer to close construction financing. OCII financing will be leveraged by other funding sources, including: equity raised from the sale of 4% Low-Income Housing Tax Credits; private loan funds; Affordable Housing Program funding; State Affordable Housing Sustainable Communities ("AHSC") funds; and, tax-exempt bond financing in the form of mortgage revenue bonds to be issued by the City. The Project successfully competed for AHSC in the first round of this new source of financing from the state's cap and trade program. The Project sources and uses are detailed in the chart below:

Number of units:	143			
Square Footage:	171,449			
Bedroom Count:	276			
Sources	Total Development Costs	Cost Per Unit	Cost Per Bedroom	Cost Per Square Foot
LP Equity	\$ 42,079,966	\$ 294,265	\$ 152,464	\$ 245
Permanent Loan	\$ 6,800,000	\$ 47,552	\$ 24,638	\$ 40
AHSC	\$ 4,999,989	\$ 34,965	\$ 18,116	\$ 29
AHP	\$ 1,420,000	\$ 9,930	\$ 5,145	\$ 8
GP Equity	\$ 1,152,453	\$ 8,059	\$ 4,176	\$ 7
Deferred Fee	\$ 417,547	\$ 2,920	\$ 1,513	\$ 2
Sub-total non-City sources	\$ 56,869,955	\$ 397,692	\$ 206,051	\$ 332
OCII Loan	\$ 35,750,000	\$ 250,000	\$ 129,529	\$ 209
Total all Sources	\$ 92,619,955	\$ 647,692	\$ 335,580	\$ 540
Acquisition	\$ 348,125	\$ 2,434	\$ 1,261	\$ 2.03
Construction	\$ 70,789,337	\$ 495,030	\$ 256,483	\$ 412.89
Construction Contingency	\$ 3,512,249	\$ 24,561	\$ 12,725.54	\$ 20.49
Architecture/Engineering	\$ 3,466,000	\$ 24,238	\$ 12,558	\$ 20.22
Survey & Engineering Studies	\$ 245,100	\$ 1,714	\$ 888	\$ 1.43
Financing Costs	\$ 2,766,842	\$ 19,349	\$ 10,024.79	\$ 16.14
Legal Costs	\$ 125,000	\$ 874	\$ 452.90	\$ 0.73
Other Soft Costs	\$ 5,453,209	\$ 38,134	\$ 19,758.00	\$ 31.81
Soft Cost Contingency	\$ 944,195	\$ 6,603	\$ 3,421.00	\$ 5.51
Operating Reserves	\$ 443,169	\$ 3,099	\$ 1,605.68	\$ 2.58
Replacement Reserves	\$ 7,086	\$ 50	\$ 25.67	\$ 0.04
Lease-up Reserves	\$ 341,433	\$ 2,388	\$ 1,237.08	\$ 1.99
Consultant Costs	\$ 178,210	\$ 1,246	\$ 645.69	\$ 1.04
Developer Costs	\$ 4,000,000	\$ 27,972	\$ 14,493	\$ 23.33
Total Development Costs	\$ 92,619,955	\$ 647,692	\$ 335,580	\$ 540

Subsequent to the completion of the Project, the Developer will subdivide the Site into air-rights (or condominium) and/or land parcels, in accordance with Subdivision map Act requirements (Calif.Gov. Code §§ 66410 et seq.). The divided Site will include: (1) "Housing Parcel" containing the residential apartments and parking; and (2) the "Commercial Parcel" containing the retail uses (each, a "Parcel," collectively, the "Parcels"). At that time, staff will

request authorization to allow the Amended and Restated Loan Agreement to be divided proportionally between the Housing Parcel and the Commercial, as well as authorization to bifurcate the Ground Lease into residential and commercial. Total development costs of the Project will be approximately \$92.6 million.

826 Valencia

826 Valencia will be partnering with TNDC to provide services for school age children. 826 Valencia ("826") was founded in 2002 by award-winning author Dave Eggers and Ninive Calegari (a veteran educator). 826 is a national non-profit organization based in San Francisco with programs in multiple cities. It works with students aged 6-18 with their writing skills and helping teachers get their students excited about writing. The work is based on the understanding that strong writing skills are the key to future success. The 826 budget has been calculated at \$459,000, with the majority of funding coming from individuals and foundations. 826 has not yet begun the fundraising process for the Mission Bay site because has been concentrating on funding and opening its second site in the Tenderloin. The Citywide Affordable Housing Loan Committee ("Loan Committee") discussed the inclusion of the 826 organization to the MBS 6E project and was delighted 826 selected this Project for its Mission Bay site. As part of its discussion, the Loan Committee included additional loan conditions to help keep the Sponsor and 826 on track to open its doors once the MBS 6E site has been completed. In total the 826 loan conditions include:

- Sponsor shall provide OCII a feasibility report of 826 Valencia, within six months after the start of MBS 6E construction, including but not limited to:
 - Detail of services to be provided by 826 Valencia;
 - Status of commitment of funding sources and amounts;
 - Status of sources needed for tenant improvements;
 - An operating proforma for the 826 Valencia facility at MBS 6E;
 - Submit an alternative to 826 Valencia programming; and,
 - Review of 826 Valencia's organizational capacity to operate the Mission Bay facility.
- Sponsor shall provide an 826 Valencia status report (for each of the items listed above) three months after the start of construction.

Ground Lease Terms

OCII will retain ownership of the land while construction is being completed. Once completed the Site, along with the related Ground Lease and Loan will be transferred to MOHCD as the Housing Successor Agency, who will perform long-term asset management duties. 1300 Fourth Street Associates, L.P., (the "Tenant") will maintain ownership of the building or "improvements" on the land. A summary of some of the key terms of the Ground Lease are below.

Rent

The Ground Lease terms provide for an Annual Rent set at 10% of the unrestricted value of the property. 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 Rent is 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 \$2,175,000, therefore

the maximum Residual Rent that could be paid in any given year would be \$2,160,000 to the extent this amount is supportable by the Project. This 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.

Affordability Restrictions

MBS 6E Project will comply with the City's affordable housing underwriting guidelines and the OCII's contract compliance and purchasing guidelines. As previously stated the proposed affordability for MBS 6E is for households earning up to 50% of TCAC AMI for projects placed in service after March 2016. As an example of the average income limits, the maximum income allowed for a four-person household earning up 50% of TCAC AMI is equal to \$61,500. This is consistent with the Mission Bay Housing Policy and will be in compliance with Fair Housing Law. The affordability related to the units set aside for formerly homeless families is set at 20% and 30% MOHCD AMI.

Construction of the Improvements

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 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.

Transfer of Property and Ground Lease

The Ground Lease acknowledges that the Site and the Ground Lease will be transferred to MOHCD as the Housing Successor pursuant to Dissolution Law.

Marketing of the Units

MARKETING

Occupancy Preferences and Resident Selection

Family Units (80% of total units)

Preferences for the low-income family housing will be provided in the following order:

- Certificate Holders (Property Owner and Occupant Preference Program, as amended and restated, codified and clarified recent amendments that the former Redevelopment Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008) and extended by OCII Resolution No. 77-2015 (December 15, 2015).
 - Neighborhood Resident Housing Preference ("NRHP") as recently adopted by the Board of Supervisors, and if such preference does not conflict with other financing sources. The OCII Commission will consider adoption of the NRHP in the Fall of 2016. Should OCII authorize that

NRHP be applied to OCII affordable housing developments, the Developer will include the NRHP as the second preference.

- San Francisco Residents or San Francisco Workers
- Members of the General Public

These preference referrals must meet the selected Applicant(s) established screening requirements for the project, and final selection will lie with the selected Applicant(s). Any authorized preference shall be permitted only to the extent that such preference: (a) does not have the purpose or effect of delaying or otherwise denying access to a housing development or unit based on race, color, ethnic origin, gender, religion, disability, age, sexual orientation, or other protected characteristic of any member of an applicant household; and (b) is not based on how long an applicant has resided or worked in the area. OCII will work with the selected developer teams to resolve potential occupancy conflicts, ensure adherence to OCII occupancy preferences and marketing requirements and determine additional occupancy preferences and marketing requirements.

Formerly Homeless Families (20% of total units)

The eligible population to be referred by DSHS is homeless families with at least one minor child under the age of 18, and homeless pregnant women. Single individuals and households without minor children are not eligible; however, this restriction only applies to the units set aside for formerly homeless families referred by the DSHS. Family income must not exceed 30% of AMI. The intended population is families who have experienced multiple episodes of homelessness and/or are in need of comprehensive case management services to obtain or maintain housing and financial stability. For determining eligibility, the City's definition of homelessness will be applied.

Marketing Process

OCII's required marketing process starts one month after construction and culminates with a lottery that takes place approximately 3 months before construction completion. While there is no "typical" construction period, most projects take approximately 20 months to be constructed. For the entirety of that year and a half time period, the developer is working with OCII and MOHCD staff to do the following:

1) Develop an Early Outreach Plan that:

- a. Creates a mock-up of the COP holder postcard mailer which will be mailed to COP holders in order to provide them advance notice of the housing opportunity
- b. Establishes contacts with Rental Readiness Counseling Providers that are available to provide technical assistance and individualized attention to COP holders
- c. Names the Developer's Leasing Agent and establishes a webpage, email address and hotline specific for interested parties to obtain more information. Developer also establishes a location where hardcopies of the rental or for sale application are to be picked up during the Marketing Period.
- d. Identifies Rental Readiness Counseling Providers that interested applicant households will be referred to
- e. Sets dates and locations for Application Workshops to be held by Rental Readiness Counseling Providers

- f. Establishes a list of media outlets through which the housing opportunity will be marketed

2) Carry out Early Outreach

- a. 5 COP postcards are mailed out to COP holders over a period of 4-6 months
- b. Application Workshops held by Rental Readiness Counseling Providers and interested applicants can attend and ask questions
- c. COP holders may elect to participate in one-on-one phone sessions with the Rental Readiness Counseling Providers to obtain assistance with filling out the rental application or addressing any barriers to housing

3) Facilitate a Marketing (Open Application) Period

- a. The housing opportunity is sent out to subscribers of the San Francisco Housing Email Alert
- b. The housing opportunity is published in the media outlets identified in the early outreach plan
- c. OCII/MOHCD posts the application on its website and MOHCD front desk staff are notified of the live application if interested parties call in or visit with questions
- d. Developer staffs a location where hardcopies of applications can be picked up
- e. Developer provides OCII/MOHCD with a weekly report of applicant lists as applications come in
- f. Developer provides OCII/MOHCD with a report summary of its outreach to COP holders

4) Hold a Lottery

- a. Applications are assigned numbers for anonymity and during a live lottery process, application numbers are randomly selected. A separate lottery is held for each population of preference (COP, NRHP, etc).
- b. Developer creates a final list of applicants who were successful in the lottery, sorted by preference rankings and OCII/MOHCD verifies
- c. A waitlist is established and is organized by preference rank

5) Process Appeals

- a. Developer with oversight from OCII/MOHCD hears appeals and adjusts the rent roll as necessary
- b. Rent roll is finalized

6) Lease-Up

- a. Once a project receives its Final Certificate of Occupancy, Developers begin moving residents in
- b. Developer submits a weekly report naming all the occupied units until the project is 100% occupied

Equal Opportunity Program and Compliance with OCII Policies

The Developer shall comply with OCII's Nondiscrimination policies in Contracts, Minimum Compensation and Health Care Accountability and has worked closely with contract compliance staff to comply with the Small Business Enterprise ("SBE") Program on this development. To date, the Developer has exceeded the OCII's 50% SBE goal and has achieved 54.4% SBE (39.0% SF-SBE, 8.4% MBE and 11.1% WBE) for professional services consultants. A full list of consultants is included as Attachment 5 and SBE consultant biographies for the five largest SBE contracts are included as Attachment 6.

During the construction phase of this project, the Developer is committed to meeting the OCII requirements and goals which includes the 50% SBE construction subcontracting participation goal, payment of prevailing wages and the 50% local construction workforce hiring goal. In April 2015, after a competitive solicitation process, Developer selected Nibbi Brothers General Contractor as the general contractor for the project. The Developer (through OCII staff) included joint ventures with SBEs as a consideration in the selection of the general contractor. Although Nibbi

Brothers did not propose a joint venture with an SBE, Nibbi Brothers and the Developer have indicated their readiness to encourage joint ventures and associations in upcoming contract awards.

Mission Bay Citizens Advisory Committee

The Mission Bay Citizens Advisory Committee ("CAC") has been very supportive of the development of MBS 6E. The development was presented to the CAC in September 2014 and July 2015. At both meetings, the CAC was very supportive of the MBS 6E development. The CAC was interested in parking for commercial uses and the adequate provision of trash rooms. To address these concerns the Developer and the architect team altered the building to include a trash room dedicated to commercial tenants, so that their trash will remain within the building until pick-up. The building will include parking spaces dedicated to the commercial owners, and the neighborhood includes metered parking zones outside the building, to accommodate pick-up/drop off parking for commercial customers. In addition, the CAC also had safety and security concerns. To address these concerns, the Developer included an electronic security surveillance system at the building and on the sidewalks outside the building. In addition, the Project will have 24/7 property management, including a general manager, assistant manager, and night manager.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Ground Lease and Loan Agreement documents facilitates the development of the Project, which are Implementing Actions within the scope of the Mission Bay Project analyzed in the Final Subsequent Environmental Impact Report for Mission Bay North and South ("FSEIR") and requires no further environmental review beyond the FSEIR pursuant to the State CEQA Guidelines Section 15180, 15162 and 15163 for the following reasons:

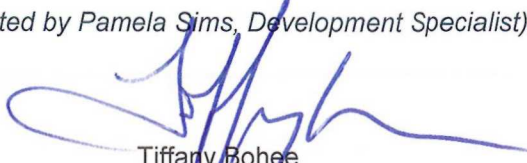
- (1) implementation of the Project does not require major revisions to the FSEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,
- (2) no substantial changes have occurred with respect to the circumstances under which the project analyzed in the FSEIR will be undertaken that would require major revisions to the FSEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FSEIR; and,
- (3) no new information of substantial importance to the project analyzed in the FSEIR has become available, which would indicate that (i) the Project will have significant effects not discussed in the FSEIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the FSEIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FSEIR.

NEXT STEPS

According to the current schedule, once the Ground Lease and Amended and Restated Loan Agreement is approved the construction financing will close and construction will begin shortly thereafter, which is expected to commence in late September 2016. Construction is scheduled to be complete by August 2018. Upon completion

of the Project, the land, Ground Lease, and Loan would be transferred to the Mayor's Office of Housing and Community Development as the Housing Successor Agency under Dissolution Law.

(Originated by Pamela Sims, Development Specialist)



Tiffany Bohee
Executive Director

- Attachments:
1. Ground Lease Agreement
 2. Amended and Restated Loan Agreement
 3. Schematic Design and Site Plan
 4. Site/Amenities Map
 5. SBE Consultants
 6. Consultant Biographies

GROUND LEASE

626 Mission Bay Boulevard North

by and between the

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

as Landlord

AND

**1300 Fourth Street Associates, L.P.,
a California Limited Partnership**

as Tenant

Dated as of August 16, 2016_____

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GROUND LEASE

This GROUND LEASE (this “**Ground Lease**” or “**Lease**”) is entered into as of August 16, 2016, (“Agreement Date”) by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, 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 1300 Fourth Street Associates, 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. In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the Mission Bay South Redevelopment Project Area (the “Project Area”) by Ordinance No. 335-98 adopted on November 2, 1998. The Redevelopment Plan is referred to as the “Mission Bay South Redevelopment Plan.” In cooperation with the City, the Agency was responsible for implementing the Mission Bay South Redevelopment Plan.
- C. The Mission Bay South Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the China Basin Channel, Seventh and Mariposa Streets, and the San Francisco Bay and containing approximately 238 acres of land. The Mission Bay South Redevelopment Plan anticipates and describes a mixed-use development comprised of public open space, retail, commercial, entertainment uses, and parking and loading uses.
- D. The Mission Bay South Owner Participation Agreement (the “OPA”) between the Agency and FOCIL-MB, LLC (the “Master Developer”) provides that the Master Developer will contribute land to the Agency, at no cost, for the development of affordable housing and the Agency will oversee the development of up to one thousand four hundred forty-five (1,445) affordable housing units in the Project Area.

- E. On May 21, 2014, OCII issued a Housing Development Request for Proposals (the “RFP”) for the development and management of up to 135 units of low- and moderate-income rental housing at the Site, with twenty percent of the units to be set aside for formerly homeless households. OCII staff made extensive outreach efforts to attract submittals from qualified developers by the July 16, 2014 deadline. The RFP set forth specific submission requirements to be met in order to be fully reviewed by OCII staff. The RFP also set forth that OCII would seek to enter into an exclusive negotiations agreement for development rights on the Site.
- F. OCII staff received four submittals, three of which met the minimum threshold requirements defined in the RFP. After a thorough review of the submittal, an interview with an interdisciplinary evaluation panel, and presentation to the Mission Bay Citizens Advisory Committee, the evaluation panel unanimously determined the development team lead by Tenderloin Neighborhood Development Center had the strongest submittal and was well-suited to develop the Project. Accordingly, OCII and Borrower executed an Exclusive Negotiations Agreement (the “ENA”) as of December 2, 2014, and the same document was amended as of March 2016.
- G. Tenant intends to construct on the Site approximately one hundred forty-three (143) units of very low- and low-income family rental housing (including one unrestricted manager’s unit) and associated parking as well as commercial space consisting of approximately 10,000 square feet of retail space (collectively, the “**Improvements**”). The Improvements include all physical construction on the Site as further set forth in Design Development Documents for this Project approved December 2015. Design and construction of the Improvements shall be referred to herein as the “**Project**”.
- H. Upon completion of the Improvements, the Tenant anticipates that it will subdivide the Site into air-rights (or condominium) and/or land parcels, in accordance with Subdivision map Act requirements (Calif.Gov. Code §§ 66410 *et seq.*), as shown tentatively on the preliminary Subdivision Drawing, Exhibit No. 3 to this Lease: (1) “**Housing Parcel**” containing the residential apartments and parking; and (2) the “**Commercial Parcel**” containing the retail uses (each, a “**Parcel**,” collectively, the “**Parcels**”).
- 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 Mission Bay 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 assets (other than housing assets) and 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 Mission Bay 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. Pursuant to OCII Commission Resolution No.97-2014, OCII authorized entering into a Predevelopment Loan Agreement with funds totaling Two Million Five Hundred Thousand Dollars (\$2,500,000) to Borrower to fund certain costs related to the development of the Project the (“Loan”).
- O. Pursuant to Ordinance 215-12, Resolution No. 11-2012, the DOF “final and conclusive” determination, and Dissolution Law, OCII has the obligation and authority to provide the Funds for the Project.
- P. On July 29, 2016, the Citywide Affordable Housing Loan Committee approved a loan to the Tenant for the development of the 626 Mission Bay Boulevard North for an aggregate amount not to exceed \$35,750,000 (the “OCII Loan”). The OCII Loan includes a predevelopment loan amount of \$2,500,000.
- Q. On August 16, 2016, the OCII Commission approved the OCII Loan through Resolution No. XX-2016.
- R. Per the Mission Bay South Owner Participation Agreement (“OPA”), on or before September 26, 2016, Mission Bay South Block 6 East will be transferred from the Mission Bay Development Group to OCII.

- S. OCII now intends to lease the Mission Bay South Block 6 East to Tenant in accordance with the terms of this Lease.
- T. 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, 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.

1.04 "CAM Payments" means payments received by Tenant from all subtenants and City or its successor and assigns for common area maintenance expenses as set by Tenant pursuant to its lease agreement with its subtenants

1.05 "Commercial Rent" means all income received by Tenant from any of its subtenants, less CAM Payments and a five percent (5%) management fee.

1.06 "Commercial Leases" means all leases entered into by Tenant with subtenants for lease of the Commercial Premises.

1.07 "Commercial Parcel" means that parcel further described in Recital H and Section 2.1, herein.

1.08 “Commercial Premises” means approximately 9,700 square feet of the ground floor portion of the Improvements devoted to neighborhood serving retail and other non-residential uses approved by the Agency.

1.09 “Construction Documents” has the meaning given in Section 10.01.

1.10 “Conversion Date” the date that the construction financing on the property converts to permanent financing.

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

1.12 “Effective Date” means the Agreement Date

1.13 “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.

1.14 “First Lease Payment Year” means the year in which the project receives a Certificate of Occupancy for all residential units.

1.15 “General Partners” means Tenant’s general partner(s).

1.16 “Ground Lease” means this Ground Lease of the Site to the Tenant from OCII, as amended from time to time.

1.17 “Improvements” means all physical construction, including all structures, fixtures and other improvements to be constructed on the Site.

1.18 “Investor Limited Partner” means Wells Fargo Affordable Housing Community Development Corporation, its successors and assigns

1.19 “Lease Year” means each calendar year during the term hereof, beginning on January 1 and ending on December 31.

