

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 01-2020

**CONDITIONALLY AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO
AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH THE CITY AND
COUNTY OF SAN FRANCISCO TO ASSIGN THE SAN FRANCISCO HOUSING
DEVELOPMENT CORPORATION LOAN AGREEMENT FOR THE DEVELOPMENT
OF 4800 THIRD STREET TO THE CITY, ACTING THROUGH THE MAYOR'S
OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, CONSISTENT WITH
THE LOAN AGREEMENT AND WITH REDEVELOPMENT DISSOLUTION LAW**

- WHEREAS, The Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "Former Agency"), approved on March 15, 2011 (Former Agency Reso. 27-2011), the "San Francisco Redevelopment Agency Citywide Tax Increment Loan Agreement by and between the Redevelopment Agency of the City and County of San Francisco and San Francisco Housing Development Corporation ("SFHDC") for the Development of 4800 Third Street, San Francisco, California, dated as of March 15, 2011" ("SFHDC Loan" or "SFHDC Loan Agreement"). SFHDC is a California nonprofit public benefit corporation; and,
- WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies, including the Former Agency, and established successor agencies to assume certain rights and obligations of the former redevelopment agencies, Cal. Health & Safety Code § 34170 et seq. (the "Redevelopment Dissolution Law"). All assets, including amounts owed to the former redevelopment agencies, were transferred, by operation of law, to successor agencies on February 1, 2012, Cal. Health & Safety Code § 34175(b); and,
- WHEREAS, The successor entity to the Former Agency is the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure (the "Successor Agency" or "OCII"). Under Redevelopment Dissolution Law, the Successor Agency assumed all of the Former Agency's enforceable obligations. and is charged with winding down the affairs of the Former Agency and disposing of Former Agency assets and properties, subject to review by an oversight board and the State of California Department of Finance ("DOF"); and,
- WHEREAS, The amount of the SFHDC Loan is \$250,000. Its purpose was to provide for tenant and façade improvements for a full-service restaurant on the ground floor commercial space at 4800 Third Street, an affordable housing mixed-use development located at the corner of Third Street and Oakdale Avenue in the Bayview. The SFHDC Loan was executed pursuant to the Former Agency's Bayview Hunters Point Revolving Loan Program ("Revolving Loan Program")

to attract new businesses and revitalize existing businesses along Third Street. The Revolving Loan Program was funded by tax increment revenue. The SFHDC Loan proceeds were used for permits, soft cost contingency, construction management, hard construction and contingency, capital replacement reserve, furnishings/smallware and equipment; and,

WHEREAS, The Loan Agreement is still in effect and is secured by a commercial promissory note (“Commercial Note”). The Loan Agreement provides for monthly amortized payments over a fifteen year term with an annual interest rate on the outstanding principal balance of 1%. Section 13 of the Commercial Note authorizes the Successor Agency to assign the Loan; and,

WHEREAS, To date, SFHDC has paid \$113,403 in principal and interest pursuant to the SFHDC Loan and is current on its loan payments. As of the date of this resolution, the outstanding principal balance of the SFHDC Loan is \$151,389; and,

WHEREAS, Redevelopment Dissolution Law requires successor agencies to: (1) “expeditiously wind down the affairs of the redevelopment agency... in accordance with the direction of the oversight board,” Cal. Health & Safety Code § 34177(h); (2) “determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities,” Cal. Health & Safety Code § 34181(e); and (3) present proposed changes in agreements to the oversight board, which “may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interest of the taxing entities.” Cal. Health & Safety Code § 34181 (e); and,

WHEREAS, Assignment of the Loan Agreement from the Successor Agency to the City is consistent with the above-referenced provisions of Redevelopment Dissolution Law because (1) the Successor Agency has limited resources to administer the Loan Agreement and collect the amounts owed; (2) the City, through the Mayor’s Office of Housing and Community Development, has the capacity and expertise to administer community and economic development loans; (3) the City, as the local taxing entity receiving the largest share of property tax revenues under property tax allocation laws, will benefit from the collection of the SFHDC Loan to the extent that it is able to enforce the Loan Agreement; (4) the City has existing contractual and other relationships with SFHDC, the Loan borrower and the 4800 Third Street mixed-use affordable housing development; and (5) the Commercial Note, Section 13, authorizes assignment of the Loan; and,

WHEREAS, Authorizing the Assignment and Assumption Agreement, which will assign the Loan Agreement to the City, is an administrative activity of government that will not result in direct or indirect physical changes in the environment, and therefore does not require environmental review subject to the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15060(c)(3) and 15378(b)(5); now, therefore, be it

RESOLVED, That the Oversight Board finds that, for the reasons stated above, the Assignment and Assumption Agreement would be in the best interests of the taxing entities; and be it further

RESOLVED, That the Oversight Board authorizes the Executive Director to enter into the Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit A, and conditioned upon review and approval by the DOF, with the City, acting by and through the Mayor's Office of Housing and Community Development, to assign the Loan Agreement to the City, consistent with Redevelopment Dissolution Law, and furthermore authorizes the Executive Director to enter into any and all ancillary documents and take any additional actions necessary to consummate the transaction.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of January 27, 2020.

Board Secretary

Exhibit A: Form of Assignment and Assumption Agreement

Exhibit A

FORM OF ASSIGNMENT AND ASSUMPTION OF THE SUCCESSOR AGENCY LOAN AGREEMENT WITH THE SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION

This Assignment and Assumption of the Successor Agency's Loan Agreement with the San Francisco Housing Development Corporation ("**SFHDC**"), a California nonprofit, public benefit corporation (the "**SFHDC Loan**" or the "**SFHDC Loan Agreement**"), is dated as of this ____ day of _____, 2020 (the "**Assignment and Assumption Agreement**"), by and between the Successor Agency to the Redevelopment Agency of City and County of San Francisco, a public body organized and existing under the laws of the State of California (the "**Successor Agency**", "**OCII**" or "**Assignor**"), and the City and County of San Francisco (the "**City**" or "**Assignee**"), a municipal corporation, acting by and through the Mayor's Office of Housing and Community Development ("**MOHCD**").

WITNESSETH

- A. On March 15, 2011, the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "**Former Agency**"), approved the loan agreement between the Former Agency and the SFHDC (Former Agency Reso. 27-2011). The SFHDC Loan Agreement is included as Attachment A to this Assignment and Assumption Agreement and incorporated herein by reference.
- B. On February 1, 2012, the State of California dissolved all redevelopment agencies, including the Former Agency, and established successor agencies to assume certain rights and obligations of the former redevelopment agencies, Cal. Health & Safety Code § 34170 et seq. (the "**Redevelopment Dissolution Law**"). All assets, including amounts owed to the former redevelopment agencies, were transferred, by operation of law, to successor agencies on February 1, 2012, Cal. Health & Safety Code § 34175 (b). Redevelopment Dissolution Law requires successor agencies to: (1) "expeditiously wind down the affairs of the redevelopment agency... in accordance with the direction of the oversight board," Cal. Health & Safety Code § 34177 (h).

- C. Under Redevelopment Dissolution Law, the Oversight Board of the City and County of San Francisco (“**Oversight Board**”) may direct the Successor Agency to assign the SFHDC Loan, if it finds that the assignment would be in the best interest of the taxing entities.
- D. The SFHDC Loan amount was \$250,000, which SFHDC used to fund the construction of tenant improvements to build out a full-service restaurant in the ground floor commercial space at 4800 Third Street, a mixed-use BMR condominium development. The SFHDC Loan Agreement is still in effect and is secured by a commercial promissory note (“Commercial Note”). The SFHDC Loan Agreement provides for monthly amortized payments over a fifteen year term with an annual interest rate on the outstanding principal balance of 1%. Section 13 of the Commercial Note authorizes the Successor Agency to assign the SFHDC Loan; and,
- E. Assignment of the SFHDC Loan Agreement from the Successor Agency to MOHCD is consistent with Redevelopment Dissolution because (1) the Successor Agency has limited resources to administer the Loan Agreement and collect the amounts owed; (2) MOHCD has the capacity and expertise to administer community and economic development loans; (3) the City, as the local taxing entity receiving the largest share of property tax revenues under property tax allocation laws, will benefit from the collection of the SFHDC Loan to the extent that it is able to enforce the SFHDC Loan Agreement; (4) MOHCD has existing contractual and other relationships with SFHDC, the Loan borrower and the 4800 Third Street affordable housing development; and (5) the Commercial Note, Section 13 authorizes assignment of the Loan.
- F. To wind down the Former Agency’s activities by transferring loan management responsibilities for the SFHDC Loan Agreement, OCII seeks to assign the SFHDC Loan to MOHCD as is, without any stipulations.
- G. Assignor and Assignee now wish to enter into the Assignment and Assumption Agreement to transfer all right, title, interest, obligations, duties, and responsibilities of the Assignor under the SFHDC Loan Agreement to Assignee.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. The Assignor does hereby irrevocably and unconditionally assign, transfer, set over and convey unto the Assignee all of the Assignor's right, title, privilege and interest in and to the SFHDC Loan Agreement and related ancillary documents; and
2. Assumption. The Assignee does hereby assume all right, title, interest, obligations, duties and responsibilities of the Assignor under the SFHDC Loan Agreement; and
3. Further Instruments. The Assignor and the Assignee hereby agree that they will, from time to time, execute and deliver such further instruments as may be reasonably required to implement and effectuate the purpose of the Assignment and Assumption Agreement; and
4. Successors and Assigns. This Assignment and Assumption Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Assignor and Assignee; and
5. Authority. Assignor and Assignee each represent and warrant to the other party that it is fully empowered and authorized to execute and deliver this Assignment and Assumption Agreement, and the individual signing the Assignment and Assumption Agreement on behalf of such party represents and warrants to the other party that he or she is fully empowered and authorized to do so; and
6. Counterparts. This Assignment and Assumption Agreement may be executed in any number of counterparts, all of which, together, shall constitute the original agreement; and
7. Governing Law. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Assignment and Assumption Agreement shall be litigated in courts located with the County of San Francisco, State of California; and
8. Entire Agreement. This Assignment and Assumption Agreement contains the entire agreement between the parties with respect to the subject matter of this Assignment and Assumption Agreement. This Assignment and Assumption Agreement supersedes any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter. No prior drafts of this Assignment and Assumption Agreement or changes from those drafts to the executed version of this Assignment and Assumption Agreement

shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Assignment and Assumption Agreement; and

This Assignment and Assumption Agreement is effective on the date on which it is executed by the parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement on the date indicated above.

