

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 28-2021

AUTHORIZING A LOAN AGREEMENT FOR \$59,200,732 WITH HPSY 52-54, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR CONSTRUCTION OF A 112-UNIT AFFORDABLE RESIDENTIAL PROJECT (INCLUDING 111 AFFORDABLE FAMILY RENTAL UNITS AND ONE MANAGER'S UNIT) AT HUNTERS POINT SHIPYARD PHASE 1 BLOCKS 52 & 54, AND ADOPTING ENVIRONMENTAL REVIEW FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

- WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the “CRL”), the Redevelopment Agency of the City and County of San Francisco (the “Former Agency”) undertook programs of redevelopment in the City and County of San Francisco (“City”), including within the Hunters Point Shipyard (“HPS”) Redevelopment Project Area; and,
- WHEREAS, In accordance with the CRL, the City and County of San Francisco (“City”) acting through its Board of Supervisors approved a Redevelopment Plan for the HPS Redevelopment Project Area by Ordinance No. 285-97 adopted on July 14, 1997 (as currently amended, the “Redevelopment Plan”); and,
- WHEREAS, On December 2, 2003, the Former Agency Commission authorized, by Resolution No. 03-179, the execution of a Disposition and Development Agreement for Hunters Point Shipyard Phase 1 with Lennar/BVHP, LLC (succeeded by HPS Development Co, LP, the “Master Developer”), which as amended by the First through Sixth Amendments thereto is referred to herein as the “Phase 1 DDA”. The Phase 1 DDA together with a number of related binding agreements attached to or referenced in the text of the Phase 1 DDA establish a comprehensive set of enforceable obligations that collectively govern implementation of the first phase of redevelopment under the Redevelopment Plan, referred to as “HPS Phase 1”; and,
- WHEREAS, Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the “Redevelopment Dissolution Law”) and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly referred to as the Office of Community Investment and Infrastructure, or “OCII”) is responsible for implementing the HPS Redevelopment Plan and fulfilling the enforceable obligations under the Phase 1 DDA; and,
- WHEREAS On December 14, 2012, the California State Department of Finance issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5, that the Phase 1 DDA is an enforceable obligation that survived the dissolution of the Former Agency; and,

- WHEREAS, The Phase 1 DDA requires the Developer to undertake development of infrastructure in HPS Phase 1 to support up to 1,428 residential units and 26 acres of open space and parks, and to deliver “finished lots” (i.e., subdivided land improved with streets, sidewalks, parks, open space and utilities) to be either sold to Vertical Developers for residential or commercial use, or retained by OCII for the development of affordable housing. At least 10.5 percent of the residential units constructed by Vertical Developers must be affordable at 80 percent of Area Median Income (“AMI”); and,
- WHEREAS, In addition to Vertical Developers’ affordable housing obligation, OCII intends to provide financing to construct at least 218 affordable housing units within Phase 1 (“Agency Affordable Housing Units”), bringing the overall percentage of all of the affordable housing within HPS Phase 1 to a minimum of 27 percent; and,
- WHEREAS, On March 20, 2018, the Commission selected, by Resolution No. 07-2018, McCormack Baron Salazar and Bayview Hunters Point Multipurpose Senior Services (“BHPMSS”) to develop approximately 112 Agency Affordable Housing Units (the “Project”) on Blocks 52 and 54 within HPS Phase 1 (the “Site”); and,
- WHEREAS, On January 25, 2021 under Resolution No. 2-2021, the Oversight Board of the City and County of San Francisco approved an expenditure for funding including the Project through Item No. 395 of the Recognized Obligation Payment Schedule for the period of July 1, 2021 through June 30, 2022 (“ROPS 21-22”); and,
- WHEREAS, The Citywide Affordable Housing Loan Committee (the “Loan Committee”) reviewed OCII staff’s evaluation of the request for predevelopment funding for the Project at its meeting on June 15, 2018, and recommended to the Commission that it authorize OCII to provide a predevelopment loan in an amount not to exceed \$4,000,000 subject to certain terms and conditions as set out in the Loan Committee’s action and the Predevelopment Loan Documents; and,
- WHEREAS, On August 7, 2018, by Resolution No. 33-2018, the Commission approved an exclusive negotiations agreement (the “Original ENA”) with Shipyard 5254, L.P., an affiliate of McCormack Baron Salazar (the “Prior Developer”) as well as a predevelopment loan in an initial amount of Four Million Dollars (\$4,000,000.00) (“Original Predevelopment Loan Agreement”) to develop and operate affordable family rental housing units on the Site; and,
- WHEREAS, On July 16, 2019, by Resolution No. 17-2019, the Commission conditionally approved Schematic Designs for the Project contemplating 111 affordable rental housing units and one manager’s unit at the Site; and,
- WHEREAS, On or about February 17, 2020, the Original ENA between OCII and the Prior Developer expired according to its terms and in August 2020, the Prior Developer formally notified OCII that it would no longer be proceeding with the development of the Project. BHPMSS intended to remain co-developer and services provider for the Project. As a result, on April 6, 2021, by Resolution No. 08-2021, the Commission approved selection of The Jonathan Rose Companies (“JRC”) as new lead developer for the Project, and authorized (1) an Exclusive Negotiations

Agreement (the “ENA”) with HPSY 52-54, LP, a California limited partnership, an affiliate of JRC (the “Developer”) which, if executed to completion will result in an Option to Ground Lease for the Project site, and (2) an Amended and Restated Predevelopment Agreement (the “Predevelopment Agreement”) with the Developer allowing the Developer to use remaining funding initially approved for the Project, or, Two Million Eighty-Five Thousand Seven Hundred Seventy-Two and 98/100 Dollars (\$2,085,772.98) (the "Remaining Funding Amount") to fund predevelopment costs of the Project as well as assume the debt associated with the existing Work Product produced by the Prior Developer for the Project; and,

WHEREAS, The Citywide Affordable Housing Loan Committee reviewed OCII staff’s evaluation of the request for permanent funding for the Project at its meeting on July 16, 2021, and recommended to the Commission that it authorize OCII to provide a permanent loan in the form of a Second Amended and Restated Loan Agreement (the “Loan Agreement”) in an amount not to exceed \$59,200,732 subject to certain terms and conditions as set out in the Loan Committee’s action and the Loan Agreement; and,

WHEREAS, In order to allow the Developer to apply for tax exempt bond and low-income housing tax credit financing for the Project in the upcoming State application period (applications due in September 2021), OCII staff recommend approval and execution of the Loan Agreement in advance of the ground lease for the Site. The closing of the Loan under the Loan Agreement will be conditioned on the Commission’s approval of a ground lease for the Project, which will be presented to the Commission upon completion of negotiations of the terms thereof; and,

WHEREAS In the meantime, Staff propose that a portion of the Loan amount, in the amount of approximately \$751,605 be available to the Developer prior to Loan closing as additional predevelopment funds, to assist the Developer in completing predevelopment activities for the Project. The Loan Agreement, in substantially final form, is attached to the Commission memorandum associated with this Resolution and on file with the Commission Secretary; and,

WHEREAS, The Developer also desires to enter into and execute the Loan Agreement; and,

WHEREAS, For purposes of implementation and to ensure consistency with the City’s overall affordable housing goals and priorities, OCII has engaged the Mayor’s Office of Housing and Community Development (MOHCD) to provide additional services, construction monitoring and design review, and loan disbursement review and processing. Upon completion of the Blocks 52/54 Project, OCII intends, and is obligated, to transfer the affordable housing loan obligation, asset, and ground lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution No. 11-12, as required by Redevelopment Dissolution Law; and,

WHEREAS, The Former Agency Commission and the San Francisco Planning Commission (“Planning Commission”) certified the Hunters Point Shipyard Phase 1 Reuse Final Environmental Impact Report (“FEIR”), and adopted California Environmental Quality Act (“CEQA”) findings, a mitigation monitoring and reporting program

and statement of overriding considerations (collectively “CEQA Findings”) in 2000, and subsequently issued a First and Second Addendum to the Final EIR in 2003 and 2006, respectively, to address project changes (collectively, the FEIR and the CEQA Findings as updated by the First and Second Addenda are referred to as the “Phase 1 EIR”). The Commission has received the Phase 1 EIR and the Phase 1 EIR was made available to the public during prior Commission meetings. Additionally, the Former Agency Commission and the Planning Commission certified the Candlestick Point/Hunters Point Shipyard Phase 2 Final Environmental Impact Report in 2010 and adopted CEQA findings, a mitigation monitoring and reporting program and statement of overriding considerations (collectively, “Phase 2 CEQA Findings”), and subsequently issued four addenda, in 2014, 2016, 2018, and 2019, respectively, to address project changes (collectively, the FEIR and Phase 2 CEQA Findings as updated by the four addenda are referred to as the “Phase 2 EIR”). The Phase 2 EIR updated the transportation analysis and transportation plan (including the transportation system management plan) for Phase 1, but the Phase 2 EIR did not identify any new significant environmental effects or an increase in the severity of significant impacts of the Phase 1 Project previously identified in the Phase 1 EIR; and,