1.20 “Leasehold Estate” means the estate held by the Tenant pursuant to and created by this Ground Lease.

1.21 “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.

1.22 “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.

1.23 “Loan Documents” means that certain Tax Increment 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 16, 2016, as amended.

1.24 “MOHCD” shall have the meaning given in Recital J.

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

1.26 “OCII Loan” has the meaning set forth in Recital P.

1.27 “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.

1.28 “Premises” means the Site together with any Improvements thereon.

1.29 “Project” has the meaning given in Recital G. If indicated by context, **“Project”** means the leasehold interest in the Site and the fee interest in the Improvements on the Site.

1.30 “Residential Units” has the meaning given in Section 9.02.

1.31 “Site” means the real property shown in the Site Legal Description, Attachment 1

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

1.33 “Tenant” means 1300 Fourth Street Associates, 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.

1.34 “Very Low-Income Households” means (a) households earning no more than fifty percent (50%) of Area Median Income, for a term of 55 years from the date on which a Certificate of Occupancy is issued for the Project, as further defined in 1.03. Area Median Income for any period of the term (or extended term) of this Ground Lease thereafter, as determined by California Tax Credit Allocation Committee (“TCAC”), adjusted solely for actual household size.

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 OCII 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.

(e) **Right of First Refusal.** If, following the term of this Ground Lease, or any extensions of this Ground Lease, the Agency desires to sell its interest in the Site, the Tenant will have the right of first refusal to negotiate for the purchase of the Site provided that the Tenant agrees to maintain the Site as a very low-income housing development for fifty (50) years from the date of purchase.

(f) **Commercial Lease.** If and when the Site is subdivided, the parties shall amend this Lease to remove the Commercial Parcel. The parties agree that they shall simultaneously enter into a lease of air rights or condominium space in the Commercial Parcel allowing for commercial uses of the Commercial Parcel (the “**Commercial Lease**”) with XXXXXXXXXXXX, LLC (XXXXXXXXX, as managing general partner, (the “**Commercial Entity**”). Unless otherwise agreed to by the Landlord and the Commercial Entity in writing. Basic terms for such Commercial Lease shall be as follows:

(i) The Commercial Lease shall terminate on the same date as this Ground Lease.

(ii) The Commercial Lease shall provide the same option to extend as this Ground Lease.

(iii) The Commercial Lease shall be a triple net lease. Rent for the Commercial Lease shall be XX% of the Annual Rent in Section 4 of this Ground Lease, and the commercial base rent shall be \$2,500. Upon the Effective Date of the Commercial Lease, the Annual Rent and Residual Rent of this Ground Lease shall be reduced by the amount of the annual rent in the Commercial Lease. All terms of the Commercial Lease shall be in compliance with MOHCD Commercial Space Policy, including the cash flow split. Rent shall be reappraised and readjusted every ten (10) years.

(iv) The Commercial Lease shall contain terms substantially similar to this Ground Lease (except for such terms not reasonably related to commercial purposes). Payment of the rent on the Commercial Parcel by the Commercial Entity shall not be deemed to reduce the rent owed on the Residential Parcel.

(v) Nothing herein shall be deemed to allow for subdivision of the Site that is not in compliance with all applicable laws of the City and County of San Francisco.

(vi) If subdivision of the site is not accomplished by the Conversion Date, such subdivision shall require the prior approval of OCII.

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 Two Million One Hundred Seventy Five Thousand Dollars (\$2,175,000.00) 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 first to occur of (i) the First Lease Payment Year, as that term is defined in the Trust Indenture for the multifamily housing revenue bonds that are being issued as part of the financing of the Project, or (ii) June 1, 2018, and every fifteen (15) years thereafter, [and shall be equal to the greater of (i) Two Million One Hundred Seventy Five Thousand Dollars (\$2,175,000.00) 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 12 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 other than the insurance proceeds. 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) an initial issuer fee equal to 25 basis points on the total bond issuance or \$131,250 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; (i) 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 (j) 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 \$25,000, increasing by 3% annually, less any amounts received as an Asset Management Fee from the Project’s Operating Budget, payable to the Tenant’s general partners, (ii) an annual investor services fee in the amount of \$5,000, (iii) issuer fees of \$8,500 per year with no annual increases; and (iv) deferred developer fees approved by OCII pursuant to the Loan Documents. In no event shall such fees exceed the maximum amount permitted by the Department of Housing and Community Development as long as it is a Lender.

(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 Payment Year an amount equal to Two Million One Hundred Sixty Thousand Dollars \$2,160,000.00 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 Annual Rent – Base Rent Two Million One Hundred Sixty Thousand Dollars (\$2,160,000.00) 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), 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 26.07, devote the Site to, exclusively and in accordance with, the uses specified in Article 9 of this Ground Lease, , 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-half (1/2) of remaining Surplus Cash shall be shared by Tenant and OCII, for the lesser of the initial 10 years of operations or when the deferred developer fee is

paid out. Subsequent to the initial 10 years the split shall be 1/3 to the Tenant and remaining two thirds (2/3) of Surplus Cash shall be paid to OCII ("OCII's Portion"). OCII's Portion of Surplus Cash will be applied first to Accrued Base Rent, and then toward repayment of the outstanding OCII Loan until the entire 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 payment of OCII's Portion shall go toward 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.

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).

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 12 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 forty-two (142) residential dwelling units, plus one (1) manager's unit ("Residential Units"), ground floor common areas, open space and the Commercial Premises. 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-

Households. Rent levels shall comply with the rent levels established in Attachment 12. 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 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.

Marketing of the units, including conformance with MOHCD's Certificate of Preference Program (as described in Attachment 4 to this Lease) for as long as it is in existence.

(a) Per the Mission Bay Affordable Housing Policy, adopted September 17, 1998 by Resolution 194-98, the Sponsor will be required to give occupancy preference to Agency Certificate of Preference Holders. In accordance with OCII funding requirements and HCD/AHSC funding requirements, preference shall be given to the following order for all eligible applicants: 1) holders of former Redevelopment Agency Certificates of Preference, 2) Neighborhood Resident Housing Preference (see below), 3) San Francisco residents or San Francisco workers, and 4) members of the general public.

Although OCII's authorized applying an Ellis Act Housing Preference to OCII affordable

housing that preference is not permitted for project's with HCD funding such as AHSC. Because MBS 6E includes AHSC, EAHP would not apply.

In addition, the City has recently replaced the Ellis Act Housing Preference with the Displaced Tenant Housing Preference (DTHP). DTHP is also not allowed in projects receiving HCD funding. Even if the OCII Commission authorizes DTHP to be applied to OCII projects, it would not be applied at MBS 6E.

The City also recently adopted the Neighborhood Resident Housing Preference ("NRHP"). Should OCII authorize that NRHP be applied to OCII affordable housing developments, the Sponsor will include the NRHP after the Certificate of Preference Holder Preference as preferred population number two as shown above.

(b) A reasonable accommodations policy that indicates how Tenant intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(c) Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(h) An acknowledgement that, with respect to vacant Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS

10.01 General Requirements and Rights of OCII

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 OCII construction management staff 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, except to the extent that such Improvements become subject to the Commercial Lease and 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, in the case of the Commercial Parcel, to the Commercial Entity), 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 1300 Fourth Street Associates, L.P., 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 or tenants in the Commercial Premises 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.

Notwithstanding anything to the contrary contained herein, the following transfers shall be permitted: (a) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by OCII; (b) removal or replacement of a general partner of Tenant in accordance with the terms of Tenant's Limited Partnership Agreement according to the following: General Partner can be replaced 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), as a replacement General Partner satisfactory to OCII but if Tenant requires additional time for the admission of a replacement General Partner, OCII may approve an extension granting such additional time, which approval shall not be unreasonably withheld or delayed; or (c) transfers of the limited partner or non-managing member interests in Tenant. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Ground Lease. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Ground Lease.

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, OCII 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, 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 (which includes, without limitation, the Investor Limited Partner),, 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 Tenant’s General Partners. 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 fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the same within 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.

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 these minimum levels shall be maintained for no less than 10 years; and

(e) crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to the OCII Loan 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 Ten Thousand Dollars (\$10,000) 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 sole discretion.

c. Commercial Premises. Tenant must require that all nonresidential tenants' liability insurance policies include Tenant and OCII as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Premises in the Project, Tenant must require commercial tenants 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 cancellation of 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. t

(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 Wells Fargo Bank, N.A., Landlord approves _____ 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 Ground Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable loan documents, 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 11 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 forty three (143) 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 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 residential and commercial uses specified in the schematic design, 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 € 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 5 and will submit all documents required pursuant to the policies included in Attachment 5.

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 5 -3 and to comply with applicable provisions of the Labor Code.

ARTICLE 32: OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

OCII find 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 Minimum Compensation Policy ("MCP") and Health Care Accountability Policy ("HCAP"), adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly, the "Policies") as set forth in Attachments 9 and 10 respectively. 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: Tenderloin Neighborhood Housing Corporation
201 Eddy Street
San Francisco, CA 94102
Attn: Donald S. Falk

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

and after Conversion to:

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

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

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 Investor Limited Partner shall include any successors and/or assigns of Wells Fargo Affordable Housing Community Development Corporation that is an affiliate of the Investor Limited Partner, each of which shall be deemed a "Permitted Limited Partner".

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. Operational Rules for Certificate Holder's Priority
5. Equal Opportunity Program
6. Prevailing Wage Provisions
7. Income Computation and Certification
8. City's Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments
9. OCII's Minimum Compensation Policy
10. OCII's Health Care Accountability Policy
11. Consent to Leasehold Mortgage
12. 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:

By:

Its: _____
Vice President

Authorized by OCII Resolution No. XX-2016, adopted August 16, 2016

ATTACHMENT 1

Legal Description of the Site

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and is described as follows:

All that real property situated in the City and County of San Francisco, State of California, described as Lot 21, as said lot is shown on the Final Map Tract no. 3936, recorded February 22, 2006 in Book BB of Maps, at Page 54 through 58.

APN: 8711/21

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,

WHEN RECORDED RETURN TO:

Free Recording Requested Pursuant to Government Code Section 27383
626 Mission Bay Boulevard North
San Francisco, CA 94107

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 1300 Fourth Street, L.P. _____ (the "Lessee") with respect to that certain unrecorded Ground Lease dated as of August 16, 2016, _____ (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 August 16, 2016 _____, 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 16 day of August 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:

By:

By:

By: _____
Its: Vice President

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and is described as follows:

All that real property situated in the City and County of San Francisco, State of California, described as Lot 21, as said lot is shown on the Final Map Tract No. 3936, recorded February 22, 2006 in Book BB of Maps, at Page 54 through 58.

APN: 8711/21

ATTACHMENT 3
Schedule of Performance

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
A.	Prop I Noticing (if applicable)	<u>N/A</u>	
1	Acquisition/Predev Financing Commitment	<u>completed</u>	
2.	Site Acquisition	<u>8/1/2016</u>	_____
3.	Development Team Selection		
a.	Architect	<u>Completed</u>	
b.	General Contractor	<u>Completed</u>	
c.	Owner's Representative	<u>Completed</u>	
d.	Property Manager	<u>Completed</u>	
e.	Service Provider	<u>Completed</u>	
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	<u>Completed</u>	_____
b.	Submittal of Design Development & Cost Estimate	<u>Completed</u>	
c.	Submittal of 50% CD Set & Cost Estimate	<u>Completed</u>	
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	<u>Completed</u>	
5.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	<u>Completed</u>	
b.	NEPA Environ Review Submission	<u>N/A</u>	
c.	CUP/PUD/Variances Submission	<u>N/A</u>	
6.	Permits		
a.	Building / Site Permit Application Submitted	<u>Completed</u>	_____
b.	Addendum #1 Submitted	<u>Completed</u>	
c.	Addendum #2 Submitted	<u>Completed</u>	
7.	Request for Bids Issued	<u>Completed</u>	
8.	Service Plan Submission		
a.	Preliminary	<u>1/1/2017</u>	
b.	Interim	<u>6/1/2017</u>	
c.	Update	<u>12/1/2017</u>	
9.	Additional City Financing		

a.	Predevelopment Financing Application #2	<u>N/A</u>	
b.	Gap Financing Application	<u>7/15/2016</u>	
10.	Other Financing		
a.	MHP Application	<u>N/A</u>	
b.	Construction Financing RFP	<u>Completed</u>	
c.	AHP Application	<u>Completed</u>	
d.	CDLAC Application	<u>Completed</u>	
e.	TCAC Application	<u>Completed</u>	
f.	HUD 202 or 811 Application	<u>N/A</u>	
g.	Other Financing Application: AHSC	<u>Completed</u>	
11.	Closing		
a.	Construction Closing	<u>9/26/2016</u>	
b.	Permanent Financing Closing	<u>9/26/2016</u>	
12.	Construction		
a.	Notice to Proceed	<u>9/27/2016</u>	<u>10/31/2016</u>
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	<u>8/1/2018</u>	<u>1/1/2019</u>
13.	Marketing/Rent-up		
a.	Early Outreach Marketing Plan Submission	<u>10/27/16</u>	<u>11/30/2016</u>
b.	Marketing Plan Submission	<u>10/27/2016</u>	<u>11/30/2016</u>
c.	Commence Marketing	<u>10/27/2016</u>	<u>11/30/2016</u>
d.	Commercial Marketing Plan Submission	<u>12/01/17</u>	<u>1/10/18</u>
e.	Commercial Marketing Plan Approval	<u>5/01/18</u>	<u>6/10/18</u>
c.	95% Occupancy	<u>2/1/2019</u>	<u>7/1/2019</u>
14.	Cost Certification/8609	<u>10/2019</u>	
15.	Close Out MOH/OCII Loan(s)	<u>10/2019</u>	

ATTACHMENT 5

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 5 which includes: Small Business Enterprise Agreement, Construction Workforce Agreement, and Prevailing Wage Provisions (Labor Standards):

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 82-2009, July 27, 2009) attached as Attachment 5-1.;
- (ii) Construction Workforce, attached as set forth in Attachment 5-2; and
- (iii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985) attached as Attachment 6.
- (iv) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997) attached as Attachment 5-3.
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001) attached as Attachment 9..
- (vi) Health Care Accountability Policy (adopted by Resolution No. 168-2001) attached as Attachment 10.

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 proceeds of the OCII Loan 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 proceeds of the OCII Loan 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 5-1

Applicability. 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:

<u>Trainees</u>	<u>Design Professional Fees</u>
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 5-2

CONSTRUCTION WORK FORCE AGREEMENT

I. **PURPOSE.** This Agreement is entered into between the Borrower and 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 Mission Bay South 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 to 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 immediately 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 #5-3

	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	☐	Y	☐	N
		e		
		s		
color	☐	Y	☐	N
		e		
		s		
Creed	☐	Y	☐	N
		e		
		s		
Religion	☐	Y	☐	N
		e		o
		s		
ancestry	☐	Y	☐	N
		e		o
		s		
national origin	☐	Y	☐	N
		e		o
		s		

Age	☐	Y	☐	N
		e		o
		s		
sex	☐	Y	☐	N
		e		o
		s		
sexual orientation	☐	Y	☐	N
		e		o
		s		
gender identity	☐	Y	☐	N
		e		o
		s		
marital status	☐	Y	☐	N
		e		o
		s		
domestic partner status	☐	Y	☐	N
		e		o
		s		
Disability	☐	Y	☐	N
		e		o
		s		
AIDS or HIV status	☐	Y	☐	N
		e		o
		s		

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?

☐ Y ☐
e
s

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?

☐ Y ☐
e
s

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

☐ Y ☐
e
s

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	Y e s , f o r S p o u s e s	Y e s , f o r P a r t n e r s
• 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?	☐	☐
(2) Do you provide a cash equivalent?	☐	☐

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 6

PREVAILING WAGE PROVISIONS **(LABOR STANDARDS)**

1. 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.

11.1 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 Borrower 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 Borrower 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.
- (b) Before close of escrow under the Agreement and as a condition to close of escrow, the Borrower shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

11.2 Definitions. The following definitions shall apply for purposes of this Exhibit H:

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

2. 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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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 5 of this Lease Agreement.

9. **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.
10. **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.
11. **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.

12. 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.

13. **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 7

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)

(Date)

Signature

Signature
(Date)

(Date)

Signature

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 ☐

See Part V above.

b. HOME ☐

Income Status

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

c. Tax Exempt ☐

Income Status

☐ 50% AMGI
☐ 60% AMGI
☐ 80% AMGI
☐ OI**

d. AHDP ☐

Income Status

☐ 50% AMGI
☐ 80% AMGI
☐ OI**

e. _____ ☐
(Name of Program)

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 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 <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

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

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

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

Part VIII – Program Type

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

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

- AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
- Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

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

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

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

ATTACHMENT 8

**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 Tenant Improvement Allowance, in lieu of construction funding for the Commercial Shell will be considered on a case-by-case basis.	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.

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 #9

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 #10

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 11

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 12

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
Total Units	143						

* The maximum rents shown here are for 2016. 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 TCAC 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.

**AMENDED AND RESTATED LOAN AGREEMENT
(OCII PROPERTY TAX TRUST FUND)**

By and Between

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO,**
a public body, corporate and politic

and

1300 FOURTH STREET ASSOCIATES, L.P.,
a California limited partnership,

for

BLOCK 6 EAST, MISSION BAY SOUTH
626 Mission Bay Boulevard North
\$35,750,000

Dated as of August 16, 2016

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**AMENDED AND RESTATED
LOAN AGREEMENT
(Affordable Housing Fees)
(Redevelopment Property Tax Trust Fund)
(Block 6E – Mission Bay South)**

THIS AMENDED AND RESTATED LOAN AGREEMENT ("Agreement") is entered into as of August 16, 2016, by and between the **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**, hereafter referred to as the Office of Community Investment and Infrastructure, a public body organized and existing under the laws of the State of California ("OCII"), and **1300 FOURTH STREET ASSOCIATES, L.P.**, a California limited partnership, whose general partner is 1300 Fourth Street GP LLC, an affiliate of Tenderloin Neighborhood Development Center, ("Borrower").

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 ("Agency") would undertake programs for the reconstruction and construction of blighted areas in the City and County of San Francisco (the "City").

B. In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the Mission Bay South Redevelopment Project Area (the "Project Area") by Ordinance No. 335-98 adopted on November 2, 1998. The Redevelopment Plan is referred to as the "Mission Bay South Redevelopment Plan." In cooperation with the City, the Agency was responsible for implementing the Mission Bay South Redevelopment Plan.

C. The Mission Bay South Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the China Basin Channel, Seventh and Mariposa Streets, and the San Francisco Bay and containing approximately 238 acres of land. The Mission Bay South Redevelopment Plan anticipates and describes a mixed-use development comprised of public open space, retail, commercial, entertainment uses, and parking and loading uses.

D. The Mission Bay South Owner Participation Agreement (the "OPA") between the Agency and FOCIL-MB, LLC (the "Master Developer") provides that the Master Developer will contribute land to the Agency, at no cost, for the development of affordable housing and the Agency will oversee the development of up to one thousand four hundred forty-five (1,445) affordable housing units in the Project Area. 1300 4th Street at Block 6 East (the "Site") is located in the Project Area and is part of this land contribution.

E. Under California Pursuant to the State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("redevelopment dissolution law known as AB X1 26"),

as, which was subsequently amended under AB 1484 and further amended by California State Assembly Bill No. 1484 ("AB 1484") subsequent legislation (together, the "Dissolution Laws" Law"), the Agency was dissolved as a matter of law on February 1, 2012.

F. On October 2, 2012 the San Francisco Board of Supervisors, acting as legislative body of OCII as the successor to the Successor Agency, passed Ordinance 215-12, which outlined the rights and responsibilities of OCII as the Agency's successor agency, including but not limited to certain the retained existing enforceable obligations for the development of affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement to allow required for the development of the Project as defined in Recital H.

G. On January 24, 2014, the California Department of Finance ("DOF") determined "finally and conclusively" that the Mission Bay OPAs and tax allocation pledge agreements are enforceable obligations under the Dissolution Law. These obligations require OCII to develop and fund affordable housing in the Project Area.

H. On May 21, 2014, OCII issued a Housing Development Request for Proposals (the "RFP") for the development and management of up to 135 units of low- and moderate-income rental housing at the Site, with twenty percent of the units to be set aside for formerly homeless households. OCII staff made extensive outreach efforts to attract submittals from qualified developers by the July 16, 2014 deadline. The RFP set forth specific submission requirements to be met in order to be fully reviewed by OCII staff. The RFP also set forth that OCII would seek to enter into an exclusive negotiations agreement for development rights on the Site.

I. OCII staff received four submittals, three of which met the minimum threshold requirements defined in the RFP. After a thorough review of the submittal, an interview with an interdisciplinary evaluation panel, and presentation to the Mission Bay Citizens Advisory Committee, the evaluation panel unanimously determined the development team lead by Tenderloin Neighborhood Development Center had the strongest submittal and was well-suited to develop the Project.