ASSIGNOR:

**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

ASSIGNEE:

City and County of San Francisco, a
municipal corporation

By: _____
Nadia Sesay
Executive Director

By: _____
Daniel Adams
Acting Director
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
James B. Morales
General Counsel

By: _____
Keith Nagayama
Deputy City Attorney

Authorized by Oversight Board Resolution No.
##-2020 (adopted ##### ##, 2020).

Attachment A: SFHDC Loan Agreement

**SAN FRANCISCO REDEVELOPMENT AGENCY
CITYWIDE TAX INCREMENT LOAN AGREEMENT**

By and Between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION

For the Development of

**4800 THIRD STREET
SAN FRANCISCO, CALIFORNIA**

Dated as of March 15, 2011,

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SAN FRANCISCO REDEVELOPMENT AGENCY

TAX INCREMENT LOAN AGREEMENT

**4800 Third Street
San Francisco, California**

THIS LOAN AGREEMENT (the "Agreement") is entered into this 15th day of March, 2011 between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**Agency**") and SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("SFHDC") ("**Borrower**" or "**Developer**").

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq"), the Agency undertakes programs for the reconstruction and rehabilitation of blighted areas in the City and County of San Francisco (the "City").

B. On May 16, 2006, by Ordinance No. 113-06, the Board of Supervisors of the City adopted the Bayview Hunters Point Redevelopment Project Area (the "Project Area") in order to undertake a variety of projects and activities to alleviate blighting conditions. The Bayview Hunters Point Redevelopment Plan became effective on September 19, 2006. It is the mission of SFHDC, to provide safe, decent and affordable housing, and stimulate economic development in the Bayview Hunters Point (BVHP) community. On July 3, 2008, the Agency transferred the property at 4800 Third Street (the "Site") to Green Blended Communities, LLC, a California limited liability company ("Green Blended"), an affiliate of the Borrower, pursuant to a Disposition and Development Agreement dated June 27, 2008 (the "DDA"). Green Blended has developed 18 units of homeownership housing (the "Housing Site") and 2,280 square feet of commercial space (the "Commercial Parcel") at the Site as described in the DDA. The Commercial Parcel is a separate legal parcel. Borrower desires to designate the Commercial Parcel for a full service restaurant operation.

C. In 2008, per the Disposition and Development Agreement ("DDA"), the Commercial Parcel had an appraised value of approximately \$400,000, and at that time the Developer anticipated leasing the Commercial Parcel to a retail tenant for approximately \$3.00 per square foot. Per the Amended and Restated Tax Increment Loan Agreement ("Loan Agreement"), dated April 15, 2008, the Developer purchased the Commercial Parcel from the Agency for \$400,000, which was paid by a combination of Developer's contribution of \$250,000 of the Developer's developer fee plus Developer's execution of a promissory note payable to the Agency in the amount of \$150,000 (the "Original Note").

D. In March 2011, to reflect the full purchase price of the Commercial Parcel, the Developer requested a Fourth Amendment to the Loan Agreement and a Fifth Amendment to the DDA. Due to a downturn in the commercial real estate market, the Commercial Parcel currently has an updated appraised value of approximately \$235,000, and the Developer anticipates leasing the Commercial Parcel to a retail tenant for approximately \$1.00 per square foot. Based on the current real estate market, the Agency has agreed to reduce the purchase price for the Commercial Parcel to \$235,000. That amount was paid by the Developer's

contribution of \$250,000 in the form of SFHDC's developer fee. As a result, the Developer has fully paid the purchase price for the Commercial Parcel, and the Agency has agreed to forgive the Developer's obligations under the Original Note and to cancel the Original Note.

E. Borrower desired to designate the Commercial Parcel for a full service restaurant operation which will not only enhance sales of the residential units above but also provide much desired healthy dining alternatives in addition to those restaurants currently located on the Third Street commercial corridor.

F. In the current economic climate, SFHDC recognizes that the best way to facilitate this goal is to build out the Commercial Parcel for a restaurant turn-key operation. This involves completing the interior tenant improvements and installing all major equipment required by a full service food operator. The selected business would complete the space by adding furniture, fixtures and small wares required by a full service operation.

G. Therefore, SFHDC has applied to the Bayview Hunters Point Revolving Loan Program ("BVHP Loan Program") for a new loan in the amount of \$250,000 to be used expressly for completion of interior surfaces, including walls, electrical and plumbing outlets and fixtures, bathroom build out and all major equipment necessary for on-site food preparation in the Commercial Parcel.

H. On March 2, 2011, based on the Loan Evaluation provided in Attachment A, the Loan Committee approved SFHDC's loan request under the draft BVHP Loan Guidelines.

I. The Agency and the Borrower have entered into the following earlier agreements, executed by SFHDC and assigned to Green Blended for the development of the Site: (1) an Eighth Amendment to the Exclusive Negotiations Agreement as amended, dated November 31, 2001; (2) a Development Services Agreement, dated March 8, 2006 to provide access to the Original Site for the demolition of the existing improvements and the remediation of the Original Site; and (3) the Tax Increment Affordable Housing Loan Agreement (the "Agency Project Loan Agreement") as amended, dated, November 30, 2001 to provide construction and permanent financing for the Project (collectively, the "Project Documents").

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 "Agency" means the Redevelopment Agency of the City and County of San Francisco.

1.2 "Agreement" means this Tax Increment Loan Agreement.

1.3 "Agreement Date" means the date first above-written.

1.4 “**Authorization**” means any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any governmental agency or other person.

1.5 “**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 any other entity, evidence of such other action as the Agency may require, in each case authorizing the execution, delivery and performance of all Loan Documents to which it is a party or by which it is bound.

1.6 “**Borrower**” means San Francisco Housing Development Corporation, a California nonprofit public benefit corporation.

1.7 “**CCR**” means the California Code of Regulations.

1.8 “**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42 U.S.C. 9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986 (“**SARA**”) (42 U.S.C. Sections 9601 et seq.).

1.9 “**Charter Documents**” means (a) in the case of a corporation, its articles of incorporation, bylaws, and a certificate of good standing from the California Secretary of State; (b) in the case of a partnership, its partnership agreement, any certificate or statement of partnership, and a certificate of good standing from the California Secretary of State if the partnership is a California limited partnership; and (c) in the case of any other entity, its formation documents, in each case as amended from time to time.

1.10 “**City**” means the City and County of San Francisco, a municipal corporation.

1.11 “**Commercial Parcel**” means the 2,280 square feet of ground floor of nonresidential leasable space at the ground floor of the Project as described in Exhibit A attached hereto.

1.12 “**Commercial Deed of Trust**” means the deed of trust substantially in the form attached hereto as Exhibit D, which shall be recorded against the Commercial Parcel in accordance with Section 3.5 to secure SFHDC’s obligations with respect to the Loan.

1.13 “**Commercial Note**” means the promissory note in the original principal amount of the Loan Amount, as defined in Section 2.1, in substantially the form attached as Exhibit C.

1.14 “**Completion Date**” has the meaning set forth in Section 5.5 as set forth in more detail in the Schedule of Performance (Exhibit F).

1.15 “**Default Interest Rate**” is defined in Section 3.3.

1.16 “**Disbursement**” means the disbursement of all or a portion of the Loan Amount from the Agency to the Borrower, as described in Section 4.

1.17 “**Disbursement Request**” is defined in Section 4.3(a).

1.18 **“Disposition and Development Agreement”** means the agreement entered into between the Agency and Green Blended, dated of even date herewith, to provide for the transfer of the Property and the development of the Site in conformance with the Redevelopment Plan.

1.19 **“Environmental Activity”** means any actual, proposed or threatened storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Commercial Parcel, other than those used in the normal course of constructing and operating a restaurant or other use permitted in the Commercial Parcel.

1.20 **“Environmental Requirements”** means all present and future federal, state and local laws (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**), (42 U.S.C. § 9601 et seq.) and the Superfund Amendments and Reauthorization Act of 1986 (**“SARA”**) (42 U.S.C. § 9601 et seq., as they may be amended from time to time, and regulations promulgated thereunder), ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to the environment or to any Hazardous Substance or Environmental Activity.

1.21 **“Event of Default”** has the meaning set forth in Section 15.1.

1.22 **“Force Majeure”** is defined in Section 15.3.

1.23 **“Hazardous Substance”** means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes, without limitation, flammable or explosive material, polychlorinated biphenyls, formaldehyde, urea, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos and asbestos containing materials, radioactive materials, and any substance, chemical, waste or other material which is 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 federal, state, local or administrative agency ordinance or law, including, without limitation, CERCLA; the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. Sections 6901 et seq.); 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) (California Health and Safety Code Sections 25300 et seq.); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Sections 25249.2 et seq.). Notwithstanding the foregoing, "Hazardous Substance" shall not include materials of a type and quantity normally used in the construction, rehabilitation, operation or maintenance of developments similar to the Project.

1.24 **“Indemnify”** shall mean, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), the Indemnitor shall be obligated to defend, indemnify and protect 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 such Indemnitee, whether such 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 shall be obligated to Indemnify any

Indemnitee against any Loss from the gross negligence or intentional wrongful acts or omissions of such Indemnitee, or such Indemnitee's 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), such Indemnitee shall be entitled to Indemnification for that part of the Loss not attributable to such Indemnitee's (or its agents, employees or contractors) grossly negligent or intentionally wrongful acts or omissions.

1.25 “**Interest**” is defined in Section 3.2.

1.26 “**Loan Amount**” is defined in Section 2.1.

1.27 “**Loan Documents**” means this Tax Increment Loan Agreement, the Note, the Commercial Deed of Trust, and any other documents executed or delivered in connection with this Tax Increment Loan Agreement.

1.28 “**Loss**” includes any loss, liability, damage, cost, expense or charge (including reasonable charges and expenses of legal counsel).

1.29 “**Median Income**” means area median income as determined by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, adjusted solely for actual household size, and as published annually by the San Francisco Mayor’s Office of Housing.

1.30

1.31 “**Opinion**” means an opinion of the Borrower's California legal counsel, satisfactory to the Agency and its legal counsel, that the Borrower is a duly formed, validly existing California limited liability company; in good standing under the Laws of the State of California, has the power and authority to enter into the Loan Documents and shall be bound by the terms of such documents when executed and delivered, and that addresses such other matters as the City may reasonably request.