WHEREAS, OCII staff has reviewed the Loan Agreement and has found it to be within the scope of the project analyzed in the Phase 1 EIR and its subsequent addenda and consistent with additional review performed under the Phase 2 EIR; and,

WHEREAS, Copies of the Phase 1 EIR and Phase 2 EIR and supporting documentation for each are on file with the Commission Secretary and are incorporated into this Resolution by this reference; now therefore be it

RESOLVED, That the Commission finds the Loan Agreement is within the scope of the project analyzed in the Phase 1 EIR and its subsequent addenda and the Phase 2 EIR and its subsequent addenda and require no additional environmental review pursuant to CEQA Guidelines Sections 15180, 15162, 15163, and 15164 for the following reasons:

(1) implementation of the Loan Agreement does not require major revisions to the Phase 1 EIR and the Phase 2 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,

(2) no substantial changes have occurred with respect to the circumstances under which the project analyzed in the Phase 1 EIR and Phase 2 EIR will be undertaken that would require major revisions to the Phase 1 EIR and Phase 2 EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Phase 1 EIR and Phase 2 EIR; and,

(3) no new information of substantial importance to the project analyzed in the Phase 1 EIR and Phase 2 EIR has become available, which would indicate that (i) implementation of the ENA and the Agreement will have significant effects not discussed in the Phase 1 EIR and Phase 2 EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives

found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the Phase 1 EIR and Phase 2 EIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the Phase 1 EIR and Phase 2 EIR; and be it further

RESOLVED, That the Commission authorizes the Executive Director to: (i) enter into the Loan Agreement with the Developer, substantially in the form of the documents approved by legal counsel for OCII; (ii) to make expenditures consistent with Redevelopment Dissolution Law; and (iii) to enter into any and all ancillary documents or to take any additional actions, including updating insurance requirements, necessary to consummate the transaction contemplated by this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of August 17, 2021.

Commission Secretary

Exhibit A: Second Amended and Restated Loan Agreement

SECOND AMENDED AND RESTATED LOAN AGREEMENT

By and Between

**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

and

HPSY 52-54, LP, a California limited partnership,

for

Hunters Point Shipyard Phase 1 Blocks 52 and 54

151 and 351 Friedell St.

\$59,200,732

Dated as of _____, 2021

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EXHIBITS

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J	Form Deed of Trust
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N	Developer Fee Schedule
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**SECOND AMENDED AND RESTATED
LOAN AGREEMENT**
(Hunters Point Shipyard Phase 1 Blocks 52 and 54)

This SECOND AMENDED AND RESTATED LOAN AGREEMENT ("**Agreement**") is entered into as of _____, 2021, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body organized and existing under the laws of the State of California ("**OCII**"), and HPSY 52-54, LP, a California limited partnership (the "**Borrower**"), whose general partner is Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, an affiliate under common control with Jonathan Rose Companies ("**JRC**"), which general partner is anticipated to become the co-general partner and whose managing general partner is anticipated to be Bayview Hunters Point Multipurpose Senior Services, Inc. ("**BHPMSS**"), a California nonprofit public benefit corporation.

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the "**CRL**"), the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") and the Board of Supervisors of the City and County of San Francisco (the "**City**") established the Hunters Point Shipyard ("**HPS**") Redevelopment Project Area ("**Project Area**").

B. In accordance with the CRL, the City, acting through its Board of Supervisors initially approved a Redevelopment Plan for the Hunters Point Shipyard Redevelopment Project Area ("**Project Area**") by Ordinance No. 285-97 adopted on July 14, 1997 (and as currently amended, the "**HPS Redevelopment Plan**").

C. Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the "**Redevelopment Dissolution Law**") and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the CRL), OCII is responsible for implementing the HPS Redevelopment Plan and fulfilling enforceable obligations of the Former Agency under the Disposition and Development Agreement – Hunters Point Shipyard Phase 1 (initially adopted December 2, 2003, and as currently amended, the "**DDA**") between OCII and HPS Development Co., L.P. (the "Master Developer").

D. Under the DDA including its Affordable Housing Program, the Master Developer is required to deliver "finished lots" (i.e., subdivided land served by improved streets, sidewalks, parks, open space and utilities) to be sold to vertical developers or retained by OCII for the development of affordable housing. The DDA identifies the specific "**Agency Affordable Parcels**", which include the two parcels of land depicted on Attachment 1 hereto (the "Site"), commonly referred to as OCII Blocks 52 and 54. OCII intends to provide financing to assist in the construction of at least 218 affordable housing units, collectively, on the Agency Affordable Parcels, including approximately 111 units on the Site.

E. On August 7, 2018, by Resolution No. 33-2018, the Commission approved a loan in an initial amount of Four Million Dollars (\$4,000,000.00) to Shipyard 5254, L.P., an affiliate of McCormack Baron Salazar (the “**Prior Borrower**”), for predevelopment funding (“**Original Loan Agreement**”) to develop and operate affordable family rental housing units on the Site. The Oversight Board of the City and County of San Francisco and the California Department of Finance have approved, under Redevelopment Dissolution Law, this expenditure in the Recognized Obligation Payment Schedule for July 1, 2017 to June 30, 2018 - Oversight Board Resolution No. 1-2017 (January 23, 2017), as amended by Oversight Board Resolution No. 3-2017 (September 8, 2017).

F. On July 16, 2019, by Resolution No. 17-2019, the Commission conditionally approved “**Schematic Designs**” contemplating 111 affordable rental housing units and one manager’s unit at the Site (as further described in the Schematic Designs, the “**Project**”).

G. On or about February 17, 2020, the exclusive negotiations agreement between OCII and the Prior Borrower expired according to its terms and the Prior Borrower halted development of the Project.

H. As a result of the Prior Borrower's withdrawal, on October 22, 2020, OCII issued a Housing Development Request for Qualifications (the “**RFQ**”) seeking a new lead developer to continue development and thereafter operations of the Project, including assumption of rights and obligations of borrower under an amended and restated predevelopment loan agreement and a new exclusive negotiations agreement.

I. On April 6, 2021, by Resolution No. 08-2021, the Commission approved the selection of Borrower as the replacement lead developer for the Project. In furtherance of the Commission's approval and authorized thereby (1) on May 26, 2021 OCII, Prior Borrower and Borrower entered into an Assignment, Assumption and Release Agreement pursuant to which Prior Borrower assigned to Borrower all rights of ownership of the Existing Work Product (as defined therein), Borrower assumed the Existing Work Product and all rights and obligations of “Borrower” under the Original Loan Agreement, and OCII and Borrower released the Prior Borrower from any further obligations under the Original Loan Agreement; and (2) on April 6, 2021 OCII and the Borrower entered into a new exclusive negotiations agreement for the Project (“**ENA**”), and an Amended and Restated Predevelopment Loan Agreement (“**Predevelopment Loan Agreement**”) providing a loan to Borrower to fund predevelopment costs of the Project in the amount of Three Million Six Hundred Fifty Thousand Dollars (\$3,650,000) (reflecting the sum of the proceeds expended on the Existing Work Product (as defined in the Predevelopment Loan Agreement) and the remaining predevelopment loan funding initially approved for the Project the “**Predevelopment Loan Amount**”).

J. On July 16, 2021, the Citywide Affordable Housing Loan Committee (“**Loan Committee**”) approved a loan to the Borrower (the “**Loan**”) for the development of the Project for an aggregate amount not to exceed Fifty Nine Million Two Hundred Thousand Seven Hundred and Thirty Two Dollars (\$59,200,732), which amount includes the Predevelopment Loan Amount and an increase to the Predevelopment Loan Amount of \$751,605 to fund additional predevelopment costs of the Project (collectively the “**Total Predevelopment Loan Amount**”).

K. On August 17, 2021, by Resolution No. XX-2021, the Commission approved the issuance of the Loan and authorized the OCII Executive Director to enter into this Agreement.

L. Subject to Commission approval, in a separate and future action, Borrower intends to enter into a Ground Lease (as defined herein) of the Site for the purpose of constructing, and thereafter intends to construct and operate on the Site, the Project, consisting of approximately one hundred twelve (112) residential units, including one-hundred eleven (111) units of low-income rental housing and one unrestricted manager's unit, for families and related management services, and amenity spaces.

M. OCII now intends to issue the Loan to Borrower in accordance with the terms of this Agreement.

N. For purposes of implementation and to ensure consistency with the City's overall affordable housing goals and priorities, OCII has engaged the Mayor's Office of Housing and Community Development ("**MOHCD**") to provide certain construction monitoring and loan disbursement services for the Loan and the Project, in cooperation with OCII.

O. Upon completion of construction of the Project, OCII intends to assign its rights and obligations under this Agreement and the Ground Lease, together with conveyance of fee title to the Site, to MOHCD as the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12, as required by Redevelopment Dissolution Law and OCII's approved Long-Term Property Management Plan dated December 2015.