J. Tenant intends to construct on the Site approximately one hundred forty-three (143) units of very low- and low-income family rental housing (which includes one unrestricted manager's unit) and associated parking as well as commercial space consisting of approximately 10,000 square feet of retail space (collectively, the "**Improvements**"). The Improvements include all physical construction on the Site as further set forth in Design Development Documents for this Project approved December 2015. Design and construction of the Improvements shall be referred to herein as the "**Project**".

K. Pursuant to OCII Commission Resolution No.97-2014, OCII authorized entering into an Exclusive negotiations Agreement ("ENA") and provided predevelopment loan funds totaling Two Million Five Hundred Thousand Dollars (\$2,500,000) to Borrower to fund certain costs related to the development of the Project the ("Loan").

L. At its July 29, 2016 meeting, the Citywide Affordable Housing Loan Committee (the “Loan Committee”) reviewed and approved OCII staff’s evaluation of the request for \$33,250,000 in gap funding (“Funding Amount”, for an aggregate loan amount of \$35,750,000 (“Funds”), to the OCII Commission for approval.

M. Upon completion of the Improvements, the Borrower anticipates that it will subdivide the Site into air-rights and land parcels, in accordance with Subdivision map requirements (Calif. Gov. Code Sections 66410 et seq.), into air rights or condominium parcels consisting of (i) a “**Residential Parcel**”, containing the residential apartments and parking, and (ii) a “**Commercial Parcel**”, allowing for retail uses of said parcel. The tentative locations of said parcels are shown on the preliminary Subdivision Drawing, attached hereto as Exhibit No. [REDACTED]. When the Project is subdivided the Loan will also be divided per the actual costs for the Housing Parcel and the Commercial Parcel

N. Pursuant to Ordinance 215-12, Resolution No. 11-2012, the DOF “final and conclusive” determination, and Dissolution Law, OCII has the obligation and authority to provide the Funds for the Project.

O. For purposes of implementation and to ensure consistency with the City’s overall affordable housing goals and priorities, OCII has engaged the Mayor’s Office of Housing and Community Development (MOHCD) to provide additional services, including: construction monitoring, and design review, and processing loan disbursements. Upon completion of the project, 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.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

“826 Valencia” means a nonprofit organization dedicated to supporting students with their literacy and creative writing skills and to helping teachers inspire their students to write.

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the OCII in writing. All Accounts must be maintained in accordance with **Section 2.3.**

"Agreement" has the meaning given in the first paragraph hereto.

“Annual Operating Budget” means an annual operating budget for the Project attached hereto as Exhibit B-2, which may not be adjusted without MOHCD's prior written approval. The Final Financial Plan for the Project, including the Annual Operating Budget, is subject to approval by the MOHCD Director and the OCII Executive Director, prior to the Loan Closing Date.

“Assignment of Work Product” means the assignment of work product executed by Borrower granting OCII a security interest in the Work Product to secure Borrower's performance under this Agreement and the Note prior to the Loan Closing Date, in substantially the form and substance attached hereto as **Exhibit O**.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the OCII Documents to which Borrower is a party or by which it is bound.

"Borrower" means 1300 Fourth Street Associates, L.P., a California limited partnership, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to OCII in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

"Completion Date" has the meaning set forth in **Section 5.6**.

"Compliance Term" has the meaning set forth in **Section 3**.

“Construction Contract” has the meaning set forth in **Section 5.2**.

“Commercial Entity” shall have the meaning set forth in **Section 2.6**.

“Commercial Lease” shall have the meaning set forth in **Section 2.6**.

“Commercial Parcel” shall have the meaning set forth in **Recital M**, above.

“Commercial Shell” means all components of an unfinished Commercial Space as further defined by MOHCD’s commercial space policy, as it may be amended from time to time. As used in this Agreement, the term excludes non-residential space in the Project to be used primarily for the benefit of the Tenants.

“Control of the Site” means Borrower’s acquisition of fee ownership or a leasehold interest in the Site (or a portion thereof).

“Conversion Date” means the date upon which Borrower’s institutional construction financing converts to a permanent phase requiring payments of principal amortized over the term of the loan.

“CRL” has the meaning set forth in **Recital A**.

"Declaration of Restrictions" means a recorded declaration of restrictions in substantially the form and substance attached hereto as **Exhibit K** that requires Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement and the Note, in substantially the form and substance attached hereto as **Exhibit J**.

“Deferred Developer Fees” means the portion of the Developer Fee, if any, that is deferred for payment at the time of the audit performed by Borrower after completion of construction of the Project.

“Department of Building Inspection” has the meaning set forth in **Section 5.2**.

"Developer" means 1300 Fourth Street Associates, L.P., a California limited partnership whose general partner is: 1300 Fourth Street GP, LLC, and its authorized successors and assigns.

"Developer Fees" has the meaning set forth in **Section 15.1**.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by OCII as described in **Article 4**.

“Dissolution Laws” has the meaning set forth in **Recital E**.

"Distributions" has the meaning set forth in **Section 13.1**.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 (“NEPA”) (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

"Escrow Agent" means the escrow agent for the title company issuing the Title Policy.

"Event of Default" has the meaning set forth in **Section 19.1**.

“Existing Predevelopment Loan” has the meaning set forth in **Recital J**.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, which must certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower.

"Final Financial Plan" means the Table of Sources and Uses, the Annual Operating Budget and 20 Year Cash Flow as (Exhibits B-1, B-2, and B-3) as they may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Once approved, the attachments reflecting the Final Financial Plan will be attached to this Agreement as, in the form of the Final Financial Plan Confirmation Letter.

"Final Financial Plan Confirmation Letter" means a letter documenting the approved Final Financial Plan and any subsequent adjustments to this document, including interest rate and distribution of surplus cash.

"Funding Amount" has the meaning set forth in **Recital K**. The Final Financial Plan for the Project, including the Funding Amount, is subject to approval by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date

"Funds" has the meaning set forth in **Recital K**.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"General Partner" means 1300 Fourth Street GP, LLC, a California limited liability company, and its authorized successors and assigns.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Ground Lease" means the ground lease of the Site naming Borrower as tenant and OCII as landlord.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity

normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as set forth in **Exhibit A**.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agent, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; *provided that* no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in **Section 23.1** and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Investor Limited Partner" means the tax credit equity investor who will be admitted as a limited partner of Borrower concurrent with Loan Closing.

"IRS Tax Credit Rules" shall mean all laws, rules, regulations, ordinances and statutes relating to or governing the Tax Credits, including, but not limited to, Section 42 of the Internal Revenue Code, as it may be amended from time to time.

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency, including the CRL.

"Loan" has the meaning set forth in **Recital K**.

“Loan Closing Date” means the date on which OCII and the Borrower authorize Loan Closing and the Deed of Trust and Declaration of Restrictions are recorded in the Official Records.

“Loan Committee” has the meaning set forth in **Recital K**.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of OCII's or the City's rights or in defense of any action in a bankruptcy proceeding.

"Maturity Date" has the meaning set forth in **Section 3.2**.

"Median Income" means area median income as determined by for any period of the term (or extended term) of this Ground Lease thereafter, as determined by California Tax Credit Allocation Committee ("TCAC"), adjusted solely for actual household size.

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor which the Board of Supervisors of the City and County of San Francisco has designated, under Dissolution Law, as the Housing Successor to the former Redevelopment Agency, and which will acquire OCII's interest in the Project upon OCII's issuance of a certificate of completion, as described in the Memorandum of Understanding for the implementation of Affordable Housing Obligations under San Francisco Successor Agency Ordinance 215-12 between OCII and MOHCD (May 6, 2014).

"Note" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount. The prior note for the Predevelopment Loan Amount has been cancelled and returned to Borrower.

“OCII” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, known as the Office of Community Investment and Infrastructure.

"OCII Documents" means this Agreement, the Note, the Deed of Trust, the Declaration of Restrictions, the Assignment of Work Product and any other documents executed or, delivered in connection with this Agreement.

“OCII Monthly Project Update” has the meaning set forth in **Section 10.2**.

“Official Records” has the meaning set forth in **Section 3**.

"Operating Reserve Account" has the meaning set forth in **Section 12.2**.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to OCII and its legal counsel, that Borrower is a duly formed, validly existing California limited

partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.

"Permitted Exceptions" means liens in favor of OCII, real property taxes and assessments that are not delinquent, and any other liens and encumbrances OCII expressly approves in writing in its escrow instructions.

"Predevelopment Loan Amount" has the meaning set forth in **Recital J**.

"Project" means the development described in **Recital J**. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Area" has the meaning set forth in **Recital B**.

"Project Expenses" means the following costs, which may be paid from Project Income to the extent of available Project Income pursuant to the Annual Operating Budget approved prior to the Loan Closing Date by OCII Executive Director and MOHCD Director as part of the Final Financial Plan: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower 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 any 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 maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) credit adjuster payments including interest; (f) required, and necessary, deposits to the Replacement Reserve Account, and any other reserve account required under this Agreement; (g) annual base rent payments under the Ground Lease in an amount equal to \$15,000; (h) amounts necessary to replenish the Operating Reserve pursuant to Section 12.2; (i) the approved annual management fees indicated in the Annual Operating Budget and approved as part of the Final Financial Plan prior to the Loan Closing Date; (j) an initial issuer fee 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 (k) any extraordinary expenses approved in advance by the OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

"Project Fees" means (i) a combined annual asset management and partnership management fee in the amount of \$25,000, increasing by 3.5% annually, payable to the Tenant's general partner, (ii) an annual investor services fee in the amount of \$5,000, payable to Tenant's Investor Limited Partner, and (iii) deferred developer fees approved by OCII pursuant to the Loan Documents. In no event shall such fees exceed the maximum amount permitted by the Department of Housing and Community Development as long as it is a Lender.

“Project Financing” has the meaning set forth in Section 4.2(i).

"Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income.

"Project Operating Account" has the meaning set forth in Section 11.1.

"Publication" means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Funding Amount.

"Qualified Tenant" means a Tenant household, earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in **Exhibit A**. The term "Qualified Tenant" includes each category of Tenant designated in **Exhibit A**.

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Section 7**.

"Rent Restrictions" means the limitations on Rents set forth in **Section 7.3** and **Exhibit A**.

"Replacement Cost" means all hard constructions costs of the Project, not including the cost of site work and foundations but including construction contingency, for the purpose of establishing the amount of the Replacement Reserve Account. This defined term is not intended to affect any other calculation of replacement cost for any other purpose.

"Replacement Reserve Account" has the meaning set forth in **Section 12.1**.

“Residential Parcel” shall have the meaning set forth in **Recital L**, above.

"Retention" has the meaning set forth in **Section 4.7**.

“Schedule of Performance” means the schedule attached hereto as **Exhibit L** that sets forth Project tasks and milestones and the dates by which they will be completed.

"Section 8" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

"Senior Lien" has the meaning set forth in **Section 24.1**.

"Site" means the real property described in **Recital D** of this Agreement.

"Surplus Cash" means Project Income remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash must be based on figures contained in audited financial statements.

"Table" means the Table of Sources and Uses.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as **Exhibit B-1**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without OCII's prior written approval.

"Tenant" means any residential household in the Project.

"Tenant Selection Plan" has the meaning set forth in **Section 6.1**.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to OCII, issued by an insurer selected by Borrower and satisfactory to OCII, together with any endorsements and policies of coinsurance and/or reinsurance required by OCII, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"20-Year Cash Flow Proforma" means the 20-year cash flow proforma for the Project attached as **Exhibit B-3**.

"Unit" means a residential rental unit within the Project.

"Waiting List" has the meaning set forth in **Section 6.5**.

"Work Product" has the meaning set forth in **Section 24.21**.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other OCII Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years

unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific OCII Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other OCII Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the OCII Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circulars

(c) S.F. Administrative Code:
www.sfgov.org/site/government_index.asp#codes

1.4 Contracting Requirements. Borrower shall use the OCII contract compliance requirements for procurement activities, as further set forth in Exhibit E of this Agreement.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance predevelopment and development costs associated with the Project. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the OCII's agreement to make the Loan is based in part on Borrower's agreement to use the Funding Amount solely for the purpose

set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses.

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to OCII as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. Borrower must maintain and provide to the OCII upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the OCII in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition Borrower must provide to the OCII promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The OCII may grant or deny any application by Borrower for additional financing for the Project in its sole discretion.

2.6 Transfer of Portion of Repayment Responsibility. If the Site is subdivided as further referenced in Recital M, OCII may enter into a lease with a limited liability company whose sole member is a non-profit affiliate of Borrower (the “**Commercial Entity**”) for the Commercial parcel (the “**Commercial Lease**”). Concurrently with entry into the Commercial Lease, OCII shall enter into a Loan Agreement, on the same terms as set forth herein (except as may be inapplicable to the Commercial Parcel) for Three Million Six Hundred Thousand Dollars (\$3,600,000), which number shall be subtracted from the loan Amount due from Borrower to OCII under this Agreement. As part of the terms of the loan agreement with the Commercial Entity, the Commercial Entity will be required to obtain a loan from a third party to reduce the principal of the Loan Amount. OCII shall be under no obligation to reduce the Loan Amount (as set forth in this Section 2.6) if OCII is unable to agree with the Commercial Entity on terms of the loan and/or the Commercial Lease.

ARTICLE 3 TERMS. The term of this Agreement shall commence on the Agreement Date and shall continue until the fifty seventh (57th) anniversary of the date the Deed of Trust is recorded on Borrower's leasehold interest in the Site the Official Records of the County of San Francisco (the “Official Records”), regardless of any reconveyance of the Deed of Trust (the “Compliance Term”). In order to ensure the Borrower's, or subsequent assignees', continued compliance with such obligations during the Compliance Term, the Deed of Trust shall be recorded in the Official Records upon execution of the Ground Lease.

3.1 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3%) per annum, which may be adjusted to a rate no less than 1.5%, per annum, as provided in the Note.

3.2 Loan Repayment Terms. Interest shall accrue, and repayment of principal and interest shall be paid from Surplus Cash in accordance with Section 3.5, below. Notwithstanding the foregoing, the outstanding principal balance and any accrued but unpaid interest of the Loan will be due and payable on the fifty seventh (57th) anniversary of the date Deed of Trust is recorded on the leasehold interest in the Official Records (the “Maturity Date”) according to the terms set forth in full in the Note. At least sixty (60) days prior to the Maturity Date, the Borrower may apply to the City for an extension of the Maturity Date. In the event that, as of the date of such request the Borrower continues to be in compliance with the Loan Documents, the City may, in its discretion, agree to extend the Maturity Date pursuant to a written amendment to the Agreement and permit the Borrower to continue to defer repayment of principal and interest, or may require that the Borrower make amortized payments of principal and interest, depending on factors such as rental payments received from the commercial portion of the Site.

3.3 Compliance Term; Declaration of Restrictions: Borrowers, and its assigns, must comply with all provisions of the OCII Documents relating to the use of the Site and the Project, as set forth in the Declaration of Restrictions, and any amended and restated versions of such declaration, to be recorded in the official records of the San Francisco County, for the Compliance Term even if the Loan is repaid or otherwise satisfied, or the Deed of Trust is reconveyed before that date. Notwithstanding anything to the contrary contained herein, Borrower’s obligation to comply with the terms and obligations contained in the OCII _ shall be subject to Borrower’s compliance with all applicable laws, statutes and regulations, including, but not limited to Section 42 of the Internal Revenue Code, the California Revenue and Taxation Code, TCAC’s regulations, and TCAC’s regulations.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any OCII Document, the principal balance of the Loan will bear interest at the default interest compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the OCII under any OCII Document if not paid when due or as otherwise provided in any OCII Document.

3.5 Distribution of Surplus Cash and Repayment of Principal. Within one hundred twenty (120) days of the end of each fiscal year following the Completion Date, Borrower shall apply annual Project Income to pay Project Expenses and then to pay Project Fees. Any cash remaining after payment of Project Expenses and Project Fees shall be deemed Surplus Cash. Provided Borrower is not currently in default (subject to applicable notice and cure periods) under the terms of OCII Documents, Borrower shall use Surplus Cash to make the following payments:

One-half (1/2) of Surplus Cash shall be shared by the Borrower and OCII, for the lesser of the initial 10 years of operations or when the deferred developer fee is paid out. Subsequent to the

initial 10 years the split shall be 1/3 to the Tenant and remaining two thirds (2/3) of Surplus Cash shall be paid to OCII ("OCII's Portion"). OCII's Portion of Surplus Cash will be applied first to Accrued Base Rent, and then toward repayment of the outstanding OCII Loan until the entire 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 payment of OCII's Portion shall go toward Residual Rent until paid in full in accordance with the terms of this Lease. This share of Surplus Cash shall be split on a pro-rata basis between OCII and the Department of Housing and Community Development ("HCD") for so long as HCD is a lender in the Project.

3.6 Repayment of Unused Portion of Loan Amount. In addition to any other payment requirements, within six (6) months after the Completion Date, the Borrower shall promptly repay to OCII any portion of the Loan Amount previously disbursed to Borrower and not used for eligible costs as described in this Agreement.

3.7 Repayment of California Tax Credit Allocation Committee Performance Deposit. To the extent OCII funded the TCAC Performance Deposit, Borrower must repay the TCAC Performance Deposit to OCII upon receipt of said deposit by Borrower from TCAC, or use it to pay for eligible costs related to the Project. Use of the TCAC Performance Deposit to pay for eligible costs must be approved by the OCII Executive Director. Borrower shall include the requirements related to the TCAC Performance Deposit in any tax credit limited partnership agreement.

3.8 Changes In Funding Streams. OCII's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses for construction of the Project (including predevelopment activities and construction phase expenses), as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the OCII within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the OCII. OCII reserves the right to modify the terms of this Agreement based upon any substantial reductions in Borrower's projected sources or substantial increase in Borrower's uses of all funds for the Project to the extent Borrower has not provided additional Project sources sufficient to cover any reductions in sources or increase in uses, which sources shall be acceptable to the OCII in its reasonable discretion.

3.9 Additional OCII Approvals. Borrower understands and agrees that OCII is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all local laws. Borrower understands that any development of the Property shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Property,

which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project. Notwithstanding the above, on September 17, 1998, the Redevelopment Agency Commission adopted Resolution No. 182-98 which certified the Final Subsequent Environmental Impact Report ("FSEIR") for Mission Bay North and South pursuant to the California Environmental Quality Act ("CEQA") and State CEQA Guidelines Sections 15168 (Program EIR) and 15180 (Redevelopment Plan EIR). On the same date, the Redevelopment Agency Commission also adopted Resolution No. 183-98, which adopted environmental findings (and a statement of overriding considerations), in connection with the approval of the Plan and other Mission Bay project approvals (the "Mission Bay Project"). The San Francisco Planning Commission ("Planning Commission") certified the FSEIR by Resolution No. 14696 on the same date. On October 19, 1998, the Board of Supervisors adopted Motion No. 98-132 affirming certification of the FSEIR by the Planning Commission and the Agency, and Resolution No. 854-98 adopting environmental findings and a statement of overriding considerations for the Mission Bay Project.

3.10 Additional Borrower Covenants. Borrower hereby agrees to the following:

(a) Borrower shall quantify an adequate percentage of Director of Development time to assist the assigned Project Manager to MBS 6E due to Borrower's recent project management staff transition.

(b) MOHCD/OCII must review and approve the investor and lender RFPs for the Project. Borrower must allow MOHCD/OCII staff and its financial advisor to communicate directly, with borrower participation in such communication, with prospective and selected lenders/investors.

(c) Allow OCII Executive Director to decrease the interest rate as part of the Final Financial Plan ("FFP") to less than 3%, if necessary, to satisfy IRS-related true debt test at the time of construction financing closing.

(d) Borrower shall provide adequate front desk coverage (at a level which is satisfactory to OCII and Department of Homeless and Supportive Housing staff) to support a well-functioning building.

(e) If the Project can support additional formerly homeless households, the Borrower will consider adding more homeless units in an amount not to exceed 25% (or 36 total units) of the total number of units.

(f) Borrower shall provide a more comprehensive services plan the TNDC service program; the program must include Trauma Informed service provisions, within the first six months of the start of construction.

(g) Borrower shall provide OCII a feasibility report of 826 Valencia, within six months after the start of MBS 6E construction, including but not limited to:

- o Detail of services to be provided by 826 Valencia;
- o Status of commitment of funding sources and amounts;
- o Status of sources needed for tenant improvements;
- o An operating proforma for the 826 Valencia facility at MBS 6E;
- o Submit an alternative to 826 Valencia programming; and,
- o Review of 826 Valencia's organizational capacity to operate the Mission Bay facility.

(h) Borrower shall provide an 826 Valencia status report with status of each item in 3.10(h) three months after the start of construction.