1.32 “**Permitted Exceptions**” means: (a) Liens in favor of the Agency; (b) Liens in favor of the construction financing lender; (c) Permitted Prior Exceptions; and (d) other matters expressly approved by the Agency in writing that are subject and subordinate to the Lien of the Commercial Deed of Trust.

1.33 “**Permitted Prior Exceptions**” means: (a) general ad valorem real property taxes that are not delinquent and any other special taxes approved in writing by the Agency that are not delinquent; and (b) such other matters as the Agency has expressly approved in writing.

1.34 “**Project**” means the façade and tenant improvements to be made to the 2,280 square feet of ground floor Commercial Parcel at 4800 Third Street, together with the purchase of kitchen equipment, for the express purpose of the leasing a full service restaurant operation.

1.35 “**Site**” is the real property located at 4800 Third Street, San Francisco, California, and includes the Commercial Parcel and the Housing Site.

1.36 “**Table**” means a table of sources and uses of funds attached hereto as Exhibit B.

1.37 “**Term**” has the meaning set forth in Section 3.3.

1.38 “**Title Policy**” means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the Agency, issued by an insurer selected by the

Borrower and satisfactory to the Agency, together with such endorsements as may be required by the Agency, in a policy amount equal to the Loan Amount, insuring the Commercial Deed of Trust as a valid lien on the Commercial Parcel, subject only to the Permitted Exceptions.

1.39 **“Turn Key”** The completion of all interior and façade improvement construction, including the installation of all major equipment required for the operation of a full service restaurant.

1.40 **“Unit”** means a homeownership unit within the Project.

ARTICLE 2

LOAN

2.1 **Loan Amount.** The Agency agrees to lend to Borrower the total principal amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000, the “Loan Amount”).

2.2 **Approval of Future Funds.** The Agency execution of this Agreement is in no way a commitment by the Agency to provide funds in excess of the Loan Amount. The Agency may approve such funds, in its sole discretion, upon Borrower’s satisfaction of any conditions imposed by the Agency to the receipt of such additional funds.

ARTICLE 3

LOAN PROVISIONS

3.1 **Loan.**

(a) The Agency agrees to lend to Borrower, and Borrower agrees to borrow from Agency, the Loan Amount as defined in Section 2.1 of this Agreement (the “Loan”) to finance all construction and equipment costs for the Project, and also including the cost of off-site improvements and site improvements such as exterior landscaping, seating and lighting related to the development of the Project.

(b) The outstanding principal balance of the Loan will bear interest at a simple annual rate of one percent (1%) ,which interest shall begin to accrue commencing on the first anniversary of the date that the tenant of the Commercial Parcel commences rental payments under the lease between SFHDC and such tenant (the “Commencement Date”).

(c) The Loan will be evidenced by the Note in the principal amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) executed by Borrower in favor of the Agency. The Note will replace the Original Note executed by the Borrower for the Commercial Loan amount and the Original Note will be marked “cancelled” and returned to the Borrower.

(d) The Loan will be secured by a Commercial Deed of Trust which shall be a lien on the Commercial Parcel. In addition, the Agency shall file a UCC-1 financing statement to perfect the Agency’s security interest in any personal property acquired with the proceeds of the Loan.

(e) Borrower shall deliver to the Agency the Note properly executed in favor of the Agency, and any further security that the Agency may require.

3.2 **Use of Loan Funds.** Borrower agrees to use the Loan funds solely for the Project.

3.3 **Term.** The term of this Agreement (the "Term") shall commence on the Commencement Date and shall terminate upon repayment of the Loan by Borrower pursuant to Section 3.4, unless earlier terminated pursuant to the terms of this Agreement.

3.4 **Repayment**

(a) **Loan Repayment.** Borrower shall repay the Loan, within fifteen (15) years following the Commencement Date, subject to extension under Subsection (b), or on the earlier of the date on which Borrower sells, assigns, conveys or otherwise transfers the Commercial Parcel in violation of this Agreement.

(1) Beginning in the first year on the first day of each month during the Term, Borrower shall pay the agency an amount necessary to fully amortize the Loan over the Term, subject to any applicable cure periods.

(2) Upon full repayment of the Loan, the Agency shall promptly reconvey the Commercial Deed of Trust.

(b) **Deferral of Payments.** If at any time during the Term the Commercial Parcel is vacant for any reason for a period in excess of thirty (30) days, the Borrower may defer its obligation to make monthly payments hereunder and to make monthly deposits into the Reserve Account during the period of such vacancy, commencing on the 31st day of such vacancy and continuing until the first day of the month in which SFHDC receives monthly rental payment under a new lease (the "Vacancy Period."). In that case, the Term shall be extended for the Vacancy Period, and Borrower shall recommence monthly payments due hereunder beginning on the first day of the first full month following the Vacancy Period. No interest shall accrue on the Loan during the Vacancy Period.

3.5 **Approval of Commercial Lease(s):** The Borrower shall submit all leases for the Commercial Parcel in the Project to the Agency for review and approval prior to final execution. Such approval shall not be unreasonably withheld.

3.6 **Repayment of Unused Portion of Loan Amount.** In addition to any other payment requirements, within six (6) months of the completion of the Commercial Parcel's façade and tenant improvements, the Borrower shall promptly repay to the Agency any portion of the Loan Amount previously disbursed to Borrower and not used for eligible costs as described in this Agreement as determined by the reports set forth in Section 9.3. No interest shall accrue on the amounts repaid under this Section 3.6.

ARTICLE 4

DISBURSEMENTS

4.1 **Generally.** Subject to the terms of this Agreement, the Agency shall make Disbursements of the Loan Amount to or for the account of the Borrower in accordance with this Agreement and the Table (Exhibit B).

4.2 **Use of Funds.** Borrower shall use the Loan proceeds only in accordance with the provisions of this Agreement and the Table (Exhibit B) as such Table may be modified with the prior written approval of the Agency.

4.3 **Conditions Precedent to Disbursement of Loan Amount.** The Agency's obligation to disburse the Loan Amount to Borrower is conditioned upon Borrower's satisfactory completion of the following:

(a) Borrower shall have delivered to the Agency a written request for disbursement of funds, which shall include the total amount requested, and shall provide the Agency with invoices, approved draw requests, or other written documentation acceptable in form and substance to the Agency (the "**Disbursement Request**");

(b) No Event of Default shall have occurred that remains uncured as of the date of the Disbursement Request;

(c) Borrower shall have fulfilled all additional terms, covenants, and conditions then due in any other Loan Documents;

(d) Borrower or its approved assignee shall have delivered to the Agency fully-executed (and for documents to be recorded, fully-acknowledged) originals of the following documents, in form and substance satisfactory to the Agency: (i) this Agreement; (ii) the Note (Exhibit C); (iii) the Commercial Deed of Trust (Exhibit D); (iv) the opinions of Borrower's counsel; (v) the Authorizing Resolutions; (vi) the Small Business Enterprise documents (Exhibit F); and (vii) any other Loan Documents reasonably requested by the Agency;

(e) Borrower shall have delivered to the Agency the Borrower's Charter Documents;

(f) The Commercial Deed of Trust shall have been executed and delivered to the Escrow Agent to be recorded as a valid Lien against the Commercial Parcel in the Official Records, subject only to the Permitted Exceptions;

(g) Escrow Agent shall be irrevocably committed to deliver to the Agency the Title Policy in form and substance satisfactory to the Agency.

(h) With respect to Disbursement Requests which include construction costs, the Borrower shall have certified to the Agency that the Project complies with the labor standards set forth in Section 9.1(a) below, if applicable; and

(i) Borrower shall have delivered to the Agency a proposed estimated closing cost statement in a form that is acceptable to the Agency's Deputy Executive Director – Housing.

(j) Borrower shall have established a segregated, interest-bearing account (the "Reserve Account") into which Borrower shall have deposited, or shall deposit from the proceeds of the Loan, Twenty-Five thousand Dollars (\$25,000), or such lesser amount as approved by the Agency.

(k) The Escrow agent shall be in a position to file the UCC-1 with the California Secretary of State.

4.4 **Schedule of Performance.** Borrower must perform in accordance with the Schedule of Performance (Exhibit E). The Schedule of Performance may be modified at the request of the Borrower with the written consent of the Agency Executive Director or his/her designee.

4.5 **Expenditures for Construction Costs.** In addition to the other conditions to disbursement of the Loan Amount, Borrower acknowledges that, if a Disbursement Request includes hard costs associated with construction, the amount of such costs included in the Disbursement Request shall not exceed ninety percent (90%) of the total amount of such construction costs. The remaining ten percent (10%) of hard costs, the "Retention," may be requested from the Agency through a Disbursement Request only upon satisfaction of each of the following conditions, unless otherwise approved in writing by the Agency: (1) completion of construction of the Project in accordance with the plans and specifications approved by the Agency; (2) obtaining a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection; (3) obtaining the architect's or engineer's certificate of completion; (4) timely recordation of a notice of completion; and (5) the absence of any unreleased mechanics' liens or stop notices (which may be evidenced by lien releases and/or mechanics lien title insurance endorsements).

4.6 **Limitations on Loan Amount Disbursements.** The Agency may refuse to approve any expenditure during the period in which an Event of Default has been declared. The Agency is not obligated to approve disbursement of the entire Loan Amount unless approved Disbursement Requests are submitted for the entire undisbursed balance of the Loan Amount, and in no event shall the aggregate amount of all funds disbursed to Borrower under this Agreement exceed the Loan Amount.

4.7 **Records.** Borrower shall maintain and provide to the Agency upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures of the Loan Amount, and shall keep all estimates, invoices, receipts and other documents related to expenditures of the Loan Amount. Following the completion of construction, Borrower shall provide to Agency all Project completion information required in Section 9.3.

ARTICLE 5

CONSTRUCTION OF THE IMPROVEMENTS

5.1 **Bidding Requirements.** In selection of a contractor and subcontractors for the Project, Borrower must comply with the requirements of the Agency's Small Business Enterprise Program according to the procedures established by the Agency's Contract Compliance Division.

5.2 **Plans and Specifications; Change Orders.** Prior to the start of any construction on the Commercial Parcel, the Borrower shall have delivered to Agency a copy of the applicable building permit issued by the San Francisco Department of Building Inspection that authorizes Borrower to commence construction of the phase of work authorized by the permit and the

Agency, as well as a set of the approved plans and specifications. Borrower shall submit to the Agency notice of all proposed material changes in plans and specifications as set forth in the DDA. Upon completion of the Project, Borrower shall deliver to the Agency a set of “as-built” plans for the Project. The Borrower acknowledges that the Agency’s approval of any change order will not constitute an agreement to amend the Table or to provide additional funds for the Project, unless the Agency agrees in its sole discretion to adjust the Table.