AGREEMENT

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

ARTICLE 1 DEFINITIONS.

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

"**20-Year Cash Flow Proforma**" means the 20-year cash flow proforma for the Project attached as Exhibit B-3, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the 20-Year Cash Flow Proforma so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

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

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

“Amended Table of Sources and Uses for Predevelopment” means the table of sources and uses of funds attached hereto as Exhibit B-0.

“Annual Operating Budget” means an annual operating budget for the Project attached hereto as Exhibit B-2, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the Annual Operating Budget so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

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

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

“Borrower” is defined in the first paragraph of this Agreement.

“CFR” means the Code of Federal Regulations.

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

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

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

"**Commission**" means the Successor Agency Commission, commonly referred to as the Commission on Community Investment and Infrastructure.

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

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

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

"**Control of the Site**" means Borrower's acquisition of fee ownership or a leasehold interest in the Site (or a portion thereof).

"**Conversion Date**" means the date upon which Borrower's institutional construction financing converts to a permanent phase requiring payments of principal amortized over the term of the Loan.

"**CRL**" has the meaning set forth in Recital A.

"**Declaration of Restrictions**" means a recorded declaration of restrictions in substantially the form and substance attached hereto as Exhibit K that requires Borrower and the Project to comply with the use restrictions in this Agreement for the duration specified therein, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed, provided that changes to the form may be approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date..

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

"**Developer**" means, for purposes of distribution of the Developer Fees (as defined herein) Rose Community Development Company, LLC, or another affiliated entity designated as Developer by JRC, Rose Companies Holdings, LLC or an entity affiliated or under common control with the foregoing.

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

"**Development Expenses**" means all costs incurred by Borrower and approved by the OCII Executive Director and MOHCD Executive Director in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

"Development Proceeds" means the sum of: (a) funds contributed or to be contributed to Borrower by Borrower's limited partner as capital contributions, equity or for any other purpose under Borrower's limited partnership agreement; and (b) the proceeds of all other financing for the Project (including under this Agreement).

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

"Disburse", "Disbursement" and other derivatives thereof means the disbursement of all or a portion of the Funding Amount by OCII as described in Article 4.

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

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

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

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

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

"Excess Development Proceeds" means Development Proceeds remaining after payment of Development Expenses.

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

“Final Financial Plan” means the Table of Sources and Uses, the Annual Operating Budget and 20-Year Cash Flow Proforma, including without limitation the Funding Amount, interest rate and distribution of Surplus Cash (Exhibits B-1, B-2, and B-3), as they may be revised by the Final Financial Plan Confirmation Letter and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date.

“Final Financial Plan Confirmation Letter” means a letter documenting the approved Final Financial Plan including any adjustments thereto made and approved by the MOHCD Director and the OCII Executive Director subsequent to execution of this Agreement but prior to the Loan Closing Date, including without limitation the Funding Amount, interest rate and distribution of Surplus Cash.

“Funding Amount” means an aggregate amount not to exceed Fifty Nine Million Two Hundred Thousand and Seven Hundred Thirty Two Dollars (\$59,200,732), and shall include any revision to the foregoing amount included in the Final Financial Plan.

“Funds” means the monies to be disbursed by OCII under this Agreement.

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

“Co-General Partner” means Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, an affiliate under common control with Jonathan Rose Companies, and its authorized successors and assigns.

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

“Ground Lease” means a ground lease of the Site between Borrower as tenant and OCII as landlord, as approved by the Commission.

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

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

"HCD" means the California Department of Housing and Community Development.

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

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

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

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

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

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

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

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

"Loan" has the meaning set forth in Recital H.

"Loan Closing" means the date on which all conditions to closing of the Loan under Section 4.1.1 have been met and Borrower and OCII authorize recordation of the Deed of Trust and Declaration of Restrictions.

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

"Loan Committee" has the meaning set forth in Recital J.

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

"Maturity Date" has the meaning set forth in Section 3.3.

"Median Income" means area median income as determined by MOHCD, adjusted solely for actual household size.

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

"Note" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount, attached hereto as Exhibit D. The prior note for the Predevelopment Loan Amount has been cancelled and returned to Borrower as of the date of this Agreement, and the Total Predevelopment Loan Amount is now part of the Funding Amount.

"Notice to Proceed" has the meaning set forth in Section 5.5.

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

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

"OCII Monthly Project Update" has the meaning set forth in Section 10.2.

"Official Records" means the Official Records of the City and County of San Francisco.

"One Hundred Percent Occupancy" means the date on which the Borrower can evidence executed leases and residency for all One Hundred and Eleven (111) affordable units in the Project.

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

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to OCII and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.

"Payment Date" means the first May 1st following the Completion Date and each succeeding until the Maturity Date.

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

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

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

"Project Area" has the meaning set forth in Recital A.

"Project Expenses" means the following costs, all as may be further defined or limited in the Annual Operating Budget: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any senior financing that has been approved by OCII and is secured, consistent with the Ground Lease, by either the Borrower's leasehold interest in the Ground Lease, the improvements constructed thereon, or both, and used to finance the Project; (d) all other expenses

actually incurred to cover operating costs of the Project, including supportive services (if any), maintenance and repairs and any property management fee, each as indicated in the Annual Operating Budget; (e) required, or necessary, deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement or required by another lender or regulatory agency, as approved by OCII and MOHCD pursuant to the Final Financial Plan; (f) annual base rent payments under the Ground Lease in an amount equal to FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00); (g) an initial issuer fee equal to 25 basis points on the total bond issuance (\$127,500) and an annual bond monitoring fee equal to the greater of 12.5 basis points on the outstanding bond amount or \$2,500; (h) mandatory interest payment(s) payable to HCD for any loan made by HCD to Borrower for the Project or mandatory interest payment(s) payable to another subordinate lender for any loan made by such lender to Borrower for the Project, as approved by OCII and MOHCD pursuant to the Final Financial Plan; (i) annual asset management fee indicated in the Annual Operating Budget and approved by MOHCD and OCII prior to the Effective Date, which, when combined with the annual partnership management fee payable as a Project Fee, shall not exceed \$50,249 plus any permitted annual increase; and (j) any extraordinary expenses approved in advance by OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

"Project Fees" means (i) any partnership management fee in an amount that, when combined with the annual asset management fee payable as item (i) of Project Expenses, may be no greater than \$50,249 in the first year of operations (which limitation may increase by 3.5% annually), payable to the Borrower's general partner, (ii) a limited partner asset management fee/annual investor services fee payable to Borrower's Investor Limited Partner in the amount of \$5,000 and approved by OCII pursuant to the OCII Documents and consistent with the MOHCD Multifamily Affordable Housing Operating Fees Policy (effective April 1, 2016), as may be amended from time to time.

"Project Financing" has the meaning set forth in Section 4.3(b)(i).

"Project Income" means all revenue, income, receipts in any form, and other consideration received by Borrower from the operation of the Improvements, including without limitation: all rents, fees, and charges paid by Residential Occupants; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established; and the proceeds of business interruption or similar insurance. Project Income does not include tenants' security deposits (except forfeited deposits), loan proceeds, capital contributions or similar advances, condemnation proceeds, insurance proceeds provided for the purpose of reconstructing all or part of the Project, or interest accruing on any portion of the Funding Amount.

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

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

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

"Redevelopment Dissolution Law" has the meaning set forth in Recital B.

"Redevelopment Requirements" means the DDA, the HPS Redevelopment Plan and Plan Documents (as defined therein), and the Redevelopment Area Declaration of Restrictions.

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

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

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

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

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

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

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

"Site" means the real property described in Exhibit Q of this Agreement.

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

"TCAC" means the California Tax Credit Allocation Committee.

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

"Tenant" means any residential household in the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4 This Agreement amends and restates in its entirety the Predevelopment Loan Agreement.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to lend to Borrower a maximum principal amount equal to the Funding Amount to finance predevelopment and development costs of the Project. Borrower hereby acknowledges that, upon execution of this Agreement, the amount owed under the note for the Predevelopment Loan Amount will be included within the Funding Amount, that note will be terminated, and that amount is now subject to the repayment and all other provisions of this Agreement and the OCII Documents. Therefore, any of the Total Predevelopment Loan Amount not disbursed as of the date of this Agreement shall be disbursed in accordance with the terms and conditions of Section 4.2.2 and 4.2.3 of this Agreement. The Funding Amount (less the portion of the Total Predevelopment Loan Amount to be disbursed under Section 4.2.2 and 4.2.3) will be disbursed according to the terms and conditions, other than those in Section 4.2.2 and 4.2.3, as described in this Agreement.

2.2 Use of Funds. Borrower acknowledges that OCII's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in Section 2.1 and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses and the Amended Table of Sources and Uses for Predevelopment.

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

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

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

2.6 Contracting Requirements. Borrower shall comply with OCII's contract compliance requirements for procurement activities as further set forth in Exhibit E of this Agreement.