(i) OCII shall approve the commercial condo map prior to the submittal of a final map to the Department of Public Works, and OCII's approval is subject to Borrower's compliance with the MOHCD Commercial Space Policy.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, OCII will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to Loan closing contained in Section 4.3(b) within twenty-four (24) months of the date of this Agreement, OCII may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. OCII will authorize the Loan Closing upon satisfaction of the conditions in this Section:

(a) Borrower's obligations to authorize Loan Closing shall be subject to the following preconditions:

(i) Borrower shall have obtained the following Project financing, all on terms and in amounts acceptable to Borrower in its sole discretion: (1) Borrower shall receive a loan or loans for Project development costs, made from the proceeds of the sale of tax-exempt bonds allocated to Borrower by the California Debt Limit Allocation Committee; (2) Borrower shall receive an allocation of four percent (4%) federal low income housing tax credits by TCAC pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; (3) Borrower shall obtain an equity investment in Borrower from a tax credit investor; (4) Borrower shall obtain a permanent mortgage; and (5) Borrower shall obtain additional Project financing from any other required lenders (collectively, the "Project Financing");

(ii) the lenders and investors associated with the Project Funding are unconditionally prepared to close and fund their financing, with the exception of the permanent lender and HCD;

(iii) Borrower shall have executed the Ground Lease and (subject to such limitations or reservations as may be referenced in the Ground Lease) accepted the condition of the Site.

(b) OCII will authorize the Loan closing upon satisfaction of the following conditions:

(i) Borrower must have delivered to OCII fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the OCII: (i) the Note; (ii) this Agreement (in triplicate); (iii) an opinion of Borrower's counsel in form and substance reasonably acceptable to OCII; (iv) the Authorizing Resolutions; and (v) any other OCII Documents reasonably requested by OCII.

(ii) Borrower must have delivered to OCII Borrower's Charter Documents.

(iii) Borrower must have delivered to OCII insurance endorsements and, if requested by OCII, copies of policies for all insurance required under **Exhibit F** of this Agreement.

(iv) Borrower will have reviewed the terms of the loan with its tax counsel to determine the applicable interest rate necessary to satisfy the true debt test.

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, OCII will authorize the Escrow Agent to disburse Funds as provided in OCII's escrow instructions.

4.5 Disbursements.

(a) OCII's obligation to approve any expenditure of Funds on or after the Loan Closing Date is subject to Borrower's satisfaction of the following conditions precedent:

(i) Borrower must have delivered to OCII an Expenditure Request in form and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. Any request from Borrower to reallocate Funds between the line items or to change the budget limits for a line item from what is shown in the Table of Sources and Uses must be approved as follows: (i) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount up to ten percent (10%) of the Loan Amount in the aggregate may be made with the express written approval of OCII's Housing Manager; and (ii) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount that exceed ten percent (10%) of the Loan Amount may be made only with the express written approval of the OCII Executive Director. Reallocations of Funds from contingency line items to other line items shall not require the consent of OCII.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers Section 3.10, items (a) through (f), and items (g) and (h) for Expenditure Requests for the three month and six month construction draw requests, accordingly. OCII shall endeavor to either approve or disapprove each such Expenditure Request within 10 business days of receipt. In the event OCII disapproves an Expenditure Request OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall endeavor to fund all approved Expenditure Requests within five (5) business days of approval.

4.6 Schedule of Performance. Borrower must perform in accordance with the Schedule of Performance (**Exhibit L**). The Schedule of Performance may be modified at the request of the Borrower; however, any modification to the Schedule of Performance shall be at the reasonable discretion of the OCII Executive Director.

4.7 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. OCII will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "Retention"). Borrower may request disbursement of the aggregate amount of the Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by OCII: (a) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by OCII, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

After fifty percent (50%) of the construction of the Project is complete as determined by the OCII construction management staff, and upon Borrower's written request, OCII may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom OCII agrees to release the Retention (the "Early Retention Release Contractors") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the OCII assigned Construction Manager; (c) no liens or stop notices have been filed against the Project and no claims are pending; (d) the OCII determines that the contingency is in balance and adequate to complete the Project; and (e) the Project is on schedule.

4.8 Limitations on Approved Expenditures. OCII may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured; or (b) for disapproved, unauthorized or improperly documented expenses. OCII is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Selection Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with OCII's procurement requirements and procedures.

5.2 Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Site, Borrower must have delivered to OCII, and OCII must have reviewed and approved plans and specifications and the construction contract for the Project entered into between Borrower and Borrower's general contractor and approved by OCII (the "Construction Contract"). The plans approved by OCII must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by OCII, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. After completion of the Project, Borrower must retain the Approved Plans as well as "as-built" plans for the Project, the Approved Specifications and the Construction Contract, all of which Borrower must make available to OCII upon request.

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by OCII without the OCII's prior written consent. Borrower acknowledges that OCII's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless OCII agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose. OCII shall endeavor to provide written approval or disapproval of each change order and any equivalent amendment to the Table of Sources and Uses within fifteen (15) business days of receipt for request therefor.

5.4 Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Site, Borrower must deliver to OCII insurance endorsements and bonds as described in **Exhibit F**. At all times, Borrower must take prudent measures to ensure the security of the Site.

5.5 Notice to Proceed. No demolition, rehabilitation or construction may commence until Borrower has issued a written notice to proceed with OCII's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by OCII, Borrower must: (a) commence construction by October 1, 2016; (b) complete demolition, rehabilitation or construction by January 1, 2019 (the "Completion Date"), in substantial accordance with the plans and specifications approved by OCII, as evidenced by a temporary certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; and (c) achieve occupancy of Ninety Five percent (95%) of the Units by June 1, 2019.

5.7 Construction Standards. All construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by OCII and in accordance with all applicable codes.

ARTICLE 6 MARKETING.

6.1 Marketing Plan& Tenant Selection Plan. No later than thirty (30) days after the start of construction, Borrower must deliver to OCII for OCII's review and approval an affirmative marketing plan for initial and ongoing marketing of the Units (the "Marketing Plan") and a written Tenant selection procedure for initial and ongoing renting of the Units (the "Tenant Selection Plan"), all in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to OCII, as further described in **Exhibit T-1**. Borrower must obtain OCII's approval of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. The Developer may not start the outreach process until OCII provides its approval, which will occur no later than 10 business days after OCII receives the final draft Early Outreach Plan.

Borrower must submit a draft Marketing Plan and Tenant Selection Plan ("Marketing and Tenant Selection Plans") consistent with the requirements described in **Exhibits I, S, T-2**, and no later than 12 months prior to the projected Completion Date. 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 and the Tenant Selection Plan both as approved by OCII. Before marketing any Units, Borrower must provide OCII with updated implementation and contact information. The marketing process and timeline is further described in **Exhibit T-3**.

6.2 Affirmative Marketing Plan Requirements. Borrower's Marketing Plan must address how Borrower intends to market vacant Units and any opportunity for placement on the Waiting List, as defined in 6.5. The Marketing Plan shall include as many of the following elements as are appropriate to the Project, as determined by OCII and consistent with OCII and MOHCD policies and procedures related to applicants throughout the marketing process:

(a) Per the Mission Bay Affordable Housing Policy, adopted September 17, 1998 by Resolution 194-98, the Sponsor will be required to give occupancy preference to Agency Certificate of Preference Holders. In accordance with OCII funding requirements and HCD/AHSC funding requirements, preference shall be given to the following order for all eligible applicants: 1) holders of former Redevelopment Agency Certificates of Preference, 2) Neighborhood Resident Housing Preference (see below), 3) San Francisco residents or San Francisco workers, and 4) members of the general public.

Although OCII's authorized applying an Ellis Act Housing Preference to OCII affordable housing that preference is not permitted for project's with HCD funding such as AHSC. Because MBS 6E includes AHSC, EAHP would not apply.

In addition, the City has recently replaced the Ellis Act Housing Preference with the Displaced Tenant Housing Preference (DTHP). DTHP is also not allowed in projects receiving HCD funding. Even if the OCII Commission authorizes DTHP to be applied to OCII projects, it would not be applied at MBS 6E.

The City also recently adopted the Neighborhood Resident Housing Preference (“NRHP”). Should OCII authorize that NRHP be applied to OCII affordable housing developments, the Sponsor will include the NRHP after the Certificate of Preference Holder Preference as preferred population number two as shown above.

(b) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(c) Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(d) Notices to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(e) Notices to SFHA.

(f) Notices to MOHCD.

(g) To the extent practicable, without holding Units off the market, the community outreach efforts listed above must take place before advertising vacant Units or open spots on the Waiting List to the general public.

(h) An acknowledgement that, with respect to vacant Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

Notwithstanding anything to the contrary contained herein, any provision of the tenant selection criteria contained in Section 6.2 that is (i) deemed by a court to be a violation of Fair Housing Laws, or (ii) deemed by the Internal Revenue Service or the California Tax Credit Allocation Committee to be a violation of the IRS Tax Credit Rules shall immediately be deemed inapplicable.

6.3 Tenant Selection Plan Requirements: Borrower’s Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached **Exhibit I**. The Tenant Selection Plan must be kept on file at the Project at all times. Minimum income requirements shall not be more restrictive than requiring a minimum income that is two times the rent, and must include tenant based rent subsidies as income. Additionally ability to pay rent based on rental history of paying a similar or higher rent or other demonstrable methods of rent payment such as participation in money management shall be considered mitigating circumstances related to minimum income and must be evaluated prior to denial of housing.

6.4 Marketing Records. Borrower must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts.

6.5 Waiting List. Borrower's Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list in the chronological order of their application (the "Waiting List"). The Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by OCII. Borrower shall at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower shall first attempt to select the new Tenant for such Unit from the Waiting List, and shall only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List must be kept on file at the Project at all times.

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the Deed of Trust; (b) for any Unit that has been subject to a regulatory agreement with TCAC, for a period ending three (3) years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the 3-year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. If applicable, the requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.2 Borrower's Covenant.

(a) Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in **Section 7.3**. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in **Section 7.1**.

7.3 Rent Restrictions.

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* Rents may be adjusted annually based on changes to the rents published annually by TCAC, subject to the limitations below. The Rents for the initial year of lease-up of the Project shall be the rents published for such year by TCAC.

(b) Unless prohibited under any applicable Law or the rules and regulations governing any Project funding source, each residential lease must provide for termination of the

lease upon 120 days' prior written notice in the event that Borrower's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income.

(c) With the OCII's prior written approval and in accordance with maximum rent limitations set forth in Section 7.3(a) and all applicable restrictions, Rent increases for Units exceeding the amounts permitted under **Section 7.3(b)** may be permitted once annually in order to recover increases in approved Project Expenses, provided that: (i) 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 is necessary due to the expiration of Section 8 or other rental subsidies; and (ii) Rents for each Unit may in no event exceed the maximum Rent permitted under **Section 7.3(a)**. City approval for such Rent shall not be unreasonably withheld.

(d) Unless prohibited under any applicable Laws, if the household income of a Qualified Tenant exceeds the maximum permissible income during occupancy of a Unit, then, upon no less than thirty (30) days' prior written notice to the Tenant or as otherwise required under the Tenant's lease or occupancy agreement, Borrower may adjust the charges for Rent for the previously Qualified Tenant to be equal to thirty percent (30%) of the Tenant's adjusted household income. Rents charged under this provision may exceed the Maximum Rent permitted under **Section 7.3(a)**.

7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by OCII to substantiate the prospective Tenant's income. Certifications provided to and accepted by the SFHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at Borrower's principal office, and Borrower must file or cause to be filed copies thereof with the OCII promptly upon request by the OCII.

7.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The term of the lease must be for a period of not less than one (1) year. Borrower may not terminate the tenancy or refuse to renew any lease of a Unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for a Unit must be preceded by not less than thirty (30) days' written

notice to the Tenant specifying the grounds for the action. Unless prohibited by any applicable law, or the rules and regulations governing any Project funding source, the form of lease for any Unit that has received an allocation of tax credits must provide that the Tenant agrees that the lease may be terminated upon 120 days' notice if the Tenant's certified household income exceeds 120 percent of Median Income.

7.6 Nondiscrimination. Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35.

8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to OCII prior written approval of both the management agent and, at OCII discretion, the management contract between Borrower and the management agent, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. OCII hereby approves Tenderloin Neighborhood Development Corporation, as the management agent for the Project.

(b) OCII will provide written notice to Borrower of any determination that the contractor performing the functions required in **Section 8.1(a)** has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period, as determined by OCII, Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Section 8.1(a)**, subject to OCII approval.

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval. OCII will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, OCII may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements OCII deems necessary to ensure performance of the functions required in **Section 8.1(a)**.

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including the requirements of the CRL, OPA, and those Laws set forth in **Exhibit E**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by OCII from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that, if and after Borrower acquires Control of the Site, OCII may also conduct periodic on-site inspections of the Project provided access to the interior of any residential unit is preceded by no less than 48 hours' prior notice. Borrower must cooperate with

the monitoring by OCII and ensure full access to the Project and all information related to the Project as reasonably required by OCII.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of: the member or manager of its' general partner or the executive director, director of housing development, director of property management and/or any equivalent position within the sole member of the managing general partner, within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Commencing upon the Loan Closing Date, Borrower must submit monthly reports (the "OCII Monthly Project Update") describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The OCII Monthly Project Update must be submitted by email in substantially the form attached hereto as Exhibit M through submission of Forms 8609.

10.3 Annual Reporting.

Commencing upon the Completion Date, Borrower must file with OCII annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Surplus Cash and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred twenty (120) days after the end of Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as **Exhibit H** or as later modified during the Compliance Term.

10.4 Capital Needs Assessment. Borrower must deliver to OCII an updated CNA every ten (10) years after the Completion Date for approval. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to OCII the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower shall provide to OCII information or documents reasonably requested by

the City to assist in the City's review and analysis of the submitted reports. To the extent not otherwise prohibited by applicable Law, Borrower shall provide the following reports:

(a) within one hundred eighty (180) days after completion of rehabilitation or construction, a project completion audit performed by an independent certified public accountant identifying the sources and uses of all Project funds including the Funds;

(b) within thirty (30) days after completion of rehabilitation or construction, a report on use of minority and women owned enterprises including race/ethnicity or gender, the type of work and the dollar value of such work;

(c) within thirty (30) days after seventy-five percent (75%) occupancy, and one hundred percent (100%) occupancy, respectively, a report on the lease-up of the Units including number of leases by race, ethnicity and single-headed household by gender, also indicating the Units by income category; and

(d) within thirty (30) days after completion of rehabilitation or construction, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

10.6 Response to Inquiries. At the request of OCII, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.7 Delivery of Records. At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all previously prepared certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to OCII; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to Other Project Books and Records. In addition to Borrower's obligations under **Sections 2.4, 10.1, 10.2, and 10.3**, any other obligations to provide reports or maintain records in this Agreement or any other OCII Document, Borrower agrees that duly authorized representatives of OCII (which shall include but not be limited to MOHCD staff) will have access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.9**.

10.9 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the OCII's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees and payments and distributions of Surplus Cash in accordance with Section 3.5. Withdrawals from the Project Operating Account (including accrued interest) for any other purposes may be made only with the OCII's express prior written approval.

(b) Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. Borrower must provide copies of the records to the OCII upon request.

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the OCII designates in writing, Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15th day of each month following establishment of the Replacement Reserve Account, Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section.

The OCII may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary, which shall not be unreasonably withheld.

(b) Monthly deposits must equal one-twelfth of the sum of \$600 per unit, per year in accordance the Loan Committee approval dated June 6, 2014, or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan prior to the Loan Closing Date. Such additional deposits shall be made from available Surplus Cash.

(c) Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve the Project. Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the OCII's prior written approval which shall not be unreasonably withheld, conditioned or delayed.

12.2 Operating Reserve Account.

(a) Upon the later to occur of: (x) Borrower's tax credit equity investor's capital contribution made in connection with conversion of the Project's senior debt from construction to permanent debt, or (y) sixty (60) days after the Completion Date, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to three months of the Annual Operating Budget attached hereto as Exhibit B-2.

(b) No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to the original deposit amount in Section 12.2(a). Such additional deposits shall be made from available Surplus Cash.

(c) Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies, other expenses that vary seasonally or from month to month in the Project and reductions in operating subsidy. Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the OCII's prior written approval.

(d) Borrower may maintain reserves for commercial uses only to the extent that such reserves are generated by income generated by commercial uses. For purposes of this Section 12.2(d), "commercial uses" shall refer to any non-residential uses on the Site.

ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower, its partners or any party having a beneficial interest in the Project as Surplus Cash, but does not include reasonable payments for property management, asset management, partnership management or other services performed in connection with the Project.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-2 includes projections of annual Distributions of Surplus Cash. Exhibit B-2 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) OCII approval of the Annual Monitoring Report submitted for that year; (b) the OCII's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the OCII for the Project; and (c) the OCII's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement, including, but not limited to Section 3.5. OCII will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless OCII delivers its disapproval or request for more information to Borrower within thirty (30) business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

(a) when a written notice of default has been issued to Borrower by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or

(b) when OCII determines that Borrower's management agent has failed to comply with this Agreement and such failure has not been remedied; or

(c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or

(d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or

(e) if the Loan is to be repaid from Surplus Cash, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

(f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time OCII determines the Loan is out of balance) under any OCII Document.

13.4 Distributions of Surplus Cash. Distributions of Surplus Cash shall be made in accordance with Section 3.5.

ARTICLE 14 SYNDICATION PROCEEDS.

14.1 Distribution and Use. If Borrower is a limited partnership or limited liability company, and unless otherwise approved by OCII in writing, Borrower must allocate, distribute and pay or cause to be allocated, distributed and paid all net syndication proceeds and all loan and grant funds as specified in the Table. Borrower must notify OCII of the receipt and disposition of any net syndication proceeds received by Borrower during the term of this Agreement.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees in an amount not to exceed One Million and No/100 Dollars (\$1,000,000) to Developer for the predevelopment and construction periods of the Project to be paid in accordance with the Developer Fee Schedule attached hereto as **Exhibit N**, and an additional One Million Four Hundred Thirty Thousand and No/100 Dollars that is at-risk to the extent total development costs exceeds costs shown in the Final Financial Plan, for an amount not to exceed Two Million Four Hundred Thirty Thousand and No/100 Dollars (\$2,430,000); a total of One Million One Hundred Fifty Two Thousand Four Hundred Fifty Three and No/100 Dollars (\$1,152,453) will be contributed as General Partner Equity; and Four Hundred Seventeen Thousand Five Hundred Forty Seven and No/100 Dollars (\$417,547) will be included as Deferred Developer Fee, for an aggregate total of Four Million and No/100 Dollars (\$4,000,000) ("Developer Fees").

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by OCII; or (b) removal or replacement of a general partner of Borrower in accordance with the terms of Borrower's limited partnership agreement according to the following: General partner can be replaced by the Investor Limited Partner with the Investor Limited partner or its affiliate (the "Temporary Replacement General Partner"). Borrower 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), as a replacement General Partner satisfactory to OCII but Borrower requires additional time for the admission of a replacement General partner, OCII may approve an extension granting such additional time; OCII's approval shall not be unreasonably withheld or delayed; or (c) transfers of the limited partner or non-managing member interests in Borrower. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement. If there is a

conflict between Article 16.1 subsection (c), in the Agreement and Article 14.01 in the Ground Lease, Article 16.1 (c) of the Agreement shall prevail.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by OCII's Deputy Director for Finance and Administration of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in **Exhibit F** throughout the term of this Agreement at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document, including without limitation, Section 21.3 hereof, will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within fifteen (15) days after the date when due; or

(b) On or after the Loan Closing Date, any lien is recorded against all or any part of the Site or the Project without OCII's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, and the lien is not removed from title, or otherwise remedied to the OCII's satisfaction within thirty (30) days after Borrower's receipt of written notice from OCII to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any OCII Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from OCII to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by OCII, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any OCII Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and OCII has determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose;

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower ceases to exist in its present form (unless otherwise approved pursuant to Article 16) and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under **Section 16.1**; or

(g) Without OCII's prior written consent as required under the terms of this Agreement, Borrower assigns or attempts to assign any rights or interest under any OCII Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without OCII's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower except as permitted under **Article 16**; or

(i) Without OCII's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) Either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship,

liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) Borrower fails to make any payments or disbursements required to bring the Loan in balance after OCII determines that the Loan is out of balance; or

(n) On or after the Loan Closing Date and before a certificate of occupancy is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of fifteen (15) consecutive working days, and the cessation is not excused under **Section 19.3** ; or

(o) Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) Borrower is in default of its obligations under any other agreement entered into with OCII or the City and County of San Francisco, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, OCII may exercise any right or remedy available under this Agreement or any other OCII Document or at law or in equity. All of OCII's rights and remedies following an Event of Default are cumulative, including:

(a) OCII at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) OCII at its option may terminate all commitments to make Disbursements, or, without waiving the Event of Default, OCII may determine to make further Disbursements upon terms and conditions satisfactory to OCII in its sole discretion.