5.3 **Insurance and Bonds.** Prior to the commencement of any construction on the Commercial Parcel, the Borrower shall deliver to the Agency certificates of insurance and bonds as described in Section ____.

5.4 **Notice to Proceed.** No construction may commence until the Agency has provided to the Borrower a written notice to proceed.

5.5 **Commencement and Completion of Construction.** Borrower shall commence and complete construction of the improvements within the timeframe as stated in the Schedule of Performance, as well as the required timeframes of any other financing requirements that may be applicable.

5.6 **Construction Standards.** All construction shall be performed in a high quality manner and shall be done substantially in accordance with final plans and specifications approved by the Agency, in accordance with all applicable codes. Green building elements. Borrower shall use its best efforts to construct an energy-efficient and sustainable building through incorporation of “green” building elements and techniques.

5.7 **Reports.** Until construction of the Project has been completed, the Developer shall make a report in writing to the Agency every three (3) months in such detail, or other similar report, as may reasonably be required by the Agency, as to the actual progress of the Developer with respect to such construction. During such period the work of the Developer shall be subject to inspection by representatives of the Agency in accordance with the DDA.

ARTICLE 6

RESERVE ACCOUNT

6.1 **Deposits.** Beginning on the Commencement Date and continuing thereafter on each anniversary of the Commencement Date during the Term (except as provided in Section 3.4(b)), Borrower shall make annual deposits of Two Thousand Five Hundred Dollars (\$2,500) into the Reserve Account.

6.2. **Withdrawals.** Borrower may withdraw funds from the Reserve Account to pay costs associated with the improvement and maintenance of the Commercial Parcel.

ARTICLE 7 (INTENTIONALLY OMITTED)

ARTICLE 8

GOVERNMENTAL REQUIREMENTS

8.1 **Borrower Compliance.** The Borrower shall comply, and where applicable require its contractors to comply, with all applicable laws and regulations governing the use of tax increment funds for the Project, including but not limited to those listed below in this Section 8.1; provided that such laws and regulations may be preempted by federal requirements applicable to the use of federal funds for the Site.

(a) **Prevailing Wages.** Borrower agrees to comply with the Agency's Prevailing Wage Provisions (Labor Standards) attached hereto as Exhibit G.

(b) **Bayview Hunters Point Employment and Contracting Policy.** Borrower agrees to comply with the Bayview Hunters Point Employment and Contracting Policy attached hereto as Exhibit H.

(c) **Construction Workforce Agreement.** Borrower agrees to comply with the Construction Workforce Agreement attached hereto as Exhibit I.

(d) **Environmental Review.** The requirements of the California Environmental Quality Act and implementing regulations, and of the National Environmental Protection Act and implementing regulations, as applicable.

(e) **Conflict of Interest.**

(i) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the Borrower or the Agency who exercises or has exercised any function or responsibilities with respect to activities assisted by tax increment 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, the Borrower shall incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements for the Project entered into after the Agreement date and relating to activities assisted under the Agreement, a provision similar to that of this section. The Borrower shall be responsible for obtaining compliance with such provisions by the parties with whom it contracts and, in the event of a breach, shall take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(ii) Borrower represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 through 87103.5 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 said sections, or any of them, and agrees to immediately notify the Agency if the Borrower at any time obtains knowledge of facts constituting such a violation.

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

(f) Disability Access. The Borrower shall comply with all applicable federal, state and local disability access laws, including but not limited to the Americans With Disabilities Act, Section 504 of the Rehabilitation Act, the Fair Housing Amendments Act and any other applicable disability access laws. The Borrower is responsible for determining those disability access laws applicable to the Project.

(g) Small Business Enterprise Program. Borrower agrees to comply with the requirements of the Agency's Minority/Women-Owned Business Enterprise Program and related requirements attached hereto as Exhibit I.

(h) 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", attached as Exhibits H & I) adopted by Agency Resolution 164-2001, 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. Notwithstanding the above, the Agency recognizes that the residential housing component of the Project is not subject to the Policies, but any commercial space is subject to the Policies.

(i) Non-Discrimination in Agency Contracts and Benefits Policy.

(i) Borrower Shall 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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Agency 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.

(ii) 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 the Agency 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 entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy ("**Policy**"), adopted by Agency Resolution 175-97, a such Policy may be amended from time to time.

(iii) Public Disclosure. The Borrower understands and agrees that under the State Public Records Law (California Government Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Borrower hereby authorizes the Agency to disclose any records, information and materials submitted to the Agency in connection with this Agreement, except any information which the Agency is legally prohibited from disclosing.

ARTICLE 9

PROJECT MONITORING

9.1 Generally. The Borrower understands and agrees that it will be monitored by the Agency from time to time to assure compliance with all terms and conditions in this Agreement and all laws. The Borrower acknowledges that the Agency may also conduct periodic on-site inspections of the Project. The Borrower shall cooperate with the monitoring by the Agency, and shall ensure full access by the Agency to the Project and all information related to the Project as reasonably required by the Agency.

9.2 Borrower's Notice to Agency. In addition to any other notice to the Agency required by any of the Loan Documents, Borrower agrees to promptly notify the Agency in advance if possible, and, if prior notice is not possible, no later than five (5) days after any of the following:

- (a) Any change in Borrower's assignment of staff, consultants and subconsultants for the Project, as described in Borrower's response to the Agency's Request for Qualifications.
- (b) Any materially adverse change in Borrower's financial condition or operations.
- (c) Change of the use of the space.
- (d) Change of tenant.
- (e) Any materially adverse change that may affect the Project.

9.3 **Project Completion Report.** Upon completion of the Project, the Borrower shall provide to the Agency the following documents:

- (a) A project completion audit including a project management report and identifying the final sources and uses of all Project funds including Loan proceeds;
- (b) A report on use of small business enterprises, the type of work and the dollar value of such work; and

ARTICLE 10 (INTENTIONALLY OMITTED)

ARTICLE 11 (INTENTIONALLY OMITTED)

ARTICLE 12

TRANSFERS

12.1 **Permitted Transfers/Consent.** Borrower shall not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Commercial Parcel other than leases of the Commercial Parcel. No consent to any assignment, encumbrance, lease or other transfer shall constitute a consent to any subsequent transfer, or a waiver of any of the Agency's rights under this Agreement.

ARTICLE 13

INSURANCE AND BONDS

13.1 **Borrower's Insurance.** Without in any way limiting Borrower's indemnification obligations under this Agreement, and subject to approval by the Agency's Risk Manager of the

insurers and policy forms, the Borrower shall obtain and maintain, at the Borrower's expense, the following insurance and bonds throughout the Term of this Agreement.

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

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) including completed operations for a period of no less than three years following completion of construction.
- (2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01- any auto).
- (4) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (5) Professional Liability Insurance covering all negligent acts, errors and omissions in Borrower's Architectural and Engineering Professional Design Services. As an alternative to Borrower providing said Professional Liability Insurance, Borrower must require that all architectural and engineering professional consultants for the Project have liability insurance covering negligent acts, errors and omissions. Borrower must provide the Agency with copies of consultants' insurance certificates showing such coverage.
- (6) Property Insurance against all risks of direct physical loss to the property, excluding earthquake and flood, during the course of construction and following completion of construction for such time as the property is owned by the Borrower. The Agency shall be named as a Loss Payee.

(b) Minimum Limits of Insurance. Borrower must maintain limits no less than:

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including completed operations coverage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project or the general aggregate limit must be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.
- (4) Professional Liability Insurance: \$1,000,000 per claim and in the annual aggregate. If the Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained for no less than three (3) years beyond completion of the Project.
- (5) Property Insurance: Full completed value of the property securing the loan. During the course of construction (builder's risk), full completed value of the

improvements. Following completion of construction and for such time as the Borrower owns the improvements, full completed value of the property with no coinsurance penalty provisions.

- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Borrower shall provide a financial guarantee satisfactory to the Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses. Agency approval shall not be required for deductibles below \$25,000.

(c) Other Insurance Provisions.

- (1) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. The "San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and liability arising out of work or operations performed by or on behalf of the Borrower.
- ii. For any claims related to this Loan, the Borrower's insurance coverage must be primary insurance as respects to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Borrower's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- iv. Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

- (d) Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the Agency's Risk Manager.

- (e) Verification of Coverage. Borrower must furnish the Agency with certificates of insurance and with original endorsements evidencing coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The

certificates and endorsements may be on forms provided by the Agency. All certificates and endorsements are to be received and approved by the Agency before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

- (f) Subcontractors. Borrower shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.
- (g) Fidelity Bond. Borrower agrees to obtain a blanket fidelity bond from a bonding company acceptable to the Agency covering all officers and employees of Borrower for loss of Loan Funds /disbursed Loan proceeds caused by dishonesty in an amount not less than \$250,000. Should such a loss occur, Borrower agrees to diligently pursue recovery under the bond and to assign or remit to the Agency all funds recovered.

ARTICLE 14

GOVERNMENTAL APPROVALS

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 (“**Approvals**”).