2.7 Workforce Requirements. Borrower shall comply with OCII workforce requirements pursuant to Exhibits E-2 and E-3, including but not limited to OCII's Labor Standards and the Construction Workforce Agreement, as set forth in Exhibit E for all construction related work.

ARTICLE 3 TERMS AND PROVISIONS OF THE LOAN.

3.1 Term. The term of this Agreement shall commence on the Agreement Date, and shall continue until the fifty seventh (57th) anniversary of the date the Deed of Trust is recorded in the Official Records, regardless of any reconveyance of the Deed of Trust (the "**Compliance Term**"). To ensure the Borrower's, or subsequent assignees', continued compliance with such obligations during the Compliance Term, the Deed of Trust shall be recorded in the Official Records upon execution of the Ground Lease.

3.2 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of 3%, three percent (3%) per annum. However, the interest rate may be reduced to a floor of 0% on or prior to the Loan Closing Date upon Borrower's demonstration that a reduction is necessary to meet certain requirements of tax credit financing, such as "true debt", subject to justification from the Borrower, and review and approval by the OCII Executive Director and the MOHCD Director in their sole discretion as part of the Final Financial Plan, if any.

3.3 Loan Repayment Terms. Interest shall accrue, and repayment of principal and interest shall be paid from Surplus Cash in accordance with Section 3.6, below. Notwithstanding

the foregoing, the outstanding principal balance and any accrued but unpaid interest of the Loan will be due and payable upon the expiration of the Compliance Term, but in all events not later than December 31, 2074 (the “**Maturity Date**”) according to the terms set forth in full in the Note. At least sixty (60) days prior to the Maturity Date, the Borrower may apply to the City (via MOHCD or its successor) for an extension of the Maturity Date. If, as of the date of such request the Borrower continues to be in compliance with the Loan Documents, the City may, in its discretion, agree to extend the Maturity Date pursuant to a written amendment to the Agreement and permit the Borrower to continue to defer repayment of principal and interest, or may require that the Borrower make amortized payments of principal and interest.

3.4 Declaration of Restrictions: Borrowers, and its assigns, must comply with all provisions of the OCII Documents relating to the use of the Site and the Project, as set forth in the Declaration of Restrictions, and any amended and restated versions of such declaration recorded in the Official Records, for the [duration of the Declaration of Restrictions] even if the Loan is repaid or otherwise satisfied, or the Deed of Trust is reconveyed. Notwithstanding anything to the contrary contained herein, Borrower’s obligation to comply with the terms and obligations contained in the OCII Documents shall be subject to Borrower’s compliance with all applicable laws, statutes and regulations, including, but not limited to Section 42 of the Internal Revenue Code, the California Revenue and Taxation Code, the California Debt Limit Allocation Committee’s (“CDLAC”) regulations, Tax Credit Allocation Committee’s (“TCAC”) regulations, and federal law and regulations relating to HUD.

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

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

Fifty percent (50%) of the Surplus Cash shall be Distributed to the Borrower until the earlier to occur of: (i) the fifteenth (15th) anniversary of the date the Project achieves One Hundred Percent Occupancy or (ii) full payment of the Deferred Developer Fees, if any. Thereafter, one-third (1/3) of Surplus Cash shall be Distributed to the Borrower and OCII's Portion shall be adjusted to be two thirds (2/3) of Surplus Cash, which shall be Distributed to OCII (“**OCII’s Portion**”).

OCII’s Portion will be applied first to [Accrued Base Rent as defined under the Ground Lease], and then toward repayment of the outstanding OCII Loan until the entire principal and accrued

but unpaid interest on the OCII Loan and repayment of outstanding principal and accrued and unpaid interest on any other debt payable from Surplus Cash until all amounts due and owing on such loans is repaid in full, and then payment of OCII's Portion shall go toward [Residual Rent] until paid in full in accordance with the terms of the Ground Lease

3.7 Repayment of Unused Portion of Principal. In addition to any other payment requirements, within six (6) months after the Completion Date, the Borrower shall promptly repay to OCII any portion of the Loan previously disbursed to Borrower and not used for eligible costs as described in this Agreement. No interest shall accrue on the Loan amount repaid pursuant to this Section 3.7.

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

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

3.10 Additional OCII Approvals. Borrower understands and agrees that OCII is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Project. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Project in accordance with all local laws. Borrower understands that any development of the Project shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Project, which may include, without limitation, the City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion

available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3.11 Repayment of Excess Development Proceeds. Borrower shall repay Excess Development Proceeds to OCII unless otherwise approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan approval prior to the Loan Closing Date, and failure to so repay Excess Development Proceeds shall be a material Default of this Agreement.

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

- (a) Borrower acknowledges that the MOHCD Director and OCII Executive Director may, prior to Loan Closing, collectively approve and include as part of this Agreement revisions to the Final Financial Plan ("FFP") for the benefit of the Project, and Borrower shall cooperate with OCII and MOHCD and their financial advisor in identifying such revisions.
- (b) Borrower will work with OCII and MOHCD to evaluate costs and propose cost containment strategies throughout the design phase of the Project.
- (c) Assuming the Project does not experience significant hard-cost increases as a result of pricing estimates at Construction Drawing completion, Construction Document bid by the General Contractor, final plan check of all addenda, or any significant schedule delay preventing the Project from beginning construction in 2024, all remaining contingencies including the 5% Design Contingency, 5% Bid Contingency, 5% Plan Check Contingency, and the 3.5% Escalation Contingency will be eliminated from the Project budget. OCII's subsidy to the Project will be reduced by the total value of the eliminated subsidies (unless OCII approves allocation of some or all of eliminated subsidies for other costs in the Project budget as part of the Final Financial Plan).
- (d) Borrower shall cooperate with OCII and MOHCD staff to establish a mutually agreed upon year-one operating budget, including the amount of services costs to be funded from operations, if any.
- (e) Borrower will make a good faith effort to ensure that the gap commitment request cash-flow proforma debt service coverage ratio aligns with MOHCD underwriting guidelines, and shall consider increasing the permanent tax-exempt loan amount to reduce OCII's gap commitment amount, if possible.
- (f) Addition of Supportive Services staff to be funded from Project operations shall be subject to prior OCII approval.
- (g) Borrower agrees to provide notice to OCII in accordance with Section 21.1 of the occurrence of any change or circumstance that: (a) will have a material adverse effect on

the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Project or ability to repay the Loan.

(h) Borrower shall comply with the following loan conditions based on OCII's requirements and the Loan Committee's recommendations in reviewing and approving the Project's Loan Evaluation on July 16, 2021.

- i.** Borrower will conduct ongoing outreach to the Hunters Point Shipyard community to solicit input, address concerns, and educate community members on various aspects of the project.
- ii.** Borrower will continue to utilize the services of the architect, general contractor, and other SBE consultants hired by Shipyard 5254, L.P. and shall inform and cooperate with OCII to effectuate a change in the team's makeup should a change be necessary. Borrower will obtain cost estimates from the selected contractor, and will work with their architectural team to ensure that the site's development costs are managed to OCII's approval. Furthermore, Borrower shall cooperate with OCII and continue to require the general contractor to exercise good faith efforts to select subcontractors who either are SBEs or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs.
- iii.** Borrower to apply for Federal Home Loan Bank's Affordable Housing Program at the next round. If successful, the final OCII loan will be reduced at FFP.
- iv.** Borrower to evaluate if Project will be competitive for State Infill and Infrastructure Grant ("IIG") and, if so, apply at the next round. Borrower to analyze and propose how to make project more aligned with state priorities for IIG and other state sources and thus competitive with CDLAC for bond allocation.
- v.** Borrower must provide operating and development budgets (including contractor budgets) that meet MOHCD underwriting guidelines and are sufficient to cover anticipated operating expenses.
- vi.** Borrower must provide OCII with a services plan and proposed staffing levels that meet OCII underwriting standards prior to submission of the CDLAC and TCAC application.
- vii.** Borrower must provide OCII with information outlining cost containment, efficiencies and innovation strategies to reduce overall project costs and maximize efficiency of OCII gap loans.
- viii.** Borrower must explore opportunities to increase above eight units that serve households below 50% AMI, if financially feasible. If Borrower is unable to increase the number of units below 50%, Borrower must provide additional strategies to serve COP holders at 50% AMI.
- ix.** Borrower must: a) provide for OCII review of the Request for Proposals (RFP) for equity investors and lenders before it is finalized and distributed; b) provide for OCII review of all raw financial data from developer or financial consultant prior to selection; c) provide for OCII review and

- approval of all selected investors and lenders; and, d) provide for OCII review and approval of all Letters of Intent from financial partners.
- x. Borrower will provide information regarding marketing (including the reflection of the lease-up team to that of the applicants) and operations (i.e., does on-site staff reflect the property residents) in existing portfolio and work with OCII and MOHCD to establish a marketing and outreach plan for the Project focusing on preference populations.
 - xi. Borrower must review operating cost assumptions with The John Stewart Company prior to submission of the CDLAC application to ensure the operating budget is sufficient given the anticipated lease-up date of the Project.
 - xii. Borrower must provide an Early Outreach Plan one month after the start of construction and initial draft marketing plan within 12 months of anticipated TCO, outlining the affirmative steps they will take to market the project to OCII's preference program participants, including COP Holders, Displaced Tenants, and Neighborhood Residents.
 - xiii. Borrower must provide quarterly updated responses to any letters requesting corrective action.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Closing. In the event Borrower does not satisfy all of the conditions to Loan Closing contained in Section 4.1.1 within [twenty-four (24)] months of the date of this Agreement, OCII may terminate this Agreement and relieve the parties of all obligations that have not arisen prior to termination.