(c) OCII may perform any of Borrower's obligations in any manner, in OCII's reasonable discretion.

(d) OCII may terminate this Agreement.

(e) OCII, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action OCII deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project OCII deems appropriate.

(e) OCII may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in **Section 19.1(k)**, the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of OCII in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses OCII within ten (10) days of OCII's demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of OCII or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for OCII to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the OCII Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the OCII Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the OCII Documents related to alleged invalidity of the OCII Documents.

(c) No action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

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 Borrower: 1300 Fourth Street Associates, L.P.
c/o TNDC
215 Taylor Street
San Francisco, CA 94102

Attn: Don Falk

With a copy to:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053 170
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2 Required Notices. Borrower agrees to provide notice to OCII in accordance with **Section 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Property or ability to repay the Loan.

21.3 Notice and Cure Rights of Investor Limited Partner. If an Event of Default occurs, or an event that, with notice or the passage of time, or both, could constitute an Event of Default occurs, OCII shall give Investor Limited Partner the same written notice given to the Borrower as required herein. Investor Limited Partner shall have the right, but not the obligation, to cure defaults within the time periods provided to Borrower herein. With respect to any right of cure provided herein, performance of a cure by Investor Limited Partner shall have the same effect as would like performance by Borrower. Unless OCII is otherwise notified, notices to Investor Limited Partner shall be sent to the address provided in Section 21.1 above.

ARTICLE 22 HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. Except as disclosed in that certain Phase I Environmental Site Assessment, Block 7 West San Francisco, prepared by Iris Environmental and dated [_____], which Phase I was delivered to OCII, and all historic reports and records referenced therein, Borrower represents and warrants to OCII, to the extent applicable, that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency

or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

22.1 Borrower's Representations. Intentionally omitted.

22.2 Covenant. Unless OCII otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit its agents to cause the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to OCII notice of the discovery by Borrower of any Environmental Activity on the Site promptly following Borrower's discovery.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify OCII, the City, and their respective officers, agents and employees (individually or collectively, an "Indemnatee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in **Article 22** above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event (x) occurs on or after Loan Closing and (y) arises directly or indirectly from Borrower's (or its agents) activities on the Site; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or its agents; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee that relates to or arises out of the OCII Documents, the Loan, Borrower's (or its agents) activities on the Site or the Project, or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City; (f) the occurrence, before the expiration of the term of this Agreement, of any Environmental Activity arising directly or directly from Borrower's (or its agents) activities on the Site or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to Borrower's (or its agents) activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the termination of this Agreement relating to Borrower's (or its agents) activities on the Project or the Site; (h) any liability of any nature

arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 18.1 and 22.1**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. Any indemnification obligation of the Borrower and/or its partners under the OCII Documents shall not extend to repayment of principal or interest in the Loan. The sole recourse of OCII under the OCII Documents for repayment of the Loan shall be the exercise by OCII of its rights against the Project.

23.2 No Limitation. Borrower's obligations under **Section 23.1** are not limited by the insurance requirements under this Agreement.

ARTICLE 24 GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust and Declaration of Restrictions may be subordinated to other financing secured by and used for development of the Project (in each case, a "Senior Lien"), but only if OCII determines in its sole discretion that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by OCII and approval as to form by the City Attorney's Office, the Director of OCII or his/her successor or designee will be authorized to execute any approved subordination agreement without the necessity of any further action or approval.

24.2 No Third Party Beneficiaries other than City. Nothing contained in this Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between OCII and Borrower or Borrower's agents, employees or contractors. Notwithstanding the forgoing, OCII and Borrower hereby acknowledge and agree that as the intended assignee of OCII's rights under the OCII Documents, the City is a third party beneficiary under the OCII Documents and that the Investor Limited Partner is a third party beneficiary of the provisions in Sections 16.1 and 21.3 hereof.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against OCII by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower must include this requirement as a provision in any contracts for the development of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by OCII and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on OCII or Borrower.

24.5 OCII Obligations. OCII's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will OCII be liable to Borrower for any special or consequential damages arising out of actions or failure to act by OCII in connection with any of the OCII Documents.

24.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and OCII and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other OCII Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the OCII Documents, the delivery to OCII of documents, information or items under or in connection with any of the OCII Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any OCII Document or document required under any OCII Document.

24.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 Inconsistencies in OCII Documents. In the event of any conflict between the terms of this Agreement and any other OCII Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

24.10 Joint and Several Liability. If more than one person or entity signs this Agreement as Borrower, the obligations of such persons and entities shall be joint and several.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the OCII Documents to obtain OCII's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

24.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by OCII from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. The provisions of the OCII Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any OCII Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

24.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower.

24.20 Borrower's Board of Directors. Borrower or its managing general partner (or managing member of its general partner) shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in its bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Said board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("Work Product"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, pursuant to that certain Assignment of Work Product attached hereto as Exhibit O, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes OCII to file any financing statements OCII elects and deems necessary to perfect its security interest in the Work Product.

24.22 Works for Hire. If, in connection with this Agreement or the implementation of the Project, Borrower creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of OCII. If it is ever determined that any such creations are not works for hire under applicable law, Borrower hereby assigns all copyrights thereto to OCII, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to

effect such assignment. With the prior written approval of OCII, Borrower may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Borrower shall use commercially reasonable efforts to obtain all releases, assignments or other agreements from other persons or entities implementing the Project to ensure that OCII obtains the rights set forth in this Section.

24.23 Recourse. OCII's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.25 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Form of Tenant Income Certification
- D Intentionally Omitted
- E Contract Compliance Policies
- F Insurance Requirements
- G Lobbying/Debarment Certification Form
- H Form of Annual Monitoring Report
- I Tenant Selection Plan Policy
- J Form of Deed of Trust
- K Form of Declaration of Restrictions
- L Schedule of Performance
- M OCII Monthly Project Update Form
- N Developer Fee Schedule
- O Assignment of Work Product
- P Consent to Assignment of Work Product
- Q Legal Description
- R Final Financial Plan Confirmation Letter
- S Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities
- T-1 Early Outreach Plan Template
- T-2 Marketing Plan Template and Tenant Selection Plan Template
- T-3 Marketing Process and Timeline

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

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

Authorized by OCII Resolution No. _____,
dated August 16, 2016

BORROWER:

1300 4th Street, L.P., a California limited partnership

By: 1300 Fourth Street GP LLC., a California limited liability company,
its General partner

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A
Schedules of Income and Rent Restrictions*

Unit Type	Proposed Number of Units	Proposed Avg. Sq. Feet	Max. Rent	Max. % AMI	Target % TCAC AMI	Rent or Operating Subsidies
1BR	44	628	\$956	50%	50%	\$0
2BR	36	799	\$1,062	50%	50%	\$0
3BR	33	1,150	\$1,165	50%	50%	\$0
Total Units	113					

30% LOSP Units:

Unit Type	Proposed Number of Units	Proposed Avg. Sq. Feet	Max. % AMI	Target % City AMI	Rent or Operating Subsidies
1BR	7	628	30%	30%	LOSP
2BR	8	799	30%	30%	LOSP
3BR	8	1,150	30%	30%	LOSP
Total Units	23				

20% LOSP Units:

Unit Type	Proposed Number of Units	Proposed Avg. Sq. Feet	Max. % AMI	Target %City AMI	Rent or Operating Subsidies
1BR	2	628	20%	20%	LOSP
2BR	2	799	20%	20%	LOSP
3BR	2	1,150	20%	20%	LOSP
Total Units	6				

*The foregoing schedule represents the rent restrictions in place at the time of execution (2016) of this Agreement. The maximum rent levels shall be updated upon commencement of leasing of the Project, and the updated numbers shall be the applicable maximum rents for the first year of leasing of the Project.

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.

EXHIBIT B-1
Table of Sources and Uses of Funds

The Final Financial Plan, including the Table of Sources and Uses of Funds is pending and subject to approval by OCII Executive Director and MOHCD Director, prior to the Loan Closing Date.

EXHIBIT B-2
Annual Operating Budget

EXHIBIT B-3
20-Year Cash Flow Proforma

The Final Financial Plan, including the Annual Operating Budget is pending and subject to approval by OCII Executive Director and MOHCD Director, prior to the Loan Closing Date.

EXHIBIT C
Tenant Income Certification Form

EXHIBIT D
Intentionally Omitted

EXHIBIT E
Contract Compliance Policies

1. Equal Opportunity Policies. Borrower shall comply with OCII's Equal Opportunity Policies attached hereto as part of this Exhibit E which includes: Small Business Enterprise Agreement, Construction Workforce Agreement, and Prevailing Wage Provisions (Labor Standards):

(i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 43-2015, July 7, 2015) attached as Exhibit E-1;

(ii) Construction Workforce, attached as set forth in Exhibit E-2; and

(iii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985) attached as Exhibit E-3.

(iv) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997) attached as Exhibit E-4.

(v) Health Care Accountability Policy (adopted by Resolution No. 168-2001) attached as Exhibit E-5.

(vi) Minimum Compensation Policy (adopted by Resolution No. 168-2001) attached as Exhibit E-6.

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 Borrower 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, Borrower 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. Borrower 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, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower 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. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

4. Disability Access. Borrower 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.*). Borrower 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, Borrower must provide to OCII a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower 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. Borrower 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. Borrower 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) Borrower May Not Discriminate. In the performance of this Agreement, Borrower 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 Borrower, in any of Borrower'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 Borrower.

(b) Non-Discrimination in Benefits. Borrower 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) Borrower 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. Borrower 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. Borrower 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, Borrower 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. Borrower 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. Borrower further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform

each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Borrower agrees to provide to OCII the names of each member of Borrower's general partners' (or, if applicable, general partners' managing members) board of directors; Borrower's general partners' (or, if applicable, general partners' 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 Borrower's general partners (or, if applicable, general partners' managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower.

EXHIBIT – E-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 Office of Community Investment & Infrastructure (“**Successor 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%

A. **Trainee Hiring Goal.** In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
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

- IV. **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.

- V. **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.
- VI. **CERTIFICATION.** Only businesses certified by the Agency as SBEs will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).
- VII. **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.
- VIII. **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. The calculation of a concern's size includes the employees or receipts of all affiliates.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, personal services contracts and other similar contracts, and Operations 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.

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 XII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XII.L. have been met.

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.

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), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

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: (a) construction--\$14,000,000; (b) professional or

personal services--\$2,000,000 and (c) suppliers--\$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

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). 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).

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.

IX. 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 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. 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. Encouragement to 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. Use of Other 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 an SBE due to the failure or inability of the SBE to perform the required services or timely delivery the required supplies, then First Consideration should be given to another certified SBE, if available, as a replacement.

X. 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.

XI. 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 XII.

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 disagree 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.

XII. 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 fails 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 XII.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

XIII. AGREEMENT EXECUTION

Note: If you are seeking Agency certification as a SBE, you should fill out the “Application for SBE Certification”. If you are already an Agency certified SBE, you should execute the “SBE Eligibility Statement”.

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

EXHIBIT E-2

CONSTRUCTION WORK FORCE AGREEMENT

- I. **PURPOSE.** The purpose of the Agency and the Developer/Affordable Developer entering into this Construction Work Force Agreement is to ensure participation of San Francisco residents and equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the phases upon the Site covered by the Agreement.
- II. **WORK FORCE GOALS.**
- A. The goal set forth below is expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goal represents the level of San Francisco resident participation each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ San Francisco residents to perform construction work upon the Site at a level at least consistent with said goals.
 - B. Goal: **50 percent** participation of San Francisco residents in the total hours worked in the trade.
 - C. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Developer/Affordable Developer. New goals shall not be applied retroactively.
 - D. Although paragraph B establishes a single goal for participation of San Francisco residents, each Contractor is required to provide equal employment opportunity and to take equal opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Construction Work Force Agreement if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for participation of San Francisco residents, the Contractor may be in violation if a specific ethnic group is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.
 - E. Each Contractor is individually required to comply with its obligations under this Construction Work Force Agreement, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See Section IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.
 - F. The Contractor shall not use the goals or equal opportunity standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.
 - G. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the

U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

III. INCORPORATION. Whenever the Owner, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of \$10,000 the provisions of this Construction Work Force Agreement, including the applicable goals for San Francisco resident participation in each trade.

IV. EQUAL OPPORTUNITY REQUIREMENTS.

- A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Construction Work Force Agreement shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:
1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment.
 2. Provide written notification to CityBuild when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 3. Maintain a current file of the names, addresses and telephone numbers of each resident applicant and each resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 5. Develop on-the-job training opportunities and/or participate in training programs, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under Section IV.A.2 above.
 6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel at least once a year; and by posting the

company EEO policy on bulletin boards accessible to all employees at the Site.

7. , prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations under the DDA and this Construction Work Force Agreement with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.
 8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
 9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.
 11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 12. Conduct, at least annually, an inventory and evaluation of San Francisco resident personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.
 13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
 14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
 15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.
- B. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or

more of their equal opportunity obligations under Section IV.A.1 through 15. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section IV.A.1 through 15 provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

V. ADDITIONAL PROVISIONS.

- A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer San Francisco residents shall not excuse the Contractor's obligations under this Construction Work Force Agreement.
- B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.
- C. No employee to whom the equal opportunity provisions of this Construction Work Force 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 Attachment 9 of the DDA or this Schedule.
- D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

- A. Submission of electronic certified payrolls. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.
- B. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors and for certifying its accuracy.
- C. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the Agency for the applicable time period. Certified payrolls shall be prepared pursuant to this SBE Policy for the period involved for all employees, including those of subcontractors of all tiers, for all labor incorporated into the work.
- D. Contractor shall submit certified payrolls to the Agency electronically via the Project Reporting System ("PRS") selected by the Agency, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier must register

with PRS and be assigned a log-on identification and password to access the PRS.

- E. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
- F. For each Agency-Assisted project, the Agency will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
- G. Contractor shall comply with the requirements of this Article VI at no additional cost to the Agency or the Owner.
- H. The Agency will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of weekly certified payrolls.
- I. In addition to the above, Contractor shall comply with the requirements of California Labor Code Section 1776, or as amended from time to time, 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.
- J. The Contractor shall make the payroll records available to for inspection at all reasonable hours at the job site office of Contractor.
- K. Contractor is solely responsible for compliance with Labor Code Section 1776 or this SBE Policy. The Agency shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

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 V.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

1.1 **PRECONSTRUCTION MEETING.**

- A. Prior to the commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective construction work force composition and any problems that may be anticipated in meeting the construction work force goal.
- B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

1.2 **TERM.** The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in Attachment 9 of this DDA and this Construction Work Force Agreement, shall remain in

effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

I, hereby certify that I have authority to execute this Construction Work Force 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 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 and Phone Number

EXHIBIT E-3
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

(i) **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Office of Community Investment and Infrastructure (OCII) “Successor Agency” of which this Exhibit E and these Labor Standards are a part.

(ii) **All Contracts and Subcontracts shall contain the Labor Standards.**
Confirmation by Construction Lender.

- a. All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Borrower 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 Borrower 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.
- b. Before close of escrow under the Agreement and as a condition to close of escrow, the Borrower shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

(iii) **Definitions.** The following definitions shall apply for purposes of this Exhibit E:

- a. “Contractor” is the Borrower 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.

(iv)

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 §11.5) 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 with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.
- 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 Borrower 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 §11.8. The Executive Director of the Agency may require the Borrower 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 §11.4. 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.

(v) **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:
 - (i) The deduction is not otherwise prohibited by law; and
 - (ii) It is either:
 - 1) 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
 - 2) Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

- (iii) 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
- (iv) 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.

(vi) **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.

(vii) **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.

(viii)

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 Borrower 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.
- c.
 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.
- d. The Contractor shall make the records required under this §11.8 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.

- (ix) **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.
- (x) **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit I of the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.
- (xi) **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.
- (xii) **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §11.4 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 Borrower 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.
- (xiii) **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 §11.2 (“Non-Conforming Contract”); or by reason of any failure to submit the payrolls or make records available as required by §11.8 (“Non-Complying Contractor”), the Executive Director of the Agency may, after written notice to the Borrower 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 Borrower, 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 Borrower 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 Borrower, 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 Borrower 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.
- d. Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.
- e. 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.
- f. 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.

(xiv)

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 Borrower, or as appropriate to one or the other if the Borrower 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 §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. 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 Borrower 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.

(xv) **Non-liability of the Agency.** The Borrower 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 Borrower, 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.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

***EQUAL
OPPORTUNITY
NON-DISCRIMI-
NATION***

The contractor must take equal opportunity steps to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

***PREVAILING
WAGE***

You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.

APPRENTICES

Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.

PROPER PAY

If you do not receive proper pay, write the Office of Community Investment and Infrastructure, OCII
1 South Van Ness Ave. 5th Floor
San Francisco, CA 94103
or call **749-2546** and ask for
Mr. George Bridges
Contract Compliance Specialist

EXHIBIT E-4

Nondiscrimination in Contracts and Benefits

EXHIBIT E-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: Contract 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

EXHIBIT E-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

EXHIBIT F
Insurance Requirements

Subject to approval by the OCII's Risk Manager of the insurers and policy forms Borrower 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:

1. Borrower, Contractors.

(a) to the extent Borrower 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;

(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, including owned, 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 these minimum levels shall remain in force no less than 10 years; and

(e) crime policy or fidelity bond covering Borrower'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 City 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. This policy may be provided by the Tenant's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.

2. Property Insurance. Borrower 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 City property in the care, custody and control of Borrower 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 the City and all subcontractors as loss payees;

(b) after the 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 Ten Thousand Dollars (\$10,000) each loss, including the City 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 the City 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 the City and Borrower as dual obligees, or other completion security approved by the City in its sole discretion. The City has approved issuance of a Completion Guaranty by an affiliate of Borrower to Borrower's institutional lender as completion security.

3. Commercial Space. Borrower must require that all nonresidential tenants' liability insurance policies include Borrower and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Borrower must require commercial tenants 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 coverage 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.

4. General Requirements.

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

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

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

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

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

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

(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 Agreement, 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) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

EXHIBIT G
Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

1300 Fourth Street Associates, L.P, a California limited partnership

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT H

Form of Annual Monitoring Report

EXHIBIT I

Tenant Selection Plan

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),¹ **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

Application Process

- **Application Materials.** The housing provider's written and/or electronic application materials should:
 - Outline the screening criteria that the housing provider will use;
 - provide space(s) for the applicant to explain any conviction, eviction, tenancy issues or credit concerns and present evidence that he or she will be a suitable tenant;
 - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
 - be written in language that is clear and readily understandable.
- **First Interview.** In accordance with the housing provider policies, each applicant with the minimum eligibility requirements for housing unit shall be offered the opportunity for an interview.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.
- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing

¹See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§**12,955-12,956.2**; **Unruh Civil Rights Act, Civil Code § 51**; **California Disabled Persons Act, Civil Code § 51.4**; Dymally-Alatorre Bilingual Services Act, Gov't Code §**7290-7299.8**; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**

provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.

- **Limited English Proficiency Policy.** Throughout the application process, the housing provider must comply with the language access requirements for applicants with limited English proficiency.

Reasonable Accommodation and Modification Policy

Reasonable Accommodation: The application process should provide information about how an applicant may make a reasonable accommodation request. At any stage in the admission process, an applicant may request a reasonable accommodation, if the applicant has a disability and as a result of the disability needs a modification of the provider's rules, policies or practices, including a change in the way that the housing provider communicates with or provides information to the applicant that would give the applicant an equal chance to be selected by the housing provider to live in the unit.

Reasonable Modification: Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

Response to Request: The housing provider shall respond to a request for reasonable accommodation or modification within ten (10) business days. The response may be to grant, deny, or modify the request, or seek additional information in writing or by a meeting with the applicant. The housing provider will work with the applicant and referring agency to determine if there are ways to accommodate the applicant.

The housing provider shall grant the request if the provider determines that:

14. the applicant has a disability;
- reasonable accommodation or modification is necessary because of the disability; and
 - the request is reasonable (i.e., does not impose an undue financial or administrative burden or fundamentally alter the nature of the housing program.)

If the reasonable accommodation request is denied, the rejection must explain the reasons in writing. If the denial of the reasonable accommodation request results in the applicant being denied admission to the unit, the provisions of the section on Notice of Denial and Appeal Process apply.

Notice of Denial and Appeal Process

- The housing provider shall:

- promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
 - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
 - explain how the applicant can request an in person appeal to contest the decision;
 - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
 - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
 - provide referral information for local legal services and housing rights organizations;
 - describe the evidence that the applicant can present at the appeal;
- give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
- unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
- confine the subject of the appeal to the reason for denial listed in the notice;
- give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
- have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
- within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.