ARTICLE 15

DEFAULT

15.1 **Event of Default**. An “Event of Default” shall consist of any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the Loan Documents, including but not limited to the following, but only following the expiration of any applicable notice and cure periods contained in any Loan Document:

(a) The Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Any lien is recorded against all or any part of the Commercial Parcel without the Agency's prior written consent, whether such lien is prior or subordinate to the liens of the Commercial Deed of Trust and such lien is not removed from title or otherwise remedied to the Agency's satisfaction within the time periods specified in Subsection (c), below; or

(c) The Borrower fails to perform or observe any other term, covenant or agreement contained in any Loan Documents and such failure continues for more than thirty (30) days after written notice of such failure is given by the Agency to the Borrower, unless such failure is not reasonably capable of being cured within such 30-day period (but is reasonably capable of being cured within sixty (60) days after such notice or such longer period as deemed reasonable by the Agency) and the Borrower commences action to cure such failure within such 30-day period and diligently and continuously prosecutes such action to completion and causes

such failure to be cured within sixty (60) days after such notice, or such longer period of time as deemed reasonable by the Agency; or

(d) Any representation or warranty made by the Borrower in any Loan 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 Commercial Parcel is damaged or destroyed by fire or other casualty, and the Agency has reasonably determined upon restoration or repair that the security of the Commercial Deed of Trust has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of the Commercial 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 governmental agency or subject to any action or other proceeding instituted by any governmental agency for any such purpose such that the improvements cannot be operated for their intended purpose; or

(f) The Borrower is dissolved or liquidated or merged with or into any other entity; or, if the Borrower is a corporation, partnership, or trust, for any period of more than thirty (30) days the Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the Laws of the jurisdiction of formation and California; or all or substantially all of the assets of the Borrower are sold or otherwise transferred (other than as permitted under Section 12.1); or

(g) The Borrower assigns or attempts to assign any rights or interest under any Loan Document, whether voluntarily or involuntarily, without the prior written consent of the Agency;

(h) Due to any action or inaction of Borrower, the Commercial Deed of Trust ceases to constitute a valid and indefeasible perfected lien on the Commercial Parcel, subject only to Permitted Exceptions; or

(i) The 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 the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for it or for all or any part of its property (or any such appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or the Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or to all or any part of its property under the Laws of any jurisdiction (or any such proceeding is instituted without its consent and continues undismissed and unstayed for sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Commercial Parcel, the improvements or any other property of the Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(j) Any material adverse change occurs in the financial condition or operations of the Borrower, or any changes in staff, that has a material adverse impact on the Project.

15.2 **Remedies.** In the event of a default, except as otherwise provided in this Agreement, the Borrower shall have thirty (30) days from the receipt of written notice from the Agency to cure such default, or, if such default cannot reasonably be cured within such 30-day period, the Borrower shall commence action to cure such failure within such 30-day period and diligently and continuously prosecute such action to completion.

(a) The Agency may, at its option, terminate all commitments to make Disbursements or to release any Improvements from the Commercial Deed of Trust, or the Agency may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Agency, to make further Disbursements or to release any of the Commercial Parcel from the Commercial Deed of Trust;

(b) The Agency may perform any of Borrower's obligations under this Agreement or applicable law in such manner as the Agency may determine;

(c) The Agency may, either directly or through an agent or court-appointed receiver, take possession of the Project and enter into such contracts and take such other action as the Agency deems appropriate to complete or partially construct all or any part of the Improvements, subject to such modifications and changes in the Project or the plans submitted to the Agency as the Agency may deem appropriate; and

(d) The Agency may proceed to protect, exercise and enforce all other remedies provided under the Loan Documents or by applicable laws.

(e) All costs, expenses, charges and advances of the Agency in exercising any such remedies (including any such amounts that cause the obligations of Borrower to exceed the face amount of the Note) shall be payable by Borrower to the Agency.

15.3 **Force Majeure.**

(a) For the purposes of any of the provisions of this Agreement, and notwithstanding any provision herein to the contrary, neither the Agency nor Borrower, as the case may be (the "**Delayed Party**" as applicable), will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of another Party, during an event of Force Majeure (defined below). In the event of the occurrence of any event of Force Majeure, the time or times for performance of the obligations of the Agency or Borrower will be extended for the period of the Force Majeure event; *provided, however*, that the Party seeking the benefit of the provisions of this Article must notify the other Party in writing within thirty (30) days after the beginning of any Force Majeure event, and state the cause or causes of delay and provide notification of an extension for the period of the Force Majeure event.

(b) "**Force Majeure**" means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement due to causes beyond the Delayed Party's

control, including acts of God or of a public enemy, acts of terrorism, acts of the government (other than acts of the government relating to the delay or failure to issue building permits for cause), fires, floods, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered the materials on a timely basis), unusually severe weather, archeological finds on the Commercial Parcel, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration (provided that Borrower proceeds with due diligence to resolve any dispute that is the subject of action), and delays of subcontractors due to any of these causes.

ARTICLE 16

RECORDS AND DOCUMENTS

16.1 **Generally.** Borrower shall keep and maintain books, records, and other documents relating to the receipt and use of all Loan proceeds, including but not limited to all documents evidencing any Project Income and Project Expenses. Borrower shall maintain records of all income, expenditures, assets, liabilities, contracts, operations, buyer eligibility, and condition of the Project, which shall be maintained in accordance with generally accepted accounting principles, as applicable.

16.2 **Response to Inquiries.** At the request of the Agency, its agents, employees, or attorneys, the Borrower shall promptly and specifically respond 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 information with respect to the Borrower or the Project.

16.3 **Delivery of Records.** At the request of the Agency, made through its agents, employees, officers, or attorneys, the Borrower shall provide the Agency with a photocopy of each of the following documents, certified in writing by the Borrower to be complete and accurate:

(a) Copies of 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 the Borrower and, as applicable, any officer, employee, general or limited partner of Borrower; and

(b) Copies of all certified financial statements of the Borrower and, if applicable, its managing member, the accuracy of which shall be certified by an auditor satisfactory to the Agency; and

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

16.4 **Access to the Project and Other Project Books and Records.** Borrower agrees that duly authorized representatives of the Agency shall, at all reasonable times, following

reasonable notice, have (a) access to the Project through the Term to monitor the progress of work on the Project and compliance by the Borrower with the terms of this Agreement, and (b) access to and the right to inspect, copy, audit, and examine all books, records, and other documents of the Borrower required to be kept under Section 16.1 above until three (3) years after expiration of the Term of this Agreement.

ARTICLE 17

REPRESENTATIONS AND WARRANTIES

17.1 **Borrower Representations and Warranties.** As a further inducement for the Agency to make the Loan, the Borrower represents and warrants as follows:

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

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

(c) There is no action, suit or proceeding pending or threatened against Borrower which might adversely affect the Borrower or the Project in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including but not limited to any lease of real property which might adversely affect the Borrower or the Project in any material respect.

(e) Neither Borrower nor its general contractor has been suspended or debarred by any federal, state or local governmental or regulatory agency, nor has Borrower or its general contractor been suspended, disciplined or prohibited from contracting with any federal, state or local 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 18

NOTICE

All notices, consents, communications or transmittals required by this Agreement shall be made in writing, and shall be deemed communicated by personal delivery or by United States certified mail, postage prepaid, return receipt requested, as of the earlier of actual receipt or seven days from mailing, addressed as follows:

To the Agency: **Executive Director**
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

To Borrower: San Francisco Housing Development
Corporation
4439 Third Street
San Francisco, CA 94124
Attn: Chief Executive Officer
Telefacsimile: (415) 822-1077
Telephone: (415) 822-1022

or such other address as either party may designate, from time to time, by written notice sent to the other party in like manner.

ARTICLE 19

HAZARDOUS SUBSTANCES

19.1 **Covenant**. Unless the Agency otherwise consents in writing, the Borrower shall at all times during the Term, at its sole expense: (a) comply with all applicable Environmental Requirements relating to the Commercial Parcel and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Requirements or which is not customary and incidental to the intended use of the Commercial Parcel, provided that nothing contained in this Section shall prevent the Borrower from contesting, in good faith and by appropriate proceedings, any such Environmental Requirements or the interpretation or application of such Environmental Requirements; and (b) deliver to the Agency, promptly following the occurrence of any such event, notice of the discovery by the Borrower of any event the occurrence of which would render any representation contained in this Section incorrect in any respect if made at the time of such discovery.

ARTICLE 20

INDEMNITY

Borrower shall indemnify, defend and hold harmless the Agency, the City and their respective officers, agents and employees (“**Indemnitees**”) from and against any and all losses, liabilities, damages, costs, expenses and charges (including the reasonable fees, charges and disbursements of internal and external legal counsel) arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the Loan Documents (including, without limitation, those covenants set forth in Section 19.1 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 Project,

whether caused by the negligence or any other act or omission of Borrower or any other person under control of the Borrower or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to construction of any Improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the Loan Documents, the Loan, the Project or any transaction contemplated by, or the relationship between Borrower and the Agency or any action or inaction by the Agency under, the Loan Documents; (f) the occurrence, after commencement of Borrower's acquisition of the Commercial Parcel and prior to the expiration of the Term, of any Environmental Activity or any failure of the Borrower or any other person to comply with all applicable Environmental Requirements relating to the Commercial Parcel, (g) any failure of the Project to comply with any law, statute, ordinance, rule, regulation or order of the local, state and federal authorities now or later in effect, including, but not limited to, the Americans with Disabilities Act; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Government Agency, whether meritorious or not, which 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 (g) above. 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, and upon written notice from such Indemnitee, Borrower shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnitee. The Indemnitees shall have the right, exercised in their 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; provided, however that no Indemnitee shall be entitled to indemnification under this section for matters caused by such Indemnitee's gross negligence or willful misconduct. The provisions of this Section 24 shall survive the repayment of the Loan and/or termination of this Agreement with respect to any Loss occurring prior to or upon termination of this Agreement, but shall have no force or effect in connection with any Loss occurring following the expiration of the Term, unless such Loss is due to the Borrower's negligence or willful misconduct.

ARTICLE 21

GENERAL PROVISIONS

21.1 **Subordination**. The Commercial Deed of Trust may be subordinated to other financing secured by and used for development of the Project, provided that all of the following conditions are satisfied:

- (a) All of the proceeds of the proposed financing, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Project;
- (b) The terms of the proposed financing and any subordination agreement must be reviewed and approved by the Agency;

(c) The proposed lender (“**Lender**”) shall be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated, other than as a depositor or a lender, with the Borrower or any of the Borrower’s affiliates;

(d) The Borrower shall demonstrate, to the satisfaction of the Agency, that subordination of the Commercial Deed of Trust is necessary to secure adequate acquisition, construction and/or permanent financing to ensure the viability of the Project. To satisfy this requirement, the Borrower shall provide the following information to the Agency, in addition to any other information reasonably required by the Agency:

(i) A written request from the Lender stating the economic reasons for the proposed subordination;

(ii) Evidence demonstrating that the proposed amount of the Loan is necessary to provide adequate acquisition, construction and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination;

(e) The subordination agreement(s) shall be structured to minimize the risk that, as a result of a foreclosure by the Lender or other holder of such financing, the Commercial Deed of Trust will be extinguished. To satisfy this requirement, the subordination agreement must provide the Agency with adequate rights to cure any defaults by the Borrower, including but not limited to (i) providing the Agency or its successor with copies of any notices of default in the same time and manner as provided to the Borrower, and (ii) providing the Agency with a cure period at least equal to that provided to the Borrower to cure such default;

(f) The subordination(s) described in this condition shall be effective only during the original term of the Loans and any extension of the term approved in writing by the Agency;

(g) The effect of the subordination shall be to extinguish the Commercial Deed of Trust subsequent to a transfer of the Project pursuant to a judicial foreclosure, private sale under a power of sale, or grant under a deed in lieu of foreclosure that arises out of a default under any of the Loans; and

(h) Any subordination shall not limit the effect of the Commercial Deed of Trust prior to a foreclosure.