4.1.1 Conditions Precedent to Closing.

- (a) OCII will authorize the Loan Closing upon satisfaction of the following preconditions:
 - i. Borrower must have delivered to OCII fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to OCII: (i) the Note; (ii) this Agreement (in triplicate); (iii) an opinion of Borrower's counsel in form and substance reasonably acceptable to OCII; (iv) the Authorizing Resolutions; and (v) any other OCII Documents reasonably requested by OCII.
 - ii. Borrower must have delivered to OCII Borrower's Charter Documents.
 - iii. Borrower must have delivered to OCII evidence of insurance (including required endorsements), acceptable to OCII, and, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.
 - iv. Borrower will have reviewed the terms of the Loan with its tax counsel to determine if an interest rate less than three percent (3%) simple interest is necessary to satisfy the true debt test.

(b) Borrower will authorize the Loan Closing upon satisfaction of the following preconditions:

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

ii. the lenders and investors associated with the Project Financing are unconditionally prepared to close and fund their financing;

iii. The Ground Lease has been approved by Commission and Borrower and OCII shall have executed the Ground Lease and Borrower (subject to such limitations or reservations as may be referenced in the Ground Lease) has accepted the condition of the Site.

4.1.3 Funding. Following satisfaction of the conditions in Section 4.1.2, OCII will authorize the Escrow Agent to Disburse Funds consistent with OCII 's escrow instructions.

4.2 Disbursements of Funds

4.2.1 Generally. OCII will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line-item budget contained in either the Amended Table of Sources and Uses for Predevelopment or the Table of Sources and Uses, as applicable.

4.2.2 Disbursement of Predevelopment Funds. As and when requested and in accordance with this Agreement and the approved line item budget contained in the Amended Table of Sources and Uses for Predevelopment, OCII will make Disbursements to or for the account of Borrower in an aggregate sum not to exceed the Total Predevelopment Loan Amount undisbursed as of the date of this Agreement. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, such Disbursements may occur prior to the Loan Closing and Loan Closing Date and are not subject to and may occur prior to satisfaction of the conditions precedent to closing in Section 4.1.1 so long as the conditions to disbursement of predevelopment funds in Section 4.2.3 have been satisfied.

4.2.3 Conditions to Disbursement of Predevelopment Funds.

(a) As and when requested, OCII will authorize Disbursements of the Funds available under Section 4.2.2 upon satisfaction of the following preconditions:

i. Borrower must have delivered to OCII fully executed (and for documents

to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to OCII: (i) a Promissory Note for the Funding Amount; (ii) an Amended Table of Sources and Uses for Predevelopment; (iv) this Agreement (in triplicate) (but not including the Deed of Trust, Declaration of Restrictions, or executed FFP); (iv) reserved; (v) the Authorizing Resolutions; and (v) any other OCII Documents reasonably requested by OCII.

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

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

v. Borrower must have delivered to OCII an Expenditure Request in form and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line-item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. Except for funds moved from the contingency line item to another line item, any proposed reallocation of the Total Predevelopment Funding Amount from what is shown in the Amended Table of Sources and Uses for Predevelopment shall be approved in writing by OCII's Executive Director or her designee. Any such approved changes will be considered amendments to the Amended Table of Sources and Uses for Predevelopment in the Final Financial Plan.

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

vii. OCII shall use best efforts to either approve or disapprove each such Expenditure Request within ten (10) business days of receipt. If OCII disapproves an Expenditure Request, OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall use best efforts to fund all approved Expenditure Requests within five (5) business days of approval.

[4.2.4] Disbursement of Remaining Funding Amount. As and when requested and in accordance with this Agreement (including the remainder of Article 4 below) and the approved line-item budget contained in the Table of Sources and Uses, OCII will make Disbursements to or for the account of Borrower in an aggregate sum not to exceed the Funding Amount (less the Total Predevelopment Loan Amount undisbursed as of the date of this Agreement).

4.2.5 Conditions to Disbursement of Remaining Funding Amount. OCII's obligation to Disburse Funds available under Section 4.2.4 is subject to Borrower's satisfaction of the following conditions precedent:

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

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

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

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

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

(f) With respect to any Expenditure Request for rehabilitation or construction costs in the three-month and six-month construction draw requests, Borrower must have certified to OCII that all construction-related work on the Project complies with the labor standards set forth in Exhibit E, Section 1, if applicable.

(g) OCII shall use best efforts to either approve or disapprove each such Expenditure Request within ten (10) business days of receipt. In the event that OCII disapproves an Expenditure Request, OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall use best efforts to fund all approved Expenditure Requests within five (5) business days of approval.

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

4.4 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. OCII (or other entity approved in writing by OCII) will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "**Retention**"), and no portion of the Retention may be released without OCII's prior written consent. Borrower may request Disbursement of the aggregate amount of the Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by OCII: (a) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by OCII, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection ("**DBI**"), and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

After fifty percent (50%) of the construction of the Project is complete as determined by the OCII-assigned construction management staff, and upon Borrower's written request, OCII may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom OCII agrees to release the Retention (the "Early Retention Release Contractors") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the OCII construction specialist; (c) no liens or stop notices have been filed against the Project that have not been released or bonded for according to construction mechanic's lien laws of the State of California or an appropriate title endorsement has been issued in a form reasonably satisfactory to OCII; (d) no claims against the Project are pending; (e) OCII determines that the contingency is in balance and adequate to complete the Project; and (f) the Project is on schedule.

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

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Contracting Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with OCII's contract compliance requirements as further set forth in Exhibit E of this Agreement.

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

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by OCII without the OCII's prior written consent. Borrower acknowledges that OCII's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional funds for the Project, unless OCII agrees in its sole discretion to amend the Table of Sources and Uses or provide additional funds for that purpose. OCII shall endeavor to provide written approval or disapproval of each change order and any equivalent amendment to the Table of Sources and Uses within ten (10) calendar days of receipt for request therefor

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

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

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by OCII, Borrower must: (a) commence construction of the Project by May 2022; (b) complete construction of the Project by May 2024 in substantial accordance with the plans and specifications approved by OCII, as evidenced by a temporary certificate of occupancy or equivalent certification provided by DBI, and an architect's or engineer's certificate of completion (the "**Completion Date**"); and (c) achieve occupancy of ninety five percent (95%) of the residential units by October 2024. Notwithstanding the foregoing, in the event the Borrower

applies for CDLAC and/or TCAC financing in accordance with the contractual deadlines provided in the Schedule of Performance but is not awarded financing by CDLAC and/or TCAC, then subject to the reasonable discretion OCII Executive Director, Borrower may request that the contractual deadlines applicable to items 15 and 16 in the Schedule of Performance, and the dates described in this Section 5.6, be extended to allow Borrower to reapply for up to two consecutive additional cycles of CDLAC/TCAC financing immediately following the cycle initially applied for, and if so extended, Borrower and OCII shall reasonably extend remaining Schedule of Performance contractual deadlines and the deadlines in this Section 5.6 accordingly.

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

ARTICLE 6 MARKETING.

6.1 Marketing Plan and Tenant Selection Plan. No later than thirty (30) days after the start of construction, Borrower must deliver to OCII for OCII's review and approval an outreach plan for initial marketing of the Units (the “**Early Outreach Plan**”) in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to OCII, as further described in **Exhibit T-1**. Early outreach pursuant to the Early Outreach Plan must start within three months of construction start. The Borrower may not start the outreach process until OCII provides its approval, which will occur no later than 10 business days after OCII receives the final draft Early Outreach Plan.

Borrower must submit a draft Marketing Plan and Tenant Selection Plan (the “**Marketing and Tenant Selection Plans**”) consistent with the requirements described in **Exhibits I, S, T-2**, and no later than 12 months prior to the projected Completion Date. Borrower must obtain OCII's approval of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing Plan and the Tenant Selection Plan both as approved by OCII. Before marketing any Units, Borrower must provide OCII with updated implementation and contact information. The marketing process and timeline is further described in **Exhibit T-1**.