If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Credit Reporting Act and the Investigative Consumer Reporting Agencies Act impose additional notice requirements.

EXHIBIT J
FORM DEED OF TRUST

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

The 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
Attn: Housing Division

Space above for Recorder

(Assessor's Block 8711, Lot 226)

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**
(626 Mission Bay Boulevard North)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, by 1300 Fourth Street Associates, L.P., a California limited partnership ("Trustor"), whose address is 333 Pine Street, Suite 300, San Francisco, CA 94104, to _____ ("Trustee"), whose address is _____, for the benefit of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("Beneficiary"). This Deed of Trust is executed pursuant to a Loan Agreement by and between Trustor and Beneficiary dated as of August 5, 2014, as it may be amended from time to time (the "Agreement"), the provisions of which are incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

○ Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title and interest Trustor now has or may have in the future in the following (all or any part of the following, or any interest in all or any part of it, as the context requires, the "Property"):

1. that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the "Land"), on which Trustor intends to construct an affordable housing project with 200 residential units and approximately 10,000 square feet of retail space thereon and together with the Residential Space, the "Project"; and

2. all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

3. all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

4. all of Trustor's interest in and under that certain Ground Lease dated as of August 16, 2016, by and between 1300 Fourth Street Associates, L.P., as lessor, and Trustor, as lessee, including any options of any nature whatsoever, and any future interest of Trustor in fee title to the Land; and

5. except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

6. all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

7. all Loan funds, whether disbursed or not, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

8. all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

9. all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records relating to the application and allocation of any federal, state or local tax credits or benefits; and

10. all rents, revenues, issues, royalties, proceeds and profits, including prepaid rent and security deposits ("Rents"), from the Land and the Improvements, subject to: (i) Trustor's right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under **Section 5(d)**; and

11. all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

This Deed of Trust constitutes a security agreement under, and a fixture filing in accordance with, the California Uniform Commercial Code, as it may be amended from time to time. The filing of a financing statement pertaining to personal property may not be construed in any way as derogating from or impairing the lien of, or the rights or obligations of the parties under, this Deed of Trust.

○ Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

1. performance of all present and future obligations of Trustor set forth in the Agreement, specifically compliance with certain restrictions on the use of the Property recited in that certain Declaration of Restrictions executed by Trustor, dated as of the date of and being recorded concurrently with this Deed of Trust, as it may be amended from time to time, and the promissory note dated August 5, 2014 made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "Note") and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

2. payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of Thirty Five Million Seven Hundred Fifty Thousand and No/100 Dollars (\$35,750,000), according to the terms of the Agreement and the Note; and

3. payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

○ Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land subject to available insurance proceeds; to pay when due all claims for labor performed and materials

furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

(c) to provide, maintain and deliver to Beneficiary property and liability insurance as required under the Agreement and apply any insurance proceeds as provided below;

(d) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;

(e) to pay in accordance with the Agreement, but in each case prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto;

(f) should Trustor fail to make any payment or to do any act as herein provided, then, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(g) to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

○ Insurance and Condemnation Proceeds.

• Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

- Any condemnation award or insurance proceeds must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.

- If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Note and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.

- Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any OCII Document unless the default has been cured by the application or release of funds.

- Further Agreements. Trustor further acknowledges and agrees as follows:

Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

As additional security, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due, subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as Trustor has not defaulted in performance of the Secured Obligations.

Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in

violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

○ Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods ("Event of Default"):

L. Trustor's license to collect and retain Rents will terminate automatically.

M. Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

N. Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("Notice of Default"), and:

15. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

16. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

17. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

○ Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement. A copy of all notices delivered to Trustor hereunder shall be delivered to Trustor's Investor Limited Partner at the address provided in the Agreement.

"TRUSTOR:"

1300 FOURTH STREET ASSOCIATES, L.P,
a California limited partnership

By: _____,
a California limited liability company, its _____

Its: _____

By _____

[ALL SIGNATURES MUST BE NOTARIZED.]

Legal Description of the Site

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and is described as follows:

All that real property situated in the City and County of San Francisco, State of California, described as Lot 21, as said lot is shown on the Final Map Tract no. 3936, recorded February 22, 2006 in Book BB of Maps, at Page 54 through 58.

APN: 8711/21

EXHIBIT K
FORM DECLARATION OF RESTRICTIONS

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

The 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
Attn: Housing Division

Space above for Recorder

(Assessor's Block _____, Lot _____)

DECLARATION OF RESTRICTIONS
626 Mission Bay Boulevard North

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of August 16, 2016, by 1300 Fourth Street Associates, L.P., a California limited partnership ("Borrower"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII", including any successors or assigns)

RECITALS

A. OCII is making a loan (the "Loan") to Borrower to finance costs associated with the development of the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property") as low-income housing (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between OCII and Borrower dated as of August 2, 2016, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability and other use and occupancy restrictions contained herein commencing on the date on which a certificate of occupancy is issued for the Project, and continuing for fifty-five (55) years (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

AGREEMENT

Now, therefore, in consideration of the City's providing the Loan in accordance with the City Documents, Borrower agrees as follows:

A. Borrower must comply with the following regulatory obligations contained in this Section 1 (the “Regulatory Obligations”) through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

1. With the exception of the manager’s unit, Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	No. of Units	Maximum Income Level
1 Bedroom	44	50% TCAC AMI
2 Bedroom	36	50% TCAC AMI
3 Bedroom	33	50% TCAC AMI
1 Bedroom	7	30% SF AMI
2 Bedroom	8	30% SF AMI
3 Bedroom	8	30% SF AMI
1 Bedroom	2	20% SF AMI
2 Bedroom	2	20% SF AMI
3 Bedroom	2	20% SF AMI

2. The total amount for rent and utilities charged to a Qualified Tenant may not exceed:

- thirty percent (30%) of the applicable Median Income (for 50% units) published by TCAC set forth above, adjusted for household size; or

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

B. During the Compliance Term OCII may rely on the Deed of Trust and/or this Declaration, in OCII discretion, to enforce any of OCII’s, rights under the OCII Documents.

C. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property. In the event that Borrower fails to comply with the Regulatory Obligations to OCII’s satisfaction, in its

sole discretion, within thirty (30) days of Borrower's receipt of written notice from OCII to so comply, OCII at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Borrower shall pay OCII's costs in connection with OCII's enforcement of the terms of this Declaration, including, without limitation, OCII's reasonable attorneys' fees and costs.

D. Notice of Default. The undersigned Borrower requests that a copy of any notice of default hereunder be mailed to it at its address provided in the Agreement. A copy of all notices delivered to Borrower hereunder shall be delivered to Borrower's Investor Limited Partner at the address provided in the Agreement.

(document continues on following page)

"

1300 Fourth Street Associates, L.P, a California limited partnership

By _____
Its: _____

(Legal Description of the Property)

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and is described as follows:

APN:

Street Address: 626 Mission Bay Boulevard North

EXHIBIT L
Schedule of Performance

1. No.	2. Performance Milestone	Estimated or Actual Date	Contractual Deadline
A.	Prop I Noticing (if applicable)	<u>N/A</u>	
3. 1	Acquisition/Predev Financing Commitment	<u>completed</u>	
2.	Site Acquisition	<u>8/1/2016</u>	<u> </u>
3.	Development Team Selection		
a.	Architect	<u>Completed</u>	
b.	General Contractor	<u>Completed</u>	
c.	Owner's Representative	<u>Completed</u>	
d.	Property Manager	<u>Completed</u>	
e.	Service Provider	<u>Completed</u>	
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	<u>Completed</u>	<u> </u>
b.	Submittal of Design Development & Cost Estimate	<u>Completed</u>	
c.	Submittal of 50% CD Set & Cost Estimate	<u>Completed</u>	
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	<u>Completed</u>	
5.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	<u>Completed</u>	
b.	NEPA Environ Review Submission	<u>N/A</u>	
c.	CUP/PUD/Variances Submission	<u>N/A</u>	
6.	Permits		
a.	Building / Site Permit Application Submitted	<u>Completed</u>	<u> </u>
b.	Addendum #1 Submitted	<u>Completed</u>	
c.	Addendum #2 Submitted	<u>Completed</u>	
7.	Request for Bids Issued	<u>Completed</u>	
8.	Service Plan Submission		
a.	Preliminary	<u>10/1/2016</u>	<u>12/30/16</u>
b.	Interim	<u>6/1/2017</u>	<u>8/1/16</u>

c.	Update	<u>12/1/2017</u>	<u>2/1/18</u>
9.	Additional City Financing		
a.	Predevelopment Financing Application #2	<u>N/A</u>	
b.	Gap Financing Application	<u>7/15/2016</u>	
10.	Other Financing		
a.	MHP Application	<u>N/A</u>	
b.	Construction Financing RFP	<u>Completed</u>	
c.	AHP Application	<u>Completed</u>	
d.	CDLAC Application	<u>Completed</u>	
e.	TCAC Application	<u>Completed</u>	
f.	HUD 202 or 811 Application	<u>N/A</u>	
g.	Other Financing Application: AHSC	<u>Completed</u>	
11.	Closing		
a.	Construction Closing	<u>9/26/2016</u>	
b.	Permanent Financing Closing	<u>9/26/2016</u>	
12.	Construction		
a.	Notice to Proceed	<u>9/27/2016</u>	<u>10/31/2016</u>
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	<u>8/1/2018</u>	<u>10/1/2018</u>
13.	Marketing/Rent-up		
	Early Outreach Marketing Plan	<u>10/27/2016</u>	<u>11/30/2016</u>
a.	Marketing Plan Submission	<u>10/27/2016</u>	<u>11/30/2016</u>
b.	Commence Marketing	<u>10/27/2016</u>	<u>11/30/2016</u>
c.	95% Occupancy	<u>2/1/2019</u>	<u>4/1/2019</u>
14.	Cost Certification/8609	<u>10/2019</u>	
15.	Close Out MOH/OCII Loan(s)	<u>10/2019</u>	

EXHIBIT M
OCII MONTHLY PROJECT UPDATE FORM

Please complete this Monthly Project Update and email the Word document to the Project Manager, with a copy to Jeff White (jeffrey.white@sfgov.org), by the first of each month. Please focus on the relevant sections of project progress, and anticipate approvals that will be needed over the next 2 – 3 months from other departments. Use as much space as you need.

○ **THE PURPOSE OF THESE UPDATES IS TO TRACK PROJECT PROGRESS**

1. *during pre-construction*
2. *on non-construction issues during construction, and*
3. *after regular monthly construction meetings have ended*

Project Summary Information

Project:	
Sponsor:	
# Units:	
Target Population:	

• **Monthly Update**

Month Covered:	Date of Report:
Completed by:	
Estimated Construction Start Date (if changed from previous update, please explain):	
Estimated Total Development Cost (if changed from previous update, please explain):	
Projected OCII gap commitment (excluding MOH funding committed to date):	
Expected date when OCII gap funding needed: Month _____ Year _____	
Procurement and bidding (architect, consultants and contractors)	
Entitlements, permits and utilities (OCII, Planning Dept., DBI, SFFD, DPW, SFWD, MOD, PG&E and DRE)	
Major issues OCII needs to be aware of, including anything that may require OCII's involvement	

Any changes in the scope, cost, schedule or financing plan? (Attach updated budget and/or schedule if any have occurred since prior month.)

Significant milestones reached during the past month, and any planned to be reached during the coming month. Also include any projected milestones not reached during the last month and the reasons why. (Depending on the phase of the project, please cover efforts to obtain additional financing, relocation planning, service planning, marketing and rent-up, etc., as applicable for the project.)

FOR OCII STAFF USE ONLY

Major issues, delays, etc.

Items for discussion with Director

EXHIBIT N
Developer Fee Schedule

Project Management Disbursement Schedule	% of Project Mgmt Fee	Amount
At Acquisition or closing of preconstruction financing	4%	\$100,000
During or at end of Predevelopment	8%	\$191,500
During or at End of Construction	30%	\$514,100
At Project Close Out	8%	\$194,400
At Risk	50%	\$1,430,000

EXHIBIT O
Assignment of Work Product

FOR VALUE RECEIVED, 1300 Fourth Street Associates, L.P. a California limited partnership (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the 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, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and Mithun Solomon and any other contracts entered into between Borrower and any licensed design profession or engineer (“Architect” or “Engineer”), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architects and Engineers for the account of Borrower in connection with the development of 143 units of rental housing at 626 Mission Bay Boulevard North (also known as Mission Bay South Block 6 East), San Francisco, California (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$35,750,000.

Borrower and Architect or Engineer, by executing the Consent to this assignment, agree that Agency does not assume any of Borrower’s obligations or duties concerning the Agreement and the Plans, including, but not limited to, the obligation to pay for the preparation of the Agreement and the Plans, until and unless Agency shall exercise its right hereunder.

Borrower hereby irrevocably constitutes and appoints Agency as its attorney-in-fact to demand, receive, and enforce Borrower’s rights with respect to the Agreement and the Plans, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Agency with the same force and effect as Borrower could do if this Assignment had not been made.

Borrower hereby represents and warrants to Agency that no previous assignment of its interest in the Agreement and the Plans has been made, and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Agreement and the Plans so long as this Assignment is in effect. This Assignment shall automatically terminate without further action required upon Loan Closing.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Borrower and Agency.

(document continues on following page)

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on August ____, 2016.

BORROWER:

By: 1300 Fourth Street, L.P., a California limited partnership

By: _____

Its: General Partner

By: _____

Its: Sole Member / Manager

By: _____

Its: _____

EXHIBIT P
Consent to Assignment

In accordance with the terms of that certain Assignment of Architects and Engineers Agreement Plans and Specifications dated on or about the date hereof, 1300 Fourth Street Associates, L.P., a California limited partnership ("Borrower") assigned to the Successor Agency to the 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, ("Agency") all of its rights, title and interest in and to that certain architect's agreement ("Agreement") entered into by and between Borrower and Santos Prescott Architecture ("Architect/Engineer") and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architect/Engineer and others for the account of Borrower in connection with the development of 143 units of rental housing at 626 Mission Bay Boulevard North (also known as Mission Bay South Block 6 East), San Francisco, California ("Project"). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$35,750,000.

The undersigned has prepared the Plans, hereby consents to the above Assignment and represents that he/she has received payment in full for services rendered for the Plans and accordingly hereby waives his/her lien rights, if any, with respect to the Plans. The undersigned also agrees that in the event of a breach by Borrower of any of the terms and conditions of the Agreement or any other agreement entered into with the undersigned in connection with the Plans, that so long as Borrower's interest in the Plans is assigned to Agency, it will give written notice to Agency of such breach. Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the Agency to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Borrower under any of the documents or instruments entered into in connection with said Note, the undersigned, at Agency's request, shall continue performance under the Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Agreement for all services rendered on Agency's behalf.

Dated: August 16, 2016

_____ ARCHITECT:

Mithun Solomon

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title:

EXHIBIT Q
Legal Description

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and is described as follows:

APN:

Street Address: 626 Mission Bay Boulevard North

EXHIBIT R

Final Financial Plan Confirmation Letter

To be attached on or before the Loan Closing Date

EXHIBIT T-1
Early Outreach Plan Template

City and County of San Francisco
Mayor's Office of Housing and Community Development (MOHCD)

Early Outreach Plan for Initial Rental & Sale Units (2015 edition)
Projects Approved by the Office of Community Investment and Infrastructure (OCII)

This plan is subject to City review within 10 business days from the date it is received and complete. Please set all dates in this plan so that no date commences sooner than 30 working days before the date of your plan submission.

Please complete and return this form in computer "Word" document format so that our office may track changes directly onto the document. The approval process typically involves a back-and-forth process between OCII/MOHCD and the developer's representative. Please do not submit incomplete plans. This plan may be updated from time to time at the discretion of MOHCD. Thank you.

Special Note: Projects initially approved by OCII have been transferred to MOHCD for marketing and oversight.

I. General Information *(Suggestion: Cut and paste sections I - VIII from this form into your marketing plan. This is the exact information required to be included.)*

I/We agree that ("**Developer's Name and/or Service Provider**") goal is to ensure that all applicants are screened using consistently applied, fair criteria, to provide a desirable, well-maintained and affordable place to live for an economically, racially, and ethnically integrated resident population, while complying with the provisions of any federal, state, or local law prohibiting discrimination in housing on the basis of race, religion, sex, color, family status, disability status, national origin, marital status, ancestry, gender identity or sexual orientation, source of income, or HIV/AIDS status.

In order to inform the public, owners, and prospective tenants/buyers about federal fair housing laws and affirmative fair marketing procedures per the OCII Development Agreement, ("**Developer's Name and/or Service Provider**") will include the Equal Housing Opportunity logotype and/or slogan, and a logotype indicating accessibility to the disabled, in all press releases, solicitations, and program information materials.

Today's Date	
Proposed Outreach Launch Date (Must be no sooner than 30 days from the date of first submission)	
Name of Building	
Property Address (Street address used)	

for marketing and mailing to new renters/buyers)	
Property Address as Stated in Planning Approval	
Planning Motion Number	
Notice of Special Restrictions Document #, Disposition and Development or Owner Participation Agreement # or Loan Agreement #	
Name of City and Co. of SF Planner	

The following developer contact information for is for internal use only.

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

Name of Marketing Company	
Marketing Agent	
Marketing Agent Address	
Marketing Agent Phone	
Marketing Agent Email	

Date of Building Permit Issuance	
Expected Issuance Date of Temporary Certificate of Occupancy	
Expected Issuance Date of Final	

Certificate of Occupancy	
Date on Which You Expect Affordable Units to Begin Occupancy	
Date on Which You Expect All Affordable Units to Complete Occupancy	

The section below applies to rental projects only.

List all Sources of Government Financing for the Project (e.g. CDLAC, TCAC, HUD Loan, Infill Grant, etc.)	
If there is a source of government financing, how long and at what % Area Median Income must your units be restricted as rental units under this financing?	
Are your units condo mapped (i.e. subdivided) through the Department of Real Estate?	
Do you intend to convert to ownership units in the future? Please explain.	

II. Overall Building Composition

Total # Units in Building (including affordable)	
Number of Residential Floors in the Building	

III. Market Rate Units (if applicable)

Unit Type	Total #
SRO	
Studio	
Jr. 1 Bedroom	
1 Bedroom	
1+ Bedroom	

2 Bedroom	
2+ Bedroom	
3 Bedroom	
3+ Bedroom	
4 Bedroom	
Other	

- IV. Affordable Units

Total # affordable (only) Units in Building	

- AFFORDABLE UNITS BY BEDROOM SIZE

Unit Type	Total #	Minimum Household Occupancy Size	*Maximum Household Occupancy Size
SRO			
Studio			
Jr. 1 Bedroom			
1 Bedroom			
1+ Bedroom			
2 Bedroom			
2+ Bedroom			
3 Bedroom			
3+ Bedroom			
4 Bedroom			
Other			

*Please note that children under 6 years do not count toward household size.

- DETAILED DESCRIPTION OF AFFORDABLE UNITS BY BEDROOM SIZE

Refer to Area Median Income Levels Set by MOHCD for Table Below.

Unit #	Bedroom Count	Bath Count	Square Feet	Unit Accessible/ Adaptable (including Visually or Hearing Impaired)	% Area Median Income Limit	For rent units: Min. Monthly Household Income Required (ex: 2 or 2.5 times rent)	For sale units: Min. Down payment Required (BMR program requires only 5%)

V. Renter/Buyer Outreach

I/We understand that it is our responsibility to read and understand the rules of the Regulatory Agreement(s) for this development as well as the marketing and outreach policies set forth by the City and County of San Francisco Mayor's Office of Housing and Community Development.

At least 18 months for For-Rent and For-Sale, prior to initiation of the Affirmative Marketing Obligations or other public advertising and marketing of the Residential Units in the Project, Developer shall provide Occupancy Priority holders (based on a list developed by Developer in and MOHCD) with advance notice (the "Advance Notice") that affordable and/or market rate housing opportunities in the Project will become available (the "Advance Notice Period"). This Advance Notice will include a description of the housing, income qualifications for tenancy or ownership and the name of Developer representative who can answer questions and provide additional information about the qualification process.

The outreach materials should include the following information as applicable:

1) Occupancy Preferences (Verify with MOHCD)

Preference will be given to (insert, project-specific preference chart, per the project's Development Agreement, Loan Documents and/or Ground Lease):

SAMPLE BELOW:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: a. Western Addition b. Hunters Point c. Residential G
3	All Others

2) Area Median Income Levels (Verify with MOHCD)

[PLEASE INSERT THE INCOME LIMIT TABLE YOU WILL USE AND INSERT CURRENT INCOME LIMITS INTO THE TABLE BELOW]

_____ % of Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco 201_____

A one person household can make no more than \$ _____

A two person household can make no more than \$ _____

A three person household can make no more than \$ _____

A four person household can make no more than \$ _____

A five person household can make no more than \$ _____

A six person household can make no more than \$ _____

A seven person household can make no more than \$ _____

(Please visit www.sfmohcd.org for larger households.)