(i) Following review and approval by Agency staff, the Agency’s Executive Director, or his/her successor or designee, shall be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

21.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the Agency, shall 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 the Agency and Borrower or Borrower's agents, employees or contractors. Borrower shall at all times be deemed an independent contractor and shall be wholly responsible

for the manner in which it or its agents, employees or contractors, or any of them, perform the services required of it by the terms of this Agreement for the development of the Project. Borrower has and hereby retains the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regard to the development of the Project, Borrower acknowledges and agrees to be solely responsible for all matters relating to payment of its agents, employees, and contractors, including compliance with Social Security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower agrees to be solely responsible for its own acts and those of its agents, employees and contractors.

21.3 **No Claims by Third Parties.** Nothing contained in this Agreement shall create or justify any claim against the Agency 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 shall include this requirement as a provision in any contracts entered into for the development of the Project.

21.4 **Entire Agreement.** This Agreement and the Exhibits to it and, to the extent applicable, the DDA incorporate the terms of all agreements made by the Agency and Borrower with regard to the Agency's loan to the Borrower of the Loan Amount. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein shall be binding on the Agency or Borrower.

21.5 **Agency Obligations.** The Agency's sole obligation under this Agreement is limited to the providing of funds as described in this Agreement, up to the Loan Amount. Except as set forth in the DDA, under no circumstances, including breach of this Agreement, shall the Agency be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by the Agency in connection with any of the Loan Documents.

21.6 **Borrower Solely Responsible.** Borrower shall be solely responsible for its work, shall bear full responsibility for any losses or damages incurred by Borrower, any of its contractors or subcontractors, the Agency, its officers, representatives, agents and employees on account of any act, error or omission of the Borrower in the performance of this Agreement and the development of the Project.

21.7 **No Inconsistent Agreements.** Borrower warrants that it has not, and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions hereof without the Agency's prior written consent.

21.8 **Inconsistencies in Loan Documents.** In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall control. However, any provision in this Agreement in conflict with any federal, state or local statute or regulation shall be interpreted subject to said statute or regulation.

21.9 **Governing Law.** This Agreement shall be governed by California law.

21.10 **Joint and Several Liability**. If more than one person executes this Agreement as Borrower, each shall be jointly and severally liable to the Agency for the faithful performance of this Agreement.

21.11 **Successors**. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns.

21.12 **Attorneys' Fees**. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

21.13 **Severability**. The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision.

21.14 **Time**. Time is of the essence in this Agreement. The Borrower agrees to pursue the purpose of this Agreement in an effective and continuous manner and agrees to use best efforts to achieve the purpose of this Agreement pursuant to the provisions of the Agreement.

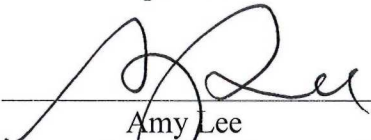
21.15 **Binding Covenants**. The provisions of the Loan Documents shall constitute covenants which shall run with the land and be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including but not limited to leasehold interests, in or to any part of the subject property, except that the same shall terminate and become void automatically at the expiration of the Term of this Agreement. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

21.16 **Consent**. Except as expressly provided otherwise; whenever consent or approval of either party is required, that party shall not unreasonably withhold or delay consideration of such consent or approval.

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

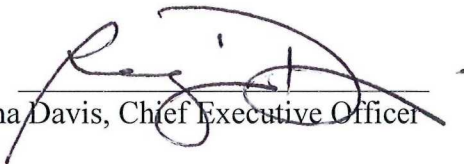
AGENCY:

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

By: 
Amy Lee
Its: Deputy Executive Director, Finance
and Administration

BORROWER:

SAN FRANCISCO HOUSING
DEVELOPMENT CORPORATION, a
California nonprofit public benefit corporation,

By: 
Regina Davis, Chief Executive Officer

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel
Authorized by Resolution No. _____
adopted _____

EXHIBIT A

Commercial Parcel Legal Description

(4800 Third Street – Improvements Only)

All of that certain real property situated in the City and County of San Francisco, State of California, being all of those existing improvements located on the following described parcel of land:

All of Lot “A” (Lots 050 to 069) as shown on that certain parcel map entitled “Final Map No. 5140, A 18 Residential Unit & 2 Commercial Unit Mixed-Use Condominium Project” as per map filed for record April 20, 2009, in Book 109 of Condominium Maps, at pages 132 to 143, inclusive, in the Official Records of the City and County of San Francisco.

APN 5322, Lot 045

EXHIBIT B

Table of Sources & Uses of Funds

4800 Third Street Retail Budget

SOURCES

<u>MOH Stimulus Funds</u>	<u>137,500</u>
<u>SFRA Tax Increment</u>	<u>250,000</u>
<u>SFHDC TI Allowance</u>	<u>35,300</u>
<u>CDBG Grant</u>	<u>185,000</u>
<u>SF Shines Grant</u>	<u>28,500</u>
<u>Radio Africa & Kitchen Investment</u>	<u>35,000</u>
<u>Total Sources</u>	<u>671,300</u>

USES

<u>Architecture</u>	<u>45,000</u>
<u>Permits/Fees</u>	<u>34,500</u>
<u>Soft Cost Contingency</u>	<u>10,000</u>
<u>Construction Management</u>	<u>25,000</u>
<u>Hard Construction</u>	<u>338,000</u>
<u>Construction Contingency 10%</u>	<u>33,800</u>
<u>Capital Replacement Reserve</u>	<u>25,000</u>
<u>Equipment</u>	<u>125,000</u>
<u>Furnishings& Smallwares</u>	<u>35,000</u>
<u>Total Uses</u>	<u>671,300</u>

EXHIBIT C

Form of Commercial Note

US \$250,000
March 15, 2011

San Francisco, California

FOR VALUE RECEIVED, the undersigned, **San Francisco Housing Development Corporation**, a California nonprofit public benefit corporation ("Borrower" or "Maker"), promises to pay to the Redevelopment Agency of the City and County of San Francisco ("Agency" or "Holder"), or order, the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Commercial Loan").

1. Secured by a Deed of Trust. The Commercial Loan is secured by a deed of trust of even date herewith (the "Commercial Deed of Trust") on the real property in San Francisco, California described more particularly in Exhibit A to the Commercial Deed of Trust ("Commercial Parcel"); This Note is non-recourse to the Maker. The Holder shall have recourse only to the security in the event of a default under this Commercial Loan or the Commercial Deed of Trust.

2. Disbursement. The Agency shall disburse the Commercial Loan as provided in the Tax Increment Loan Agreement of even date herewith between the Agency and the Borrower (the "Loan Agreement").

4. Reconveyance. Upon payment in full of all sums payable under this Commercial Note, the Commercial Deed of Trust shall be fully reconveyed.

5. Place and Manner of Payment. Payments shall be made in lawful money of the United States at the Holder's address for notices set forth below or such other address as the Holder may require from time to time.

6. Interest. Interest shall accrue on the outstanding principal balance of this Commercial Note at a rate of One Percent (1%) annum, simple interest, which interest shall begin to accrue commencing on the first anniversary of the date that the tenant of the Commercial Parcel commences rental payments under the lease between Borrower and such tenant, until paid in full, except as provided in Section 7(c).

7. Repayment.

(a) The "Commencement Date" is the first anniversary of the date that the tenant of the Commercial Parcel commences rental payments under the lease between Borrower and such tenant.

(b) Borrower shall repay the Loan within (15) years following the Commencement Date (the "Term"), subject to extension under Subsection (c), or on the earlier of the date on which Borrower sells, assigns, conveys or otherwise transfers the Property Commercial Parcel in violation of this Agreement.

(1) Beginning in the first year on the first day of each month during the Term, Borrower shall pay the agency an amount necessary to fully amortize the Loan over the Term, subject to any applicable cure periods.

(2) Upon full repayment of the Loan, the Agency shall promptly reconvey the Commercial Deed of Trust.

(c) If at any time during the Term the Commercial Parcel is vacant for any reason for a period in excess of thirty (30) days, the Borrower may defer its obligation to make monthly payments hereunder during the period of such vacancy, commencing on the 31st day of such vacancy and continuing until the first day of the month in which Borrower receives monthly rental payment under a new lease (the "Vacancy Period."). In that case, the Term shall be extended for the Vacancy Period, and Borrower shall recommence monthly payments due hereunder beginning on the first day of the first full month following the Vacancy Period. No interest shall accrue on the Loan during the Vacancy Period.

(d) Amounts due under this Note may be prepaid at any time without penalty or other charge.

8. Events of Default and Remedies. The following shall be events of default hereunder (i) the failure of the Maker to make any payment within ten (10) days of the date when due; (ii) default by the Maker in the performance of any of the terms or conditions of this Commercial Note or the Commercial Deed of Trust which remains uncured for at least thirty (30) days from the date of written notice by Holder of such longer period as provided in the Loan Agreement; and (iii) the filing by the Maker of a petition in bankruptcy, or for appointment of a creditor's receiver or in insolvency, or for reorganization, or the making of an assignment for the benefit of creditors or to a trustee for creditors, or the occurrence of an adjudication in bankruptcy or the taking of possession of the Commercial Parcel or any portion thereof by a receiver for creditors or the seizure and sale of the Commercial Parcel or any portion thereof under judicial process or pursuant to any power of sale. Following the occurrence of an event of default, Holder shall have all remedies available at law or in equity, subject to the limitations in Section 1.

9. Borrower's Waiver. The Borrower hereby waives (a) notice of default or delinquency, (b) notice of acceleration, (c) notice of nonpayment, (d) notice of costs, expenses and losses and interest thereon, (e) notice of interest on interest and late charges, (f) diligence in taking any action to collect any sums owing under this Commercial Note or in proceeding against any of the rights and interest in and to properties securing payment of this Commercial Note, (g) presentment for payment, demand, protest, and notices of dishonor and/or protest, (h) the benefits of all waivable exemptions, and (i) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Commercial Note, in whole or in part, whether before or after maturity and with or without notice.