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

- (a) First preference to Agency Certificate of Preference Holders assuming such preference does not conflict with other financing sources necessary to complete this development. OCII staff will work with the selected Applicant teams to resolve potential occupancy conflicts and determine additional occupancy preferences and marketing requirements, if any. Preferences for the low-income family housing will be leased according to the bullets below and include Displaced Tenant Housing Preference

(“DTHP”) and Neighborhood Residential Housing Preference (“NRHP”) as approved by Commission on April 16, 2019 by Resolution 09-2019. OCII reserves the right to add additional occupancy preferences, which reflect preferences applied by MOHCD in its affordable housing developments, at a later date.

- Certificate Holders (Property Owner and Occupant Preference Program, as amended and restated, codified and clarified recent amendments that the former Redevelopment Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008))
- DTHP Holders (up to 20% of units)
- NRHP Holders (up to 40% of units)
- San Francisco Residents or Workers
- Members of the General Public

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

(b) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units. Specifically, for COP holders, the Borrower shall work with a HUD-approved housing counseling agency to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP participation to the extent possible. The Borrower shall ensure that COP holders are aware that such assistance is available.

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

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

(e) Notices to SFHA.

(f) Notices to MOHCD.

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

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

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

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

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

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

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect as provided in the Declaration of Restrictions attached hereto and recorded on the Loan Closing Date. If applicable, the requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.2 Borrower's Covenant.

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

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

7.3 Rent Restrictions.

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in Exhibit A, *provided that* Rents may be adjusted annually in accordance with any increase in the rents according to MOHCD's "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco," published on an annual basis.

(b) Unless prohibited under any applicable Law or the rules and regulations governing any Project funding source, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Borrower's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income.

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

(d) For any Qualified Tenant participating in a Rent or operating subsidy program where the Rent charged is calculated as a percentage of household income, adjustments to Rent charged may be made according to the rules of the relevant subsidy program, provided that such adjustments remain consistent with Section 7.3(a) except that there shall be no limit on the number of Rent adjustments that can be made in a year under this subsection (d).

(e) For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, Rent may be charged consistent with the maximum Rent permitted under Section 7.3(a).

7.4 Certification.

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

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

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

7.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The term of the lease must be for a period of not less than one (1) year. Borrower may not terminate the tenancy or refuse to renew any lease of a Unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for a Unit must be preceded by not less than thirty (30) days' written notice to the Tenant specifying the grounds for the action, unless a shorter notice period is permitted by law. Unless prohibited by any applicable law, or the rules and regulations governing any Project funding source, the form of lease for any Unit that has received an allocation of tax credits must provide that the Tenant agrees that the lease may be terminated upon 120 days' notice if the Tenant's certified household income exceeds 120 percent of Median Income.

7.6 Nondiscrimination. Borrower covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Project nor shall Borrower, or any person claiming under or through Borrower, establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Project.

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

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

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

8.2 Contracting with Management Agent.

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

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

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

8.4 Supportive Services. Borrower is responsible for ensuring that residents or clients residing in the Units have access to appropriate referrals to case management, psychosocial supportive services, and other support services, as well as to health care, where required. Borrower shall use its best efforts to locate or cause to be located, a care provider who can appropriately care for the individual and shall refer the individual to the care provider.

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

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

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

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

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

(c) Borrower must provide written notice of the replacement of: the member or manager of its general partner or the executive director, director of housing development,

director of property management and/or any equivalent position within the sole member of the managing general partner, within thirty (30) days after the effective date of such replacement.

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

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

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

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of construction and the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to OCII the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower shall provide to OCII information or documents reasonably requested by OCII to assist in OCII's review and analysis of the submitted reports. To the extent not otherwise prohibited by applicable Law, Borrower shall provide the following reports:

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

(b) within thirty (30) days after the Completion Date, a report on expenditures to third-party firms, including but not limited to consultants, contractors, and subcontractors, whether such firms are small business enterprises, the type of work and the dollar value of such work;

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

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

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

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

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

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

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

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

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "**Project Operating Account**") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be

revised from time to time with OCII's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees and payments and distributions of Surplus Cash in accordance with Section 3.5. Withdrawals from the Project Operating Account (including accrued interest) for any other purposes may be made only with OCII's express prior written approval.

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

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

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

(b) At a minimum, Borrower shall make monthly deposits of \$33.33 Unit in the Project in accordance with the Loan Committee approval dated July 16, 2021, or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, provided that should such approved amount be greater than \$33.33 per Unit, such additional sum shall be made from available Surplus Cash.

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

12.2 Operating Reserve Account.

(a) Commencing no later than sixty (60) days after the Conversion Date, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "**Operating Reserve Account**") by depositing funds in an amount equal to one quarter of the Annual Operating Budget attached hereto as Exhibit B-2 (subject to modification by the Final Financial Plan).

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

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

ARTICLE 13 DISTRIBUTIONS.

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

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-3 includes projections of annual Distributions of Surplus Cash. Exhibit B-3 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) OCII approval of the Annual Monitoring Report submitted for that year; (b) OCII's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City or OCII for the Project; and (c) OCII's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement, including, but not limited to Section 3.6. OCII will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless OCII delivers its disapproval or request for more information to Borrower within thirty (30) business days after OCII's receipt of the request for approval.

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

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

(b) when OCII has delivered a written notice of default to Borrower for a failure to comply with this Agreement and such default has not been remedied, or when OCII determines that Borrower's management agent has failed to comply with this Agreement and such failure has not been remedied; or

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

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

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

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

13.4 Distributions of Surplus Cash. Distributions of Surplus Cash shall be made in accordance with Section 3.6.

ARTICLE 14 SYNDICATION PROCEEDS AND GENERAL PARTNER EQUITY.

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

14.2 Co-General Partner Equity. In addition to the syndication proceeds, the Co-General Partner shall be obligated to evaluate the incorporating General Partner Equity to the Borrower as part of the FFP.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees to the Developer in an aggregate amount not to exceed Three Million One Hundred Ten Thousand Dollars (\$3,178,147) ("**Developer Fees**"), to be paid in accordance with the Developer Fee Schedule. The Developer Fee are comprised of the following:

(a) an amount not to exceed One Million One Hundred Thousand Dollars (\$900,000), for the predevelopment and construction periods of the Project (the “**Project Management Fee**”);

(b) an additional amount not to exceed One Million Five Hundred Ten Thousand Dollars (\$1,120,000) that is at-risk to the extent needed to fund cost overruns if total development costs exceed estimated development costs shown in the Final Financial Plan (the “**At-Risk Fee**”);

(c) an additional amount not to exceed One Million One Hundred Fifty-Eight Thousand One Hundred Forty Seven Dollars (\$1,158,147), (the “**Deferred Developer Fee**”), payable only from surplus cash pursuant to Section 3.6. Under no circumstance will any deferred fee be considered a Project Expense.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of a general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by OCII; (b) removal and thereafter replacement of a general partner of Borrower in accordance with the terms of Borrower's limited partnership agreement (and if necessary, the temporary replacement thereof with an affiliate of the Investor Limited Partner), provided that within a period of one hundred eighty (180) days after said removal of a managing general partner (or other longer duration approved by OCII in its sole discretion), Borrower shall have replaced the managing general partner with a 501(c)(3) tax-exempt nonprofit corporation (or a wholly-owned subsidiary thereof), subject to OCII's reasonable approval of the replacement managing general partner; (c) transfers of the limited partner or non-managing member interests in Borrower in accordance with the terms of the Borrower's partnership agreement; (d) leases, subleases or occupancy agreements with occupants of the residential units or any permitted commercial tenants of the Project made in accordance with the Ground Lease; or (e) transfers of a general partnership interest between or among affiliates controlled by Rose Companies Holdings, LLC or affiliated or under common control with JRC. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement. If there is a conflict between Article 16.1 subsection (c), in the Agreement and Article [14.01] in the Ground Lease, Article 16.1 (c) of the Agreement shall prevail.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by OCII's risk manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F commencing with Loan Closing and thereafter for the term of the Ground Lease, at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

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

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document, including without limitation, Section 19.2 hereof, will constitute an "Event of Default," including the following:

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

(b) On or after the Loan Closing Date, any lien is recorded against all or any part of the Site or the Project (including for purposes of this provision Borrower's leasehold interest in the Site) without OCII's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or bonded over or otherwise discharged to the OCII's satisfaction within the time period provided in [Article 18] of the Ground Lease; provided, however, that Borrower has the right to contest any tax or assessment on or before the contested tax or assessment otherwise comes due, or to contest any encumbrance or lien within thirty (30) days following written notice from OCII of the imposition of said, encumbrance or lien, as further provided in [Articles 15 and 18] of the Ground Lease; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any OCII Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from OCII to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any

longer period of time deemed necessary by OCII, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

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

(e) On or after the Loan Closing Date, all or a substantial or material portion of the Project is damaged or destroyed by fire or other casualty, and, if the Borrower has elected to restore as provided in [Article 20 of the Ground Lease, such restoration has not been completed as provided in and in accordance with the Ground Lease] and Deed of Trust within two (2) years of the receipt of insurance proceeds (or such longer period as may be agreed by Borrower and OCII); or all or a substantial portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency which prevents the Project from being operated for its intended purpose;

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

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

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

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

(j) On or after the Loan Closing Date, either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on both or either the Project and/or Borrower's leasehold interest in the Site, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and

unstayed for sixty(60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, Borrower's leasehold interest therein, the Project or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

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

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

(n) On or after the Loan Closing Date and before a certificate of occupancy is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of fifteen (15) consecutive working days, and the cessation is not excused under Section 19.4; or

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

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

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

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

(a) OCII at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note

and the other OCII Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

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

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

(d) OCII may terminate this Agreement.