3) Description of the Project

A description of the total number of Affordable Units in the Project;

A description of the building amenities;

List of organizations and/or workshop dates to assist prospective applicants;

Anticipated occupancy date

COP Postcard Template

Coming Soon!

Affordable Homes for Rent or Sale in San Francisco

Exterior Photo	Interior Photo

2 two-bedroom + 3 three-bedroom rental or ownership units available at Lakeside Village, 1125 Laurel Court, San Francisco, CA 94124

- New Units with Modern Design + Amenities coming Summer, Spring, Fall, Winter YEAR
- (5) Affordable units available to households at XX% of median income
- Renter or Buyer households must earn no more than the income levels listed below:

Side Two:

All applicants are encouraged to apply. Lottery preference will be given to Certificate of Preference and Ellis Act Housing Preference holders* and households that live or work in San Francisco.

**Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. Ellis Act Housing Preference holders are long term San Francisco tenants who were evicted because of the Ellis Act. Contact 415-701-5613 for more information.*



**INSERT YOUR ACCESS TO HOUSING PROVIDER INFORMATION HERE (NAME, ADDRESS, AND PHONE NUMBER)
PLEASE INCLUDE UPCOMING DATES OF THEIR RENTAL COUNSELING WORKSHOPS & A LINK TO THEIR WEBSITE**

Please visit www.yourwebsite.com for a list of upcoming rental counseling workshops. You can also contact Smith Rentals at (415) 555-1000 or john@smithrentals.com for more information on the units.

Units are monitored through the San Francisco Mayor's Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit www.sfmohcd.org for program information.

•

- **VI. Marketing Strategy**

1) Work with a qualified organization and/or consultant to assist with counseling:

The scope of work should include the services below:

Rental Scope of Work:

To provide comprehensive outreach and marketing services integrating with education, individualized support, group workshops, and peer-support counseling to ensure candidates have the opportunity to apply and secure housing.

List of services include:

- Outreach and affirmative marketing
- Housing placement
- Budgeting and Asset Building
- Credit counseling which should address any credit issues
- Housing education
- One-one-one follow-ups
- Tenant counseling
- Financial education including credit building techniques
- Rental application assistance and preparation
- Eviction prevention
- Housing workshops
- Workshops for application process, income eligibility, security deposit requirements, credit checks and criminal background checks
- Housing rights
- Fair housing rights
- Landlord tenant relations and issues

Please provide any additional scope or recommendations that will help find and prepare prospective residents.

•

SF LGBT Community Center 865-5555

Veteran's Equity Center 415-255-2347

San Francisco Housing Development Corporation 415-822-1022

Mission Economic Development Agency 415-282-3334

Consumer Credit Counseling of San Francisco 800-777-7526

Asian, Inc. 415-928-5910

Ownership Scope of Work:

To provide comprehensive outreach and marketing services integrating with education, individualized support, group workshops, and peer-support counseling to ensure candidates have the opportunity to apply and secure housing.

List of services include:

- Individual pre-purchase counseling housing workshops
- One-one-one follow-ups
- Budgeting and Asset Building
- Credit counseling which should address any credit issues
- Housing education
- Financial education including credit building techniques
- Homebuyer application assistance and preparation
- Workshops for application process, income eligibility, down payment requirements, credit checks, etc.
- Housing rights
- Fair housing rights

Please provide any additional scope or recommendations that will help find and prepare prospective residents.

www.homeownershipsf.org or (415) 202-5464

Outreach Materials (i.e. post cards)

I/We understand that our project must provide a post card **as a part of this submission** for the AFFORDABLE units available that includes the following information. (Please see sample template at the end of this document for a template.)

- “Affordable Rental” indication
- Reference to MOHCD Affordable Rental program
- Certificate of Preference and Ellis Act Housing Preference indication (if applicable)
- Maximum and minimum qualifying incomes
- Rent Levels
- Description of units
- Exterior and interior photo of the development
- Information on information sessions
- Information on how to obtain an application
- Fair Housing logo
- Equal Opportunity logo
- Your website

Outreach to Certificate of Preference Holders

- I/We understand that we are responsible for marketing our Affordable Rental units to Certificate of Preference holders. Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. I/We understand that we are not responsible for direct marketing to Ellis Act Housing Preference holders. For more information, applicants may contact 415-701-5613.

I/We understand that I/we shall provide post cards for the mailing of an affordable housing announcement to all Certificate of Preference holders. We are responsible for printing the post

cards using the information provided by MOHCD. MOHCD shall coordinate the mailing and invoice the developer for the full cost of the first class mailing, including postage and labels.

-
- **VII. Application/Selection Process and Timeline**

I have read the City and County of San Francisco's Addendum to Marketing (Exhibit S) and understand the application, selection, preparation and review and Lottery process.

[Please complete the following timeline as part of your Plan]

Timeline of Entire Process (add info as needed)

TASK	TIME FRAME	DATE
OCII provides developer with: • Early Outreach Plan Marketing Plan (which includes Tenant Selection Criteria) ("Plans") template • Fair Chance Ordinance link on HRC website • Operational Rules for Lotteries & Lease Up (an exhibit of the Loan Agreement) • List of MOHCD's rental readiness service providers who can assist potential applicants or Homeownership SF if for-sale project	Developer will have template prior to or by construction commencement. Develop must submit <i>draft</i> Early Outreach and Marketing Plan 30 days after construction commencement.	
Upon receipt of draft Outreach Plan, OCII notifies MOHCD Team that outreach plan is forthcoming.	At least 1 month after construction commencement	
OCII reviews Outreach Plan for accurate project information, partnering with a community outreach organization, and consistency with template.	OCII will provide approval no later than 10 business days after final draft is received.	
MOHCD reviews and approves Outreach Plan	Approval is provided within 5 business days.	
Early Outreach begins: • MOHCD monitors developer's progress on Early Outreach timeline and activities • Developer submits monthly reports on Early Outreach activities to MOHCD		
MOHCD does 1 st of 5 COP mailings	3 months after construction commencement	
Developer submits draft Marketing Plan. Upon receipt of draft Marketing Plan, OCII notifies MOHCD Team that the tenant selection and marketing plans are forthcoming.	12-months prior to the anticipated Temporary Certificate of Occupancy ("TCO").	
OCII reviews Plan for consistency with development agreements (loan agreements, VDDAs), including appropriate rent ranges, AMIs and occupancy preferences, engages with developer if any discrepancies, and confirms with MOHCD first draft of plan is consistent with applicable agreement, and sends to MOHCD.	Within 30 days of receipt of plan (no later than 45 days after receipt of draft plan) OCII sends to plan to MOHCD	
OCII and MOHCD meet with leasing agent and Access to Housing Agency to go over all marketing, lease-up & lottery processes	After draft Marketing Plan(with the Tenant Selection Criteria) are approved and before marketing plan is finalized and approved	
OCII and MOHCD approves revised draft Plans & transmits Marketing Plan approval to developer	Within 60 days after the receipt of the Marketing Plan	
MOHCD does 2 nd of 5 COP mailings	12 months before TCO completion	

MOHCD does 3 rd of 5 COP mailings	10 months before TCO	
MOHCD does 4 th of 5 COP mailings	8 months before TCO	
MOHCD requests any/all Plan updates from developer with finalized dates and actual pricing	7 months before lease up/sales	
Developer submits final plan and COP postcard to MOHCD • MOHCD does 5th of 5 COP mailings • Notice of Application Workshops	30 day period, 6 months before lease up/sales	
For projects where lease-up begins between Jan-May: If a new AMI has been published since the first draft of the Marketing Plan was created, then OCII negotiates with developer to decide if the new AMI & Rent limits should be used in the final version of the marketing Plan. Alert MOHCD if the AMI numbers are revised.	Same 30 day period as above	
MOHCD provides MOHCD approved plan to OCII for final approval	Same 30 day period as above	
Developer sends advertisements to OCII for review and approval.		
Marketing Period begins. MOHCD does COP mailing and posts to website, housing alert system; Front Desk	90 days before lease-up/sales	
Marketing period	28 days (rent) 45 days (own)	
Developer provides MOHCD with applicant lists on a weekly basis. MOHCD confirms EAHP & COP	<u>Weekly</u> during marketing period	
OCII attends consumer information session (if applicable)	If/when scheduled	
OCII fields consumer complaints and works with leasing agent to address pre lottery issues	As needed	
Developer provides MOHCD with final list of applications that are assigned lottery numbers	One week before lottery date	
Lottery – MOHCD and assists developer	Two weeks after marketing period ends	
Developer provides MOHCD with final lottery lists that have been reconciled with the applicant list for approval to begin lease-up	ASAP after lottery	
Developer will submit lottery list to MOHCD who will confirm the list within 7 business days.		
Lease-up/sales begins • The appeals process needs to be included on the application, next to the signature line.		
If applicant files an appeal: • Developer hears the appeal • OCII staff needs to know the appeal occurred • Before 2nd denial is sent OCII/MOHCD need to be included in the process		
Developer submits weekly lease-up/sales reports to MOHCD using spreadsheet provided by MOHCD	Weekly during lease up	
MOHCD reviews all denials and confirms Developer is correct in calculations and following marketing procedures		
MOHCD alerts OCII to problems/concerns with lease-up		
OCII addresses lease-up issues with Developer		
OCII addresses lease-up issues with consumers and hears denial appeals after initial review by MOHCD.		
Developer provides MOHCD with a clean copy of the Final Waitlist		

VIII. Document Review

I/We certify that I/we and all agents involved in the process of renting affordable units have read Exhibit S.

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

Exhibit T-2
Marketing Plan Template and Tenant Selection Plan Template

City and County of San Francisco
Mayor's Office of Housing and Community Development (MOHCD)

Marketing and Resident Selection Plan for Initial Rental Units (2015 edition)
Projects Approved by the Office of Community Investment and Infrastructure (OCII)

This marketing and tenant selection plan is subject to City review within 10 business days from the date it is received and complete. **Please set all advertising dates in this plan so that no date commences sooner than 30 working days before the date of your plan submission.**

Please complete and return this form in computer "Word" document format so that our office may track changes directly onto the document. The approval process typically involves a back-and-forth process between OCII/MOHCD and the developer's representative. Please do not submit incomplete plans. This marketing and tenant selection plan may be updated from time to time at the discretion of MOHCD. Thank you.

Special Note: Projects initially approved by OCII have been transferred to MOHCD for marketing and oversight.

I. General Information *(Suggestion: Cut and paste sections I - VIII from this form into your marketing plan. This is the exact information required to be included.)*

I/We agree that ("**Developer's Name and/or Service Provider**") goal is to ensure that all applicants are screened using consistently applied, fair criteria, to provide a desirable, well-maintained and affordable place to live for an economically, racially, and ethnically integrated resident population, while complying with the provisions of any federal, state, or local law prohibiting discrimination in housing on the basis of race, religion, sex, color, family status, disability status, national origin, marital status, ancestry, gender identity or sexual orientation, source of income, or HIV/AIDS status.

In order to inform the public, owners, and prospective tenants about federal fair housing laws and affirmative fair marketing procedures per the MOHCD Loan Agreement, ("**Developer's Name and/or Service Provider**") will include the Equal Housing Opportunity logotype and/or slogan, and a logotype indicating accessibility to the disabled, in all press releases, solicitations, and program information materials.

Today's Date	
Proposed Marketing Launch Date (Must be no sooner than 30 days from the date of first marketing plan submission)	

Name of Building	
Property Address (Street address used for marketing and mailing to new renters)	
Property Address as Stated in Planning Approval	
Planning Motion Number	
Notice of Special Restrictions Document #, Disposition and Development or Owner Participation Agreement # or Loan Agreement #	
Name of City and Co. of SF Planner	

The following developer contact information for is for internal use only.

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

Name of Marketing Company	
Marketing Agent	
Marketing Agent Address	
Marketing Agent Phone	
Marketing Agent Email	

Date of Building Permit Issuance	
Expected Issuance Date of Temporary	

Certificate of Occupancy	
Expected Issuance Date of Final Certificate of Occupancy	
Date on Which You Expect Affordable Units to Begin Renting	
Date on Which You Expect All Affordable Units to Complete Renting	

List all Sources of Government Financing for the Project (e.g. CDLAC, TCAC, HUD Loan, Infill Grant, etc.)	
If there is a source of government financing, how long and at what % Area Median Income must your units be restricted as rental units under this financing?	
Are your units condo mapped (i.e. subdivided) through the Department of Real Estate?	
Do you intend to convert to ownership units in the future? Please explain.	

II. Overall Building Composition

Total # Units in Building (including affordable)	
Number of Residential Floors in the Building	

III. Market Rate Units (if applicable)

Unit Type	Total #	Rent Range of Market Rate Units
SRO		
Studio		

V. Renter Qualifications

I/We understand that it is our responsibility to read and understand the rules of the Regulatory Agreement(s) for this development as well as the marketing and outreach policies set forth by the City and County of San Francisco Mayor's Office of Housing and Community Development.

[You must attach your resident selection criteria document and building application for our review in addition to completing the section below. The resident selection criteria must also specify any preferences or program-specific resident selection criteria applicable to the project, such as lottery preferences, and/or Access Point referrals from the Human Services Agency or Department of Public Health for Local Operating Subsidy Program units, etc. The resident selection criteria must also incorporate references to the Fair Chance Ordinance and how criminal background checks will not be used until after all other qualifications have been reviewed. The resident selection criteria should also include the following information as applicable:

4) Applicant Eligibility Criteria

All applicants must qualify based upon:

- Insert project specific eligibility information (household size, income, age, etc.)
- Commitment to use the unit as the principal residence.
- Commitment to participate in rental restrictions and compliance recertification.

5) Occupancy Preferences (Verify with MOHCD)

Preference will be given to (insert, project-specific preference chart, per the project's MOHCD Loan Documents and/or Ground Lease):

SAMPLE BELOW:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: d. Western Addition e. Hunters Point f. Residential G
3	All Others

Applicants will be required to indicate on their application if they believe they qualify for a preference, and must submit documented proof along with their application submission. Failure to provide proof may result in the preference not being granted. MOHCD staff will confirm all Certificate of Preference holders. See Exhibit S for Operational Rules for Residential Certificate of Preference Holder and Ellis Act Housing Preference Priority.

Notes regarding preferences:

- Only one form of documented proof is required.
- Only one adult household member must be eligible for a preference.
- Any preference claim found to be false may result in the reordering of the application as if it had never requested or received a preference, or in the case of proven fraud by MOHCD, withdrawal of the application.

During ongoing lease-ups of units, Certificate Holders will receive priority on the waitlist. See “Certificate of Preference” section for more information.

6) **Local Operating Subsidy Program**

[If your project is receiving Local Operating Subsidy Program (“LOSP”) funds from either the Department of Public Health or Human Services Agency for designated LOSP units, then describe the total number of units and number of units receiving LOSP subsidy along with the referral process for those units, also please insert the following language:]

“Certificate of Preference Holders who meet eligibility for (Insert City department providing LOSP funds)’s LOSP units will have priority status over other LOSP applicants. Certificate holders will be required to apply for the LOSP units by going through the (Insert DPH or HSA) designated Access Sites/Points for LOSP eligibility screening.”

[PLEASE INSERT THE ANNUAL INCOME LIMIT YOU WILL USE AND INSERT INCOME LIMITS INTO THE TABLE BELOW]

_____ % of Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco 2015

A one person household can make no more than \$ _____
A two person household can make no more than \$ _____
A three person household can make no more than \$ _____
A four person household can make no more than \$ _____
A five person household can make no more than \$ _____
A six person household can make no more than \$ _____
A seven person household can make no more than \$ _____
(Please visit www.sfmohcd.org for larger households.)

7) **Basis of Denial for Lottery Winners:**

[Please list the reasons why you would deny AFFORDABLE lottery winner (e.g. evictions, credit issues, etc.). Please be specific with each ground for denial, stating the specific standard within each denial rather than the general standard.]

Basis of Denial for Lottery Winners:

Ability to pay rent standard – [please complete in detail] Credit Standard – [please complete in detail] Rental History Standard – [please complete in detail] Criminal History Standard must be compliant with Fair Chance Ordinance– [please complete in detail] Maximum Household Size Standard – [please complete in detail] Other – [please complete]

•
I/we confirm that the building selection criteria rules that we will apply to the Affordable Rental applicants are the same as or more lenient than those applied to applicants for our market rate units.

8) **Mitigating Circumstances:**

[The Developer should describe its mitigating circumstances policy and procedures.]

9) Reasonable Accommodations:

[Your plan should provide instructions on filing a Request for Reasonable Accommodation; guidelines for considering and evaluating a Request for Reasonable Accommodation, and the appeal process.]

10) Grievance Policy

The Grievance Policy will be available to all applicants of (“Project Name”). (See below for a sample Grievance Policy).

SAMPLE GRIEVANCE POLICY:

“If, at any time during the application process, you feel that your rights, duties, welfare, or status are or may have been adversely affected by (“Developer’s Name and/or Service Provider’s”) action or failure to act, you may submit your grievance for informal or formal review. You may call (insert phone #) and leave a voicemail if necessary, and your call will be returned as soon as possible, but no later than 3 business days after your call date. If your grievance is not resolved at that point, you may request an informal hearing, which is a meeting with the (“Developer’s Name and/or Service Provider”) Staff and Director. The goal of the informal hearing is to settle the problem without the need for a formal hearing. In the event the problem is not settled, you are entitled to request a formal hearing. A formal hearing is between you and (“Developer’s Name and/or Service Provider”), and a designated member of MOHCD. To request a formal hearing, you must already have attempted to resolve the issue with the (“Developer’s Name and/or Service Provider”) and through an informal hearing described above. All requests for informal or formal meetings must be in writing, and must contain specific grounds for complaint. Hearing requests should be mailed to: (insert “Developer’s Name and/or Service Provider” & contact info).

If you have a grievance with any entity related to the project, including MOHCD, please contact the (“Developer’s Name and/or Service Provider”) to advise you on pursuing the appropriate next steps.”

-
- **VI. Marketing Strategy**
- Advertising

The City and County of San Francisco requires best practices regarding marketing affordable units. These best practices include advertising over a period of at least three (3) weeks in five (5) local newspapers that outreach to minority and low-, median-, and moderate-income communities in San Francisco and in one (1) citywide paper for a period of 2 weekends on a Saturday or Sunday. The marketing must occur during the first 3 weeks of the 4-week required MOHCD posting period.

- *I/We will post in the following five (5) local venues throughout a 3-week period at least one time each week:*

Newspaper or publication	Exact Advertisements Dates
<i>Suggestion: Craig’s List</i>	
<i>Suggestion: Bayview or Sun Reporter (African American audience)</i>	

<i>Suggestion: El Mensajero or El Tecalote (Spanish speaking audience)</i>	
<i>Suggestion: Philippine News or Asian Journal (Filipino audience)</i>	
<i>Suggestion: Asian Weekly or Singtao Daily (Chinese audience)</i>	
<i>Suggestion for Other: Choose a paper that is local to the building</i>	

- I/We will announce the affordable housing opportunity in at least three of the following non-print electronic media outlets throughout the marketing period.

Social Media Activity	Exact Advertisement Dates Sources
<i>Suggestion: Facebook, Twitter, etc.</i>	
<i>Suggestion: website</i>	
<i>Suggestion: email blast</i>	

All newspaper ads and postings will state income maximums by household size; renter qualifications; rental team contact information as the primary contact information; and identify MOHCD as the monitor of the Affordable Rental program. Ads may refer applicants to the MOHCD website at www.sfmohcd.org but will not list MOHCD telephone numbers or email addresses. A copy of the wording to be used in all advertising will be sent to MOHCD for initial review and copies of all placed ads will be sent to MOHCD upon the completion of the marketing period. All postings will display an "Equal Housing Opportunity" symbol on all marketing materials, advertisements and notices at the rental office:



SAMPLE AD LANGUAGE:

2 one-bedroom Affordable Rental Units available at 333 Birch Street. \$1,000 a month. Must not own a housing unit and be income eligible. Households must earn no more than the maximum income levels below:

55% of Median Income

One person - \$38,950; 2 persons - \$44,500; 3 persons - \$50,100; 4 persons - \$55,650 etc.

Applications due by 5pm on DATE. Please contact the Green Company for an application and more information at (415) xxx-xxxx or 333birchaffordable@green.com or download at www.green.com.

Units available through the San Francisco Mayor's Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit www.sfmohcd.org for program information.



I/We will use the following ad language when advertising the Affordable Rental units.

[Your Proposed Ad Language Here:]

Beyond the information provided in the application for the Affordable Rental unit(s), applicants will have access to information on the units available. This information will be relayed in the following manner: _____ (This information may be relayed through a general website for the development or through flyers or other handouts on the development.)

Outreach Materials (i.e. post cards)

I/We understand that our project must provide a post card **as a part of this submission** for the AFFORDABLE units available that includes the following information. (Please see sample template at the end of this document for a template.)