11. Holder Forbearance. No waiver of any breach, default or failure of condition under the terms of the Commercial Note or the obligations secured thereby shall be implied from any failure of the Holder to take, or any delay by the Holder in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Commercial Note or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

12. Notices. Any notice required pursuant to this Commercial Note shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the Borrower:

San Francisco Housing Development Corporation

4439 Third Street
San Francisco, CA 94124
Attn: Chief Executive Officer
Telefacsimile: (415) 822-1077
Telephone: (415) 822-1022

If to the Agency: San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Executive Director

or to such other addresses as the parties may designate by notice as set forth above.

13. Successors and Assigns. This Commercial Note may not be assumed without Holder's consent, can be assigned by Holder, and shall be binding on all successors and assigns of Holder and Maker.

14. Attorneys' Fees. If any action is instituted by Holder to enforce this Commercial Note or collect any sums due hereunder or pursuant to the Commercial Deed of Trust, the Holder shall be entitled to collect from Borrower all costs and expenses of such action, including, but not limited to, reasonable attorneys' fees.

15. Severability. If any provisions of this Commercial Note are found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Commercial Note shall remain in full force and effect.

16. Time. Time is of the essence in the performance of the terms and conditions of this Commercial Note.

17. Governing Law. This Commercial Note shall be governed by the laws of the State of California.

18. Compliance with Lawful Interest Rate. Notwithstanding any other provisions of this Note or any instrument securing the obligations of Borrower under this Commercial Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Commercial Note would result in the payment of interest which would exceed the amount that Holder may charge legally under the laws of the State of California, then the amount by which such payment exceeds the lawful interest rate shall be deducted automatically from the principal balance owing on this Commercial Note, so that in no event shall Borrower be obligated under the terms of this Commercial Note to pay any interest which would exceed the lawful rate.

Executed at San Francisco, California on March 15, 2011 _____

MAKER:

SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION,
A California nonprofit public benefit corporation

By:

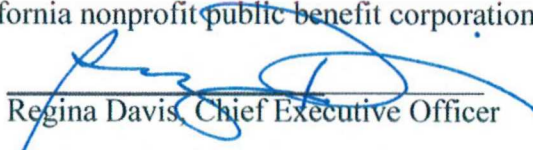

Regina Davis, Chief Executive Officer

EXHIBIT G

Form of Commercial Note

US \$150,000

San Francisco, California
_____, 2008

FOR VALUE RECEIVED, the undersigned, **San Francisco Housing Development Corporation**, a California nonprofit public benefit corporation ("Borrower" or "Maker"), promises to pay to the Redevelopment Agency of the City and County of San Francisco ("Agency" or "Holder"), or order, the principal sum of One Hundred Fifty Thousand Dollars (\$150,000) (the "Commercial Loan").

1. Secured by a Deed of Trust. The Commercial Loan is secured by a deed of trust of even date herewith (the "Commercial Deed of Trust") on the real property in San Francisco, California described more particularly in Exhibit A to the Deed of Trust ("Commercial Site"). This Note is non-recourse to the Maker. The Holder shall have recourse only to the security in the event of a default under this Commercial Loan or the Commercial Deed of Trust.

2. Disbursement. The Agency has previously disbursed the balance of the Commercial Loan to Borrower's predecessor, Green Blended Communities LLC (the "LLC"). Borrower has acquired the Commercial Site from the LLC in consideration, in part, for Borrower's assumption of the LLC's obligations with respect to the Commercial Loan, as evidenced by this Commercial Note and the Commercial Deed of Trust.

4. Reconveyance. Upon payment in full of all sums payable under this Commercial Note, the Commercial Deed of Trust shall be fully reconveyed.

5. Place and Manner of Payment. Payments shall be made in lawful money of the United States at the Holder's address for notices set forth below or such other address as the Holder may require from time to time.

6. Interest. Interest shall accrue on the outstanding principal balance of this Commercial Note at a rate of 5% per annum, simple interest, from the date of this Commercial Note until paid in full.

7. Repayment. Beginning on January 1 following the date of the commencement of rental payments under a lease for the Commercial Site (the "Commencement Date"), and on the first day of each month thereafter through the date which is twenty (20) years from the Commencement Date (the "Maturity Date"), the Borrower shall make monthly payments of principal and interest to Holder in an amount sufficient to fully amortize the Commercial Loan and accrued interest. The Commercial Loan and all accrued interest shall be due and payable on the Maturity Date. Amounts due under this Note may be prepaid at any time without penalty or other charge.

8. Events of Default and Remedies. The following shall be events of default hereunder (i) the failure of the Maker to make any payment within ten (10) days of the date when due; (ii) default by the Maker in the performance of any of the terms or conditions of this Commercial Note or the Commercial Deed of Trust which remains uncured for at least thirty (30) days from the date of written notice by Holder; and (iii) the filing by the Maker of a petition in bankruptcy, or for appointment of a creditor's receiver or in insolvency, or for reorganization, or

the making of an assignment for the benefit of creditors or to a trustee for creditors, or the occurrence of an adjudication in bankruptcy or the taking of possession of the Commercial Site or any portion thereof by a receiver for creditors or the seizure and sale of the Commercial Site or any portion thereof under judicial process or pursuant to any power of sale. Following the occurrence of an event of default, Holder shall have all remedies available at law or in equity, subject to the limitations in Section 1.

9. Borrower's Waiver. The Borrower hereby waives (a) notice of default or delinquency, (b) notice of acceleration, (c) notice of nonpayment, (d) notice of costs, expenses and losses and interest thereon, (e) notice of interest on interest and late charges, (f) diligence in taking any action to collect any sums owing under this Commercial Note or in proceeding against any of the rights and interest in and to properties securing payment of this Commercial Note, (g) presentment for payment, demand, protest, and notices of dishonor and/or protest, (h) the benefits of all waivable exemptions, and (i) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Commercial Note, in whole or in part, whether before or after maturity and with or without notice.

11. Holder Forbearance. No waiver of any breach, default or failure of condition under the terms of the Commercial Note or the obligations secured thereby shall be implied from any failure of the Holder to take, or any delay by the Holder in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Commercial Note or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

12. Notices. Any notice required pursuant to this Commercial Note shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the Borrower:	San Francisco Housing Development Corporation 4439 Third Street San Francisco, CA 94124 Attn: Chief Executive Officer Telefacsimile: (415) 822-1077 Telephone: (415) 822-1022
If to the Agency:	San Francisco Redevelopment Agency One South Van Ness Avenue, 5 th Floor San Francisco, CA 94103 Attention: Executive Director

or to such other addresses as the parties may designate by notice as set forth above.

13. Successors and Assigns. This Commercial Note may not be assumed without Holder's consent, can be assigned by Holder, and shall be binding on all successors and assigns of Holder and Maker.

14. Attorneys' Fees. If any action is instituted by Holder to enforce this Commercial Note or collect any sums due hereunder or pursuant to the Commercial Deed of Trust, the Holder shall be entitled to collect from Borrower all costs and expenses of such action, including, but not limited to, reasonable attorneys' fees.

15. Severability. If any provisions of this Commercial Note are found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall not in any

way be affected or impaired thereby, and all other provisions of this Commercial Note shall remain in full force and effect.

16. Time. Time is of the essence in the performance of the terms and conditions of this Commercial Note.

17. Governing Law. This Commercial Note shall be governed by the laws of the State of California.

18. Compliance with Lawful Interest Rate. Notwithstanding any other provisions of this Note or any instrument securing the obligations of Borrower under this Commercial Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Commercial Note would result in the payment of interest which would exceed the amount that Holder may charge legally under the laws of the State of California, then the amount by which such payment exceeds the lawful interest rate shall be deducted automatically from the principal balance owing on this Commercial Note, so that in no event shall Borrower be obligated under the terms of this Commercial Note to pay any interest which would exceed the lawful rate.

Executed at San Francisco, California on _____, 200__.

MAKER:

SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation

By:

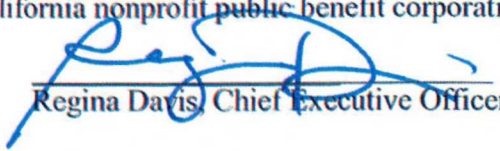

Regina Davis, Chief Executive Officer

EXHIBIT D

Form of Deed of Trust

*Free Recording (Pursuant to
Government Code §27383) Requested By:*

Redevelopment Agency of the
City and County of San Francisco

And When Recorded, Please Mail To:

Redevelopment Agency
Development Services Division
1 South Van Ness Ave., 5th Floor
San Francisco, CA 94103

Assessor's Block ____, Lots

Space Above for Recorder's Use

COMMERCIAL DEED OF TRUST

This Deed of Trust is made as of _____, 2011 by **San Francisco Housing Development Corporation**, a California nonprofit public benefit corporation, ("Trustor"), whose address is 4439 Third Street, San Francisco, CA 94124, to _____, a California corporation ("Trustee"), for the benefit of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic ("Beneficiary").

1. Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, its interest in that certain property in the City and County of San Francisco described on Exhibit A to this Deed of Trust (the "Commercial Parcel");

(a) together with the rents, issues and profits thereof, subject, however, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions incorporated herein by reference in paragraph 2 below to collect and apply such rents, issues and profits;

(b) for the purpose of securing: (i) Performance of each agreement of Trustor incorporated by reference or contained herein; (ii) Payment of Commercial Loan as evidenced by a promissory note of even date herewith, and any extension or renewal thereof, in the principal amount of \$250,000 executed by Trustor in favor of Beneficiary (the "Commercial Note"); and (iii) Performance by Trustor of its obligations pursuant to the Commercial Note.

2. To protect the security of this Commercial Deed of Trust, Trustor Agrees: (i) by the execution and delivery of this Commercial Deed of Trust and the note secured hereby, that paragraphs 1 to 14, inclusive, of the fictitious deed of trust recorded in the City and County of San Francisco on October 23, 1961, in Book A332 and at Page 905 of the Official Records in the Office of the Recorder of the City and County, hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; (ii) that it will observe and perform said provisions; and (iii) that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Commercial Deed of Trust.

3. Upon application by Trustor to Beneficiary and satisfaction of the conditions of this paragraph, Beneficiary shall cause Trustee to release and execute a full reconveyance of this Commercial Deed of Trust from the Commercial Parcel.

4. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the address set forth below.