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

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

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

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

19.4 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of OCII or Borrower to the extent the event(s) cause delays in the performance of a party's obligations under this Agreement and which delays are beyond the control of the party obligated to perform: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty; pandemics and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for so long as the conditions giving rise to the delay continue to result in delay to performance hereunder.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

(c) To Borrower's knowledge, no action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

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

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

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

ARTICLE 21 NOTICES.

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

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

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

To Borrower:

HPSY 52-54, LP, a California limited partnership

c/o Jonathan Rose Companies
551 Fifth Avenue, 23rd Floor
New York, NY 10176
Attention: Yusef Freeman
Email: yfreeman@rosecompanies.com

Bayview Senior Services
1751 Carroll Street
San Francisco, CA 94124
Attn: Executive Director

WITH A COPY TO:

Klein Hornig LLP
101 Arch Street, Suite 1101
Boston, MA 02110
Attn: Daniel Rosen
Email: drosen@kleinhornig.com

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

21.2 Required Notices. See Section 3.10(p).

ARTICLE 22 HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. Borrower represents and warrants to OCII, to the extent applicable, that, to the best of Borrower's actual knowledge, without independent

investigation or inquiry as of the date of this Agreement, the following statements are true and correct: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

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

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify OCII, the City, and their respective officers, agents and employees (individually or collectively, an "**Indemnatee**") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be correct in all material respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event (x) occurs on or after Loan Closing and (y) arises directly or indirectly from Borrower's (or its agents) activities on the Site; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or its agents; (e) any claim, demand or cause of action, or any action or other proceeding (including without limitation those made by third-parties), whether meritorious or not, brought or asserted against any Indemnatee that relates to or arises out of the OCII Documents, the Loan, Borrower's (or its agents) activities on the Site or Borrower's (or its agents' or contractors') construction of the Project, or any

transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City; (f) the occurrence, before the expiration of the term of this Agreement, of any Environmental Activity caused by Borrower's (or its contractors or agents) activities on the Site or any failure of Borrower or its agents to comply with all applicable Environmental Laws relating to Borrower's (or its contractors or agents) activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any act or failure to act caused or permitted by Borrower occurring from the date of this Agreement until the termination of this Agreement; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.1; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnatee will be entitled to indemnification under this Section for any Environmental Activity existing or occurring as of or prior to the date of this Agreement (unless aggravated or exacerbated by Borrower, its contractors or agents), any Environmental Activity of a person or entity not caused or permitted by Borrower, or for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnatee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnatee at Borrower's sole expense. Each Indemnatee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnatee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. Any indemnification obligation of the Borrower and/or its partners under the OCII Documents shall not extend to repayment of principal or interest in the Loan. The sole recourse of OCII under the OCII Documents for repayment of the Loan shall be the exercise by OCII of its rights against the Project.

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

ARTICLE 24 GENERAL PROVISIONS.

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

24.2 No Third Party Beneficiaries other than City. Nothing contained in this Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between OCII and Borrower or Borrower's agents, employees or contractors. Notwithstanding the forgoing, OCII and Borrower hereby acknowledge and agree that as the intended assignee of OCII's rights under the OCII Documents, the City is a third party beneficiary under the OCII Documents and that the Investor Limited Partner is a third party beneficiary of the provisions in Sections 16.1 and 19.2 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes OCII to file

any financing statements OCII elects and deems necessary to perfect its security interest in the Work Product.

24.22 Works for Hire. If, in connection with this Agreement or the implementation of the Project, Borrower creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of OCII. If it is ever determined that any such creations are not works for hire under applicable law, Borrower hereby assigns all copyrights thereto to OCII, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of OCII, Borrower may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Borrower shall use commercially reasonable efforts to obtain all releases, assignments or other agreements from other persons or entities implementing the Project to ensure that OCII obtains the rights set forth in this Section.

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

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

EXHIBITS

A	Schedules of Income and Rent Restrictions
B-0	Amended Table of Predevelopment Sources and Uses of Funds
B-1	Table of Sources and Uses of Funds
B-2	Annual Operating Budget
B-3	20-Year Cash Flow Proforma
C	Form of Tenant Income Certification
D	Form of Promissory Note
E	Contract Compliance Policies
F	Insurance Requirements
G	Lobbying/Debarment Certification Form
H	Form of Annual Monitoring Report
I	Tenant Selection Plan Policy and Tenant Screening Criteria Policy
J	Form Deed of Trust
K	Form of Declaration of Restrictions
L	Schedule of Performance
M	OCII Monthly Project Update Form
N	Developer Fee Schedule
O	Assignment of Work Product
P	Consent to Assignment of Work Product
Q	Legal Description of the Site

- R Final Financial Plan Confirmation Letter
- S Operational Rules for San Francisco Housing Lotteries and Rental Lease-Up Activities
- T-1 Early Outreach Plan Template
- T-2 Marketing Plan Template

Signatures begin on following page

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

OCII:

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

By: _____
Sally Oerth
Interim Executive Director

APPROVED AS TO FORM:
James B. Morales
OCII General Counsel

By: _____
Aaron J. Foxworthy
Deputy General Counsel

BORROWER:

HPSY 52-54, LP, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its sole General Partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its Managing Member

By: Rose Companies Holdings, LLC, a Delaware limited liability company, its Managing Member

By: _____
Name: _____
Its: _____

Authorized by OCII Resolution No. xx-2021, dated August 17, 2021

EXHIBIT A

Schedule of Income and Rent Restrictions¹

Unit Type	Proposed Number of Units	Proposed Avg. Sq. Feet	Max. Rent (at Target AMI)	Net Rent (including Utility Allowance)	Max % AMI OCII	Rent or Operating Subsidies
1BR	1	589	\$799	\$697	30%	none
1BR	1	589	\$1,065	\$963	40%	none
1BR	47	589	\$1,333	\$1,231	50%	none
2BR	1	824	Mgr	Mgr	Mgr	none
2BR	1	824	\$899	\$755	30%	none
2BR	1	824	\$1,199	\$1,055	40%	none
2BR	28	824	\$1,499	\$1,355	50%	none
3BR	1	1082	\$999	\$813	30%	none
3BR	1	1082	\$1,333	\$1,147	40%	none
3BR	21	1082	\$1,665	\$1,479	50%	none
4BR	1	1358	\$1,079	\$847	30%	none
4BR	1	1358	\$1,439	\$1,207	40%	none
4BR	6	1358	\$1,799	\$1,567	50%	none
5BR	1	1661	\$1,931	\$1,646	50%	none
Total Units	112					

** Maximum rent is based on MOHCD limits for 2021. The maximum rent levels shall be updated upon the commencement of leasing of the Project, and the updated amounts shall be applicable for the first year of the leasing of the Project.*

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

- i. thirty percent (30%) of the applicable maximum AMI level set forth above, adjusted for household size; or
- ii. the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

¹ In the event of conflict between this Exhibit A and Article 7 of the Agreement, Article 7 shall prevail.

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

Note: Any changes to the Schedule of Income and rent Restrictions are subject to approval by the OCII Executive Director and the MOHCD Director through the FFP. In no event shall the restrictions on any unit exceed 50% of City AMI.