- “Affordable Rental” indication
- Reference to MOHCD Affordable Rental program
- Certificate of Preference and Ellis Act Housing Preference indication (if applicable)
- Maximum and minimum qualifying incomes
- Rent Levels
- Description of units
- Exterior and interior photo of the development
- Information on information sessions
- Information on how to obtain an application
- Fair Housing logo
- Equal Opportunity logo
- Your website
-
- Strategy for Marketing to Residents of the Immediate Neighborhood

I/We understand we must present a strategy for reaching out to the local community surrounding the building. *[Suggestions include posting flyers in local community meeting places, posting the units in local papers, and reaching out to local community groups. This strategy is above and beyond your ad placements. At a minimum, list 10 local venues in which you will post your flyer or otherwise distribute your flyer.]*

- *[Your Strategy for Marketing to Residents of the Immediate Neighborhood Here:]*

Outreach to Certificate of Preference Holders

- I/We understand that we are responsible for marketing our Affordable Rental units to Certificate of Preference holders. Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. I/We understand that we are not responsible for direct marketing to Ellis Act Housing Preference holders. For more information, applicants may contact 415-701-5613.

I/We understand that I/we shall provide post cards for the mailing of an affordable housing announcement to all Certificate of Preference holders. We are responsible for printing the post cards using the information provided by MOHCD. MOHCD shall coordinate the mailing and invoice the developer for the full cost of the first class mailing, including postage and labels.

- Important Dates and Completion of MOHCD Web Posting

I/We understand that Affordable units must be posted on the MOHCD website for at least 28 calendar days prior to application deadline. The following template will be posted on the MOH website during the marketing period.

Please complete this template thoroughly. This posting will appear on the MOHCD website under "Current Rental Listings." Please remove red sections once complete.

Posting Date	Enter the date on which you would like to begin your marketing. Must be at least 30 days from the date of your submittal of a complete marketing plan to MOHCD.
Type of Unit	For example: Senior Housing; LOSP; Multi-family, etc.
Development Name	
Address	
Number of Units	Total number of affordable units
Number of Bedrooms	
Neighborhood	Write name of neighborhood here
Square Footage	
Year Built	
Maximum Allowable Income Level of Households	Use these income levels or levels specific to your units. The levels below may not apply to your project. Please remove levels of households that are too small for the unit. 55% of Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco 2015 A one person household can make no more than \$37,350 A two person household can make no more than \$42,750 A three person household can make no more than \$48,050 A four person household can make no more than \$53,400

	A five person household can make no more than \$57,650 A six person household can make no more than \$61,950 A seven person household can make no more than \$66,200
Rent	Use the rent levels and unit sizes specific to your unit and remove all others that are not applicable. For example: 2015 Maximum Monthly Rent By Unit Type (without utilities) 55% of Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco SRO - \$695 Studio - \$939 1-Bedroom - \$1,066 2-Bedroom - \$1,192 3-Bedroom - \$1,309 4-Bedroom - \$1,392
Minimum Allowable Income Level of Households	Studio unit(s) – Household income must equal at least ___ a month. One-bedroom unit(s) – Household income must equal at least ___ a month. Two-bedroom unit(s) – Household income must equal at least ___ a month. Three-bedroom unit(s) – Household income must equal at least ___ a month.
Minimum Household Size	Households should be at least as many people as there are bedrooms in the unit to apply.
Maximum Household Size	Household size should not be limited beyond that allowed by SF Housing Code.
Building Selection Criteria	Please complete according to your guidelines. In addition to qualifying under the rules of the Affordable Housing Program, applicants must qualify under the rules of the building. Each section below should be completed with detail Building Selection Criteria: Ability to pay rent standard – example – income must be 2 times monthly rent Credit Standard – example – no lower than 580 Rental History Standard – example- no previous evictions in the last 3 years Criminal History Standard – example – no felony conviction in the last 7 years <i>Please note, in compliance with Article 49 of the San Francisco Police Code, Qualified applicants with criminal history will be considered for housing in compliance with Article 49 of the San Francisco Police Code, “The Fair Chance Ordinance.”</i> Other – please list any other eligibility criteria not listed anywhere else on this posting. You may also include a link to additional selection criteria documents or info for consumer review.
Deposit Required for Move-in	

Parking	Each unit includes one parking space as a part of the rent -OR- One parking space per unit available for \$ _____ a month fee.
Which, if any, utilities are paid by the building?	
How are utilities paid by the renter?	Renter pays own utility bills directly. -OR- Renter is charged a flat rate of \$ ____ by a third party vendor for the following utilities: _____ on a monthly basis. -OR- All utilities are paid by the building.
Other fees and/or building rules	Please list any fees for pets, mandatory insurance, bounced check, etc. here.
Contact Person	
Phone	
Email	
Website	
How to obtain an application	
Application deadline	_____, 5pm Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline.
Address to which application should be delivered	Office: Rental Manager Name: Address: City/State/Zip Code: Attn:
Open House Dates (if applicable)	Date: Time: Date: Time: Date: Time:
Information Session	Enter date, time and location
Lottery	Enter date, time and location (Consider working with City to rent Main Library Koret Auditorium if a larger lottery is anticipated.)

	Applicants do not need to be present at the lottery. Results will be posted to (place your web URL here) within two weeks of the lottery.
Special Note(s)	

-
- **VII. Application/Selection Process and Timeline**

I have read the City and County of San Francisco's Addendum to Marketing (Exhibit S) and understand the application, selection, preparation and review and Lottery process.

[Please complete the following timeline as part of your Marketing Plan]

Timeline of Entire Process (add info as needed)

Task Name	Date
Submittal of Marketing Plan to MOHCD	
Marketing period (3 months)	
Copy of Advertisements to required newspapers	
Applications Available to public	
Informational Workshop #1	
Informational Workshop #2	
Additional Community Outreach (if applicable)	
Application Deadline	
Lottery	
Demographic Summary of all Applicants to MOHCD	
Certificate of Preference count to MOHCD	
Application Review / Approval Process- start date	
Lease-up process / timeline	
Initial MOHCD approvals returned	
First Occupancy	
Construction start date- projected	
Project Closing- projected date	

VIII. Document Review

I/We certify that I/we and all agents involved in the process of renting affordable units have read Exhibit S.

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

COP Postcard Template

Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo

3 two-bedroom (\$rent amount)+ 3 three-bedroom (\$rent amount) rental units available at Bayside Village, 1125 Laurel Court

- Renter Households must have a minimum monthly income of \$_____
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
55% of Median Income 2015	\$	\$	\$	\$	\$



Side Two:

**Mayor's Office of Housing & Community Development
1 South Van Ness, 5th Floor
San Francisco, CA 94103**

**Applications must be received by
5pm on Friday, April 13, 2012 to:**
ABC Rentals, 1234 Main Street
San Francisco, CA 94114.

For more information & to apply Contact JM Rentals
(415) 282-0000 or john@jmrentals.com or
www.sfmohcd.org

**Information session
Monday, June 2, 2012, 6pm
123 Hyde Street**

**Open House Dates
June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm**

Exhibit T-3 Marketing Process and Timeline

OCII Project Early Outreach and Marketing Responsibilities and Timeline – as of 9-2-15

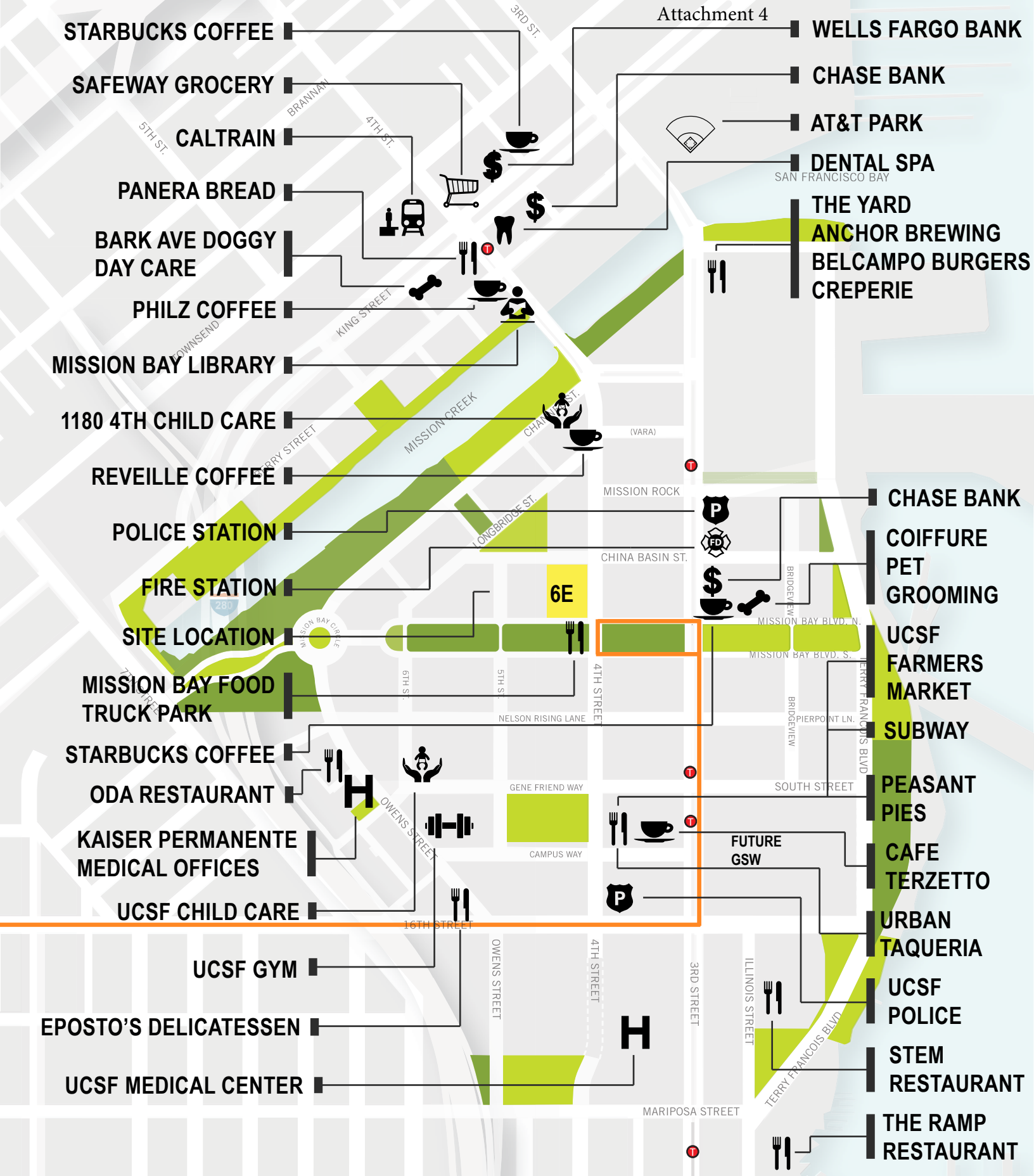
TASK	TIME FRAME
OCII provides developer with: • Early Outreach Plan and Marketing Plan (which includes Tenant Selection Criteria) (“Plans”) template • Fair Chance Ordinance link on HRC website • Operational Rules for Lotteries & Lease Up (an exhibit of the Loan Agreement) • List of MOHCD’s rental readiness service providers who can assist potential applicants or Homeownership SF if for-sale project	Developer will have template prior to or by construction commencement. Developer must submit <i>draft</i> Early Outreach and Marketing Plans 30 days after construction commencement.
Upon receipt of draft Outreach Plan, OCII notifies MOHCD Team that outreach plan is forthcoming.	At least 1 month after construction commencement
OCII reviews Outreach Plan for accurate project information, partnering with a community outreach organization, and consistency with template.	OCII will provide approval no later than 10 business days after final draft is received.
MOHCD reviews and approves Outreach Plan	Approval is provided within 5 business days.
Early Outreach begins: • MOHCD monitors developer’s progress on Early Outreach timeline and activities • Developer submits monthly reports on Early Outreach activities to MOHCD	
Developer provides MOHCD with Early Outreach marketing materials and MOHCD does 1 st of 5 COP mailings	3 months after construction commencement
Developer submits refined draft Marketing Plan. Upon receipt of draft Marketing Plan, OCII notifies MOHCD Team that the tenant selection and marketing plans are forthcoming.	12-months prior to the anticipated Temporary Certificate of Occupancy (“TCO”).
OCII reviews Plan for consistency with development agreements (loan agreements, VDDAs), including appropriate rent ranges, AMIs and occupancy preferences, engages with developer if any discrepancies, and confirms with MOHCD first draft of plan is consistent with applicable agreement, and sends to MOHCD.	Within 30 days of receipt of plan (no later than 45 days after receipt of draft plan) OCII sends to plan to MOHCD
OCII and MOHCD meet with leasing agent and Access to Housing Agency to go over all marketing, lease-up & lottery processes	After draft Marketing Plan(with the Tenant Selection Criteria) are approved and before marketing plan is finalized and approved

OCII and MOHCD approves revised draft Plans & transmits Marketing Plan approval to developer		Within 60 days after the receipt of the Marketing Plan	
Developer provides MOHCD with marketing materials and MOHCD does 2 nd of 5 COP mailings		12 months before TCO completion	
Developer provides MOHCD with marketing materials and MOHCD does 3 rd of 5 COP mailings		10 months before TCO	
Developer provides MOHCD with marketing materials and MOHCD does 4 th of 5 COP mailings		8 months before TCO	
MOHCD requests any/all Plan updates from developer with finalized dates and actual pricing		7 months before lease up/sales	
Developer submits final plan and COP postcard to MOHCD - MOHCD does 5th of 5 COP mailings - Notice of Application Workshops		30 day period, 6 months before lease up/sales	
For projects where lease-up begins between Jan-May: If a new AMI has been published since the first draft of the Marketing Plan was created, then OCII negotiates with developer to decide if the new AMI & Rent limits should be used in the final version of the marketing Plan. Alert MOHCD if the AMI numbers are revised.		Same 30 day period as above	
Developer sends advertisements to MOHCD for review		Same 30 day period as above	
MOHCD provides MOHCD approved plan with advertisements to OCII for final approval			
Marketing Period begins. MOHCD does COP mailing and posts to website, housing alert system; Front Desk		90 days before lease-up/sales	
Marketing period		28 days (rent) 45 days (own)	
Developer provides MOHCD with applicant lists on a weekly basis. MOHCD confirms EAHP & COP		<u>Weekly</u> during marketing period	
OCII attends consumer information session (if applicable)		If/when scheduled	
OCII fields consumer complaints and works with leasing agent to address pre lottery issues		As needed	
Developer provides MOHCD with final list of applications that are assigned lottery numbers		One week before lottery date	
Lottery – MOHCD assists developer		Two weeks after marketing period ends	
Developer provides MOHCD with final applicant list in lottery order that has been reconciled with the lottery list.		ASAP after lottery	
Developer will submit lottery list to MOHCD who will confirm the list within 7 business days.			
Lease-up/sales begins The appeals process needs to be included on the application, next to the signature line and in every denial letter sent to applicants			
Developer submits weekly lease-up/sales reports to MOHCD using spreadsheet provided by MOHCD	Weekly during lease up	Developer submits weekly lease-up/sales reports to MOHCD using spreadsheet provided by MOHCD	Weekly during lease up

If applicant files an appeal: • Developer tracks the appeal on weekly lease up list • Developer hears the appeal • Before 2nd denial is sent OCII/MOHCD need to be review file	
MOHCD reviews all denials and confirms Developer is correct in calculations and following marketing procedures	
MOHCD alerts OCII to problems/concerns with lease-up	
OCII addresses lease-up issues with Developer	
Developer provides MOHCD with a clean copy of the Final Waitlist	



Perspective - Townhomes & Flats: View of Entry to Townhomes & Flats at Midblock Walkway



MISSION BAY AMENITIES

MARCH 2016

0 200 800
100 400

TNDC

Attachment 5

MB Block 6E (1300 Fourth Street)

Professional Services Consultant Summary (May 2016)

Discipline	Consultant Names	Fees	SBE Goal	SBE	SBE - SF	For Informational Purposes Only		
			Credit*	Participation		MBE	Ethnicity**	WBE
Architect	Mithun/Solomon	\$ 1,639,450						
Associate Architect	Studio VARA	\$ 504,000	\$ 504,000	504,000	504,000		Latina (50/50% partnership)	252,000
SBE Outreach: Professional Services	Monica Wilson	\$ 25,000	\$ 25,000	25,000	25,000		Latina	25,000
Greenpoint Rater	Bright Green Strategies	\$ 25,405	\$ 25,405	25,405			Asian/PI	25,405
HERS Rater	Bright Green Strategies	\$ 12,250	\$ 12,250	12,250			Asian/PI	12,250
TCAC Consultant	Bright Green Strategies	\$ 5,000	\$ 5,000	5,000			Asian/PI	5,000
Structural Engineer	KPFF/Rivera	\$ 237,150	\$ 225,000	78,750	78,750	78,750	Latino	
Mechanical	E350	\$ 187,450	\$ 187,450	187,450	187,450			
Electrical	E350	\$ 133,310	\$ 133,310	133,310	133,310			
Plumbing	E350	\$ 77,070	\$ 77,070	77,070	77,070			
Owner's Rep/Construction Manager	Regent	\$ 118,210	\$ 118,210	118,210	118,210	118,210	Latino	
Civil Engineer	UDCE	\$ 59,000	\$ 59,000	59,000	59,000	59,000	Asian/PI	
Landscape and Irrigation	Surface Design	\$ 103,000	\$ 103,000	103,000	103,000			
Surveyor	TBD (SBE)	\$ 17,600	\$ 17,600	17,600				
Environmental Consultant	AEW	\$ 62,150	\$ 62,150	62,150	62,150	62,150	Asian/PI	
Geotech Engineer	Rockridge	\$ 153,950	\$ 153,950	153,950				
Acoustical Engineer	Papadimos Group	\$ 25,000	\$ 25,000	25,000	25,000			
Waterproofing	Gale Associates	\$ 42,600						
OSHA design	Scaffold Testing & Inspection	\$ 12,000	\$ 12,000	12,000				
Cathodic Protection	JDH	\$ 12,000	\$ 12,000	12,000				
Reproduction	Omni Digital	\$ 100,000	\$ 100,000	100,000	100,000		SE Indian	100,000
Archaeological Monitoring	William Self Associates	\$ 27,292	\$ 27,292	27,292				
Security Design	Teletek	\$ 2,259						
Lighting Design	Weller Design	\$ 96,915	\$ 96,915	96,915				
Methane Mitigation Design	Langan Treadwell Rollo	\$ 40,500						
Commissioning	Sherrill Engineering	\$ 55,200	\$ 55,200	55,200				
OPOS consultant (same as OSHA above)	Scaffold Testing & Inspection	\$ 5,000	\$ 5,000	5,000				
Totals		3,778,761	2,041,802	1,895,552	1,472,940	318,110		419,655
Percent of Total Fees			54.0%	50.2%	39.0%	8.4%		11.1%

* 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.

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

Mission Bay Block 6E SBE Consultant Biographies

The following are biographies of SBE consultants holding the five largest contracts by dollar value. Please refer to Attachment 5 for contract values.

Studio VARA (Associate Architect)

Incorporated in 2013, Studio VARA is a San Francisco based design firm. The firm looks to the City's diverse landscape as both a foundation and a muse for its designs. Studio VARA is 50% minority-woman owned and Local Business Enterprise (LBE) certified. Previous projects include 626 Mission Bay North Blvd.

Engineering350 (Electrical and Mechanical Engineer)

Founded in 2010, Engineering350 is a San Francisco based Mechanical and Industrial and Engineering firm. Engineering350 works closely with clients to provide solutions that balance environmental benefit, social well-being, and cost-efficiency. Past projects include housing developments, offices, universities, museums, and restaurants in San Francisco and beyond.

Rockridge (Geotech Engineer)

Established in 2006, Rockridge Geotechnical is a certified Small Business in the State of California, a Small Local Emerging Business in the County of Alameda, and a Small Local Business Enterprise (LBE) in the City of Oakland. With over 70 years of combined experience in the geotechnical engineering field, Rockridge Geotechnical engineers are knowledgeable and professional experts. Past projects include Hunters View Revitalization Phase 2 Development and Mission Bay Block 7.

Regent Construction Management (Owner's Rep/Construction Manager)

Incorporated in San Francisco in 2007, Regent Construction Management supports projects within the Engineering, Accounting, Research, and Management Services sector. Regent Construction Management is minority-owned and LBE certified.

SurfaceDesign Inc. (Landscape and Irrigation)

Incorporated in 2001, Surface Design Inc. is an LBE certified San Francisco-based company. The firm's wide portfolio of business includes public spaces, commercial developments, residential estates, vineyards, resorts and hotels. Past San Francisco projects include the SF Ferry Building and Pier 9.