SAN FRANCISCO HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation

By: _____
Regina Davis, Chief Executive Officer

Notice Address: 4439 Third Street, San Francisco, CA 94124

[All Signatures Must Be Notarized]

EXHIBIT E
Schedule of Performance

<i>Financing Milestones</i>	
SFRA Tax Increment loan authorized	<u>3/2011</u>
MOH Stimulus Funds Obtained	<u>Done</u>
<i>Construction Milestones</i>	
Concept design/Lease signed	<u>4/2011</u>
Design, MOD review, PAC additional funding	<u>5/2011</u>
Complete design, Permitting, Bidding, SFRA additional. funding	<u>6/2011</u>
Construction starts	<u>7/2011</u>
Construction Completion, Soft Opening	<u>10/2011</u>
Certificate of Occupancy Obtained	<u>10/2011</u>
Grand Opening	<u>10/2011</u>

EXHIBIT F

Agency's SBE Program

EXHIBIT F

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 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%

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 firm's 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 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.

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.

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 ten (10) 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.

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 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.

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 G

PREVAILING WAGE PROVISIONS **(LABOR STANDARDS)**

11.1 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Agreement between the Developer/Borrower/Owner and the Agency.

11.2 **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.

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

- (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.

11.4 **Prevailing Wage.**

- (a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §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.

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

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.

- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

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

11.8 **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b)
 - 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the 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.

- 11.9 Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
- 11.10 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.
- 11.11 Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.
- 11.12 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.
- 11.13 Violation and Remedies.**
- (a) **Liability to Employee for Unpaid Wages.** The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §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.

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Borrower or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the 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.

11.15 **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 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
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103.
or call **415-749-2409** and ask for
Mr. Roel Villacarlos
Contract Compliance Specialist II

EXHIBIT H
SCHEDULE A
CONSTRUCTION WORK FORCE

- I. **PURPOSE.** The purpose of the Agency and the Borrower entering into this Schedule A is to ensure equal employment opportunities for minority group persons and women in the construction work force involved in building the original improvements or tenant improvements provided by the Borrower upon the Site covered by the Loan Agreement. To achieve this purpose, the Agency and the Borrower adopt the standards and requirements set forth below, which are modeled on the standards and requirements of Executive Order 11246 and its implementing regulations including those contained in 41 Code of Federal Regulations ("CFR") 60-1.4, 60-4.2 and 60-4.3.

II. **WORK FORCE GOALS.**

- A. The goals set forth below are expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goals represent the level of minority and female utilization each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Borrower agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ minority group persons and women to perform construction work upon the Site at a level at least consistent with said goals.
- B. Goals
1. Goal for minority group participation in each trade: 25.6 percent (current Office of Federal Contract Compliance Programs, hereinafter "OFCCP", goal) of the total hours worked in the trade.
 2. Goal for female participation in each trade: 6.9 percent (current OFCCP goal) of the total hours worked in the trade.
 3. Goal for participation of San Francisco residents in each trade: 50 percent of the total hours worked in the trade. Residents of Bayview Hunters Point (BVHP) area shall be given first consideration for hiring followed by other San Francisco residents.
- C. If a conflict arises, achieving the ethnic and gender goals shall take precedence over achieving the residency goal set forth in §II.B.3.

- D. The goals set forth in §II.B shall be amended to reflect either:
1. New goals issued by the Director of OFCCP pursuant to 41 CFR 60-4.6 as published periodically in the Federal Register in notice form; or
 2. New goals issued by the Agency. Goals issued by the Agency shall either reflect the availability of minority group persons and/or women in the relevant labor area to perform construction work generally or by trade, or, be designed to correct the effects of past discrimination in situations where the Agency concludes that the facts establish a prima facie case of discrimination against a minority group or women, or otherwise meet the current judicial standards for setting employment goals. A judicial finding of discrimination shall not be a prerequisite to the establishment of new goals by the Agency. If the Borrower believes that the new goals violate applicable legal standards, the Borrower may challenge the goals either through arbitration under Attachment I or in a de novo court action.
- E. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Borrower. New goals shall not be applied retroactively.
- F. Although paragraph B establishes a single goal for minority group persons and a separate, single goal for women, 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 Schedule if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation if a specific ethnic group of women 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.
- G. Each Contractor is individually required to comply with its obligations under this Schedule A, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See §V 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.
- H. 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.
- I. 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. SECTION 3 CLAUSE. The Borrower and the Agency also agree that the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u apply to the planning, design and construction of said improvements. Accordingly, the Section 3 clause is set forth verbatim of this Schedule A as required by 24 CFR 135.20(b).

- A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The Borrower and Contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- D. The Borrower and Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

IV. **INCORPORATION.** Whenever the Borrower, 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 Attachment I of the Loan Agreement and this Schedule A, including the applicable goals for minority group and female participation in each trade.

V. **EQUAL OPPORTUNITY REQUIREMENTS.**

- A. Each Contractor shall take specific equal opportunity steps to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Schedule A 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 with specific attention given to minority group persons or women working at the Site.

2. Provide written notification to: Chinese for Affirmative Action, Mission Hiring Hall, South of Market Employment Center and Young Community Borrowers and any other organizations identified for the Contractor by the Agency 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 off-the-street, minority group, female or resident applicant and each minority, female and 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 therefor, 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 minority group person, a woman or 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 which expressly include minority group persons and women, 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 subparagraph V.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 and with all minority group and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.
7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations under the Loan Agreement and this Schedule A 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 minority and female 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 §V.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 §V.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.

VI. ADDITIONAL PROVISIONS.

- A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer either minority group persons or women shall not excuse the Contractor's obligations under this Schedule A.
- 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 Schedule A 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 I of the Loan Agreement 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.

VII. DOCUMENTATION AND RECORDS.

- A. Submission of certified payrolls to the Agency. 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. Instructions for coding certified payrolls. In addition to maintaining the information required by §VII.C, each Contractor shall include, on the weekly

Exhibit I

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Redevelopment Agency of the City and County of San Francisco 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 Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is \$11.69. For Nonprofit MCP the wage rate is \$11.03 ;12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

Effect on Agency 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, the Agency 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 the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency 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, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

For more information, the complete text of the MCP is available from the Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency 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 J

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Ordinance does. The San Francisco 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 the Agency, contractors and subcontractors that enter into leases with the Agency, and parties providing services to tenants and sub-tenants on Agency property to choose between offering health plan benefits to their employees or making payments to the Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Agency Commission (2) pay the Agency \$3.00 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 \$120 in any week) and the Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Agency.

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

Effect on Agency 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, the Agency can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received waiver; from the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency'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, this will help the Agency contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

For more information, (1) see the complete text of the HCAP, available from the Agency's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency 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



SAN FRANCISCO REDEVELOPMENT AGENCY
DECLARATION FORM
Nondiscrimination in Contracts and Benefits

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 San Francisco Redevelopment Agency (Agency) or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • race | ☐ Yes | ☐ No |
| • color | ☐ Yes | ☐ No |
| • creed | ☐ Yes | ☐ No |
| • religion | ☐ Yes | ☐ No |
| • ancestry | ☐ Yes | ☐ No |
| • national origin | ☐ Yes | ☐ No |
| • age | ☐ Yes | ☐ No |
| • sex | ☐ Yes | ☐ No |
| • sexual orientation | ☐ Yes | ☐ No |
| • gender identity | ☐ Yes | ☐ No |
| • marital status | ☐ Yes | ☐ No |
| • domestic partner status | ☐ Yes | ☐ No |
| • disability | ☐ Yes | ☐ No |
| • AIDS or HIV status | ☐ Yes | ☐ No |

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

☐ Yes ☐ No

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

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

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

EXHIBIT K

- Child care ☐ ☐ ☐
- Other ☐ ☐ ☐
- Other ☐ ☐ ☐

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

Exhibit K
RFQ-RFP Template
Nondiscrimination in Contracts and Benefits Declaration - Form SFRA/CC-102
Page 3 of 4

EXHIBIT K

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: San Francisco Redevelopment Agency, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103



SAN FRANCISCO REDEVELOPMENT AGENCY
INSTRUCTIONS FOR DECLARATION FORM
Nondiscrimination in Contracts and Benefits

A. What is the Nondiscrimination in Contracts Policy?

The San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of \$5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- | | |
|----------------------|---------------------------|
| • race | • color |
| • creed | • religion |
| • ancestry | • national origin |
| • age | • sex |
| • sexual orientation | • gender identity |
| • marital status | • domestic partner status |
| • disability | • AIDS/HIV status |

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the Agency division administering your contract with the Agency. "Subcontract" also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

Exhibit K(1)
INSTRUCTIONS FOR DECLARATION FORM
Nondiscrimination in Contracts and Benefits

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM**, unless such documentation does not exist. See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.



SAN FRANCISCO REDEVELOPMENT AGENCY

DECLARATION FORM

Nondiscrimination in Contracts and Benefits

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 San Francisco Redevelopment Agency (Agency) or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|---|-----------------------------|
| • race | ☒ Yes | ☐ No |
| • color | ☒ Yes | ☐ No |
| • creed | ☒ Yes | ☐ No |
| • religion | ☒ Yes | ☐ No |
| • ancestry | ☒ Yes | ☐ No |
| • national origin | ☒ Yes | ☐ No |
| • age | ☒ Yes | ☐ No |
| • sex | ☒ Yes | ☐ No |
| • sexual orientation | ☒ Yes | ☐ No |
| • gender identity | ☒ Yes | ☐ No |
| • marital status | ☒ Yes | ☐ No |
| • domestic partner status | ☒ Yes | ☐ No |
| • disability | ☒ Yes | ☐ No |
| • AIDS or HIV status | ☒ Yes | ☐ No |

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

☐ Yes ☐ No

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

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

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

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

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Redevelopment Agency of the City and County of San Francisco 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 Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is \$11.69. For Nonprofit MCP the wage rate is \$11.03 ;12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

Effect on Agency 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, the Agency 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 the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency 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, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

For more information, the complete text of the MCP is available from the Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency 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

REGINA DAVIS
Print Name

SAN FRANCISCO HOUSING DEVELOPMENT
Company Name
CORP

Date

2/14/2011

Phone

415. 822.1022

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Ordinance does. The San Francisco 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 the Agency, contractors and subcontractors that enter into leases with the Agency, and parties providing services to tenants and sub-tenants on Agency property to choose between offering health plan benefits to their employees or making payments to the Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Agency Commission (2) pay the Agency \$3.00 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 \$120 in any week) and the Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Agency.

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

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

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Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency 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

REGINA DAVIS

SAN FRANCISCO HOUSING DEVELOPMENT
Corp

2/14/2011

415.822.1022