EXHIBIT B-0

Amended Table of Sources and Uses for Predevelopment

EXHIBIT B-1

Table of Sources and Uses of Funds

EXHIBIT B-2

Annual Operating Budget

EXHIBIT B-3

20-Year Cash Flow Proforma

EXHIBIT C

Tenant Income Certification Form

TENANT INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other _____

Effective Date:

Move-in Date:

(MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____

Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

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

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

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

Add totals from (A) through (D), above

TOTAL INCOME (E): \$

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total			Passbook Rate	
If over \$5000 \$ _____ X 2.00%			= (J) Imputed Income	\$
Enter the greater of the total of column I, or J: imputed income			TOTAL INCOME FROM ASSETS (K)	\$
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

--	--

HOUSEHOLD CERTIFICATION & SIGNATURES

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

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

_____ Signature (Date)	_____ (Date)	_____ Signature
_____ Signature (Date)	_____ (Date)	_____ Signature

PART V. DETERMINATION OF INCOME ELIGIBILITY**RECERTIFICATION ONLY:**

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

\$

Household Meets
Income Restriction
at:

☐ 60% ☐ 50%
☐ 40% ☐ 30%
☐ ____%

Current Income Limit x 140%:

\$

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

Current Income Limit per Family Size: \$

Household Income at Move-in: \$

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$
Utility Allowance \$

Rent Assistance:

\$

Other non-optional charges:

\$

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

\$

Unit Meets Rent Restriction at:

☐ 60% ☐ 50% ☐ 40% ☐ 30% ☐ ____%

Maximum Rent Limit for this unit: \$

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ yes ☐ no

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

Enter
1-4

*Student Explanation:

- 1 TANF assistance
- 2 Job Training Program
- Single parent/dependent child
- Married/joint return

PART VIII. PROGRAM TYPE

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

a. Tax Credit ☐

See Part V above.

b. HOME ☐

Income Status

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

c. Tax Exempt ☐

Income Status

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

d. AHDP ☐

Income Status

☐ 50% AMGI
☐ 80% AMGI
☐ OI**

e. _____ ☐
(Name of Program)

Income Status

☐ _____
☐ _____
☐ OI**

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

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

EXHIBIT D
Form of Promissory Note

PROMISSORY NOTE

Principal Amount: \$59,200,732

San Francisco, CA

Date: _____

FOR VALUE RECEIVED, the undersigned, HPSY 52-54, LP, a California limited partnership ("**Maker**"), hereby promises to pay to the order of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure ("**OCII**"), including any successors or assigns), or holder (as the case may be, "**Holder**"), the principal sum of Fifty Nine Million Two Hundred Thousand Seven Hundred and Thirty Two DOLLARS (\$59,200,732) (the "**Funding Amount**"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in Section 1 below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("**Note**") is given under the terms of a Loan Agreement by and between Maker and Holder (the "**Agreement**") dated as of the date set forth above, which Agreement is incorporated herein by reference. Unless otherwise specified herein, definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control. A previous note by Borrower for OCII dated April 6, 2021 in the amount of Three Million Six Hundred and Fifty Thousand Dollars (\$3,650,000) (the "Original Note") has been cancelled and returned to Borrower, and this Note replaces the Original Note in its entirety.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3%) per annum, simple interest, from the date of disbursement of funds by Holder through the date of full payment of all amounts owing under the OCII Documents. Prior to the Loan Closing Date, the OCII Executive Director and MOHCD Director collectively may decrease the interest rate to any interest rate between 3% and 0%. Any rate change will be documented through an amended and restated note. Interest on the principal disbursed under the Original Note that has accrued as of the date of this Note is _____ Dollars (\$_____).

3. Default Interest Rate. Upon the occurrence of an Event of Default under any OCII Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date on which Maker receives written notice from Holder of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the OCII Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any OCII Document.

4. Repayment of Funding Amount. Maker must repay all amounts owing under the OCII Documents in accordance with Section 3.1 of the Agreement.

All payments will be applied in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the Maturity Date. Any Payment Date, including the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

5. Security. Maker's obligations under this Note are secured by (i) prior to the Maker's obtaining a leasehold interest in the Site, the pledge of Work Product given in the Assignment of Work Product, or (ii) on the date that the Maker obtains a leasehold interest in the Site, by the Deed of Trust.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Subject to the terms in this Note, Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.5 Subject to this Section, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or nonjudicial foreclosure of the Deed of Trust, or exercise of Holder's rights under the Assignment of Work Product, and Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, *provided, however*, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the OCII Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover from Maker sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan funds and Rents (as defined in the Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

6.6 This Note may be prepaid in whole or in part at any time, and from time to time, without penalty provided that notice is given to Holder no later than sixty (60) days prior to prepayment.

7. Default.

7.1 Any of the following will constitute an “**Event of Default**” under this Note:

(a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Loan subject to all applicable notice and cure rights.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the OCII Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

"MAKER

HPSY 52-54, LP, a California limited partnership

By: Rose HPSY 52-54 GP, LLC,
a Delaware limited liability company,
its sole General Partner

By: Rose GP Investors, LLC,
a Delaware limited liability company,
its Managing Member

By: Rose Companies Holdings, LLC,
a Delaware limited liability company,
its Managing Member

By: _____

Name:

Title:

EXHIBIT E
Contract Compliance Policies

1. Equal Opportunity Policies. Borrower shall comply with OCII's Equal Opportunity Policies:

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 43-2015, July 7, 2015);
- (ii) Bayview Hunters Point Employment and Contracting Policy;
- (iii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iv) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (v) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (vi) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

Copies of the aforementioned policies are available on the OCII website at <http://sfocii.org/policies-and-procedures>

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 et seq.) and implementing regulations, and any other environmental reviews as required by any federal funding sources obtained, including the National Environmental Policy Act ("NEPA").

3. Conflict of Interest.

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

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

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

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

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

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

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

(a) Borrower May Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Borrower, in any of Borrower's operations

within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower.

(b) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure.

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

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

percent in Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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

EXHIBIT E-1

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

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

III. **GOALS.** The Agency’s SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

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

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

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

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

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

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

3. Contact Educational Institutions

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

4. Response from Educational Institutions

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

5. Action by Design Professionals When Referrals Available

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

6. Action by Design Professionals When Referrals Unavailable

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

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

If a design professional has not received a response to its request for referrals from any of the

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

8. Termination of Trainee for Cause

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

B. Reporting Requirements For Trainee Hires

1. Reporting

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

2. Report on Terminations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

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

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

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

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

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

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

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

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

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

- 1. Advertise.** Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County

of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the ***Small Business Exchange***, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs.** Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.
- B. **Pre-Solicitation Meeting.** For construction contracts estimated to cost \$5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.
- C. **Follow-up.** Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.
- D. **Subdivide Work.** Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.
- E. **Provide Timely and Complete Information.** The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.
- F. **Good Faith Negotiations.** Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.
- G. **Bid Shopping Prohibited.** Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.
- H. **Other Assistance.** Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.
- I. **Delivery Scheduling.** Establish delivery schedules that encourage participation of SBEs.
- J. **Utilize SBEs as Lower Tier Subcontractors.** The Agency-Assisted Contractor and its

Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

- K. **Maximize Outreach Resources.** Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.
- L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XII. ADDITIONAL PROVISIONS

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

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

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

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

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

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

details.

XIII. PROCEDURES

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

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

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

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

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

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

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

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

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

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

credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.
8. A description of any divisions of work undertaken to facilitate SBE participation.
9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.
10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.
11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

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

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

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

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIV. ARBITRATION OF DISPUTES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall

have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

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

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

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

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

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

Agency

Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

Signature

Date

Print Your Name

Title

Company Name and Phone Number

EXHIBIT E-2

CONSTRUCTION WORK FORCE AGREEMENT

- I. **PURPOSE.** This Agreement is entered into between the Borrower (“Borrower or “Owner”)Owner and the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.
- II. **DEFINITIONS.**
The following definitions apply to this Agreement.
- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
 - B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials.
 - C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Owner Improvements.
 - D. "Owner Improvements" means improvements constructed by the Owner.
 - E. “Project Area Resident” means a San Francisco Resident who resides in the Bay View Hunters Point Project Area or within the ZIP codes of 94124, 94107, or 94134.
 - F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. WORK FORCE GOALS.

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

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

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

B. Submit Subcontractor Information Form

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

C. Preconstruction Meeting

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

D. Submit Construction Worker Request Form

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

E. Response from CityBuild

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

F. Action by Contractor When Referrals Available

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

G. Action by Contractor When Referrals Unavailable

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

H. Action by Contractor When No Response From CityBuild

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

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

I. Action by Contractor When No Response From Union

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

J. Hiring Apprentices

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

K. Termination and Replacement of Referrals

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

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is

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

B. Additional Information

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

C. Report on Terminations

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

D. Inspection of Records

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

E. Failure to Submit Reports

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

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and

what action was taken with respect to each such individual.

G. Coding Certified Payrolls

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

VI. RECORDKEEPING REQUIREMENTS.

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

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

VII. ARBITRATION OF DISPUTES.

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

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

bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

- C. **Parties' Participation.** The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
 - 1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent

injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil

Procedure §1281.2.

- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU

REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

_____	_____
Agency	Owner

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

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

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

EXHIBIT E-3
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all construction of the Project Improvements as defined in the underlying agreement between the Borrower and the Office of Community Investment and Infrastructure (OCII) “Successor Agency” of which this Exhibit E and these Labor Standards are a part.
2. **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**
 - a. All specifications relating to the construction of the Project 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 Project 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 Project that such construction lender is aware of these Labor Standards.
3. **Definitions.** The following definitions shall apply for purposes of this Exhibit E:
 - a. “Contractor” is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Project.
 - 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 workweek.
4. **Prevailing Wage.**
 - a. All Laborers and Mechanics employed in the construction of the Project will be

paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency 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 §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 §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- e. Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

union statutes.

- g. Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- h. Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

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

8. **Payrolls and Basic Records.**

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Project and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Project. 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. 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 Project 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. 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 §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.
9. **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
10. **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit E 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. **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any

proceeding under or relating to these Labor Standards.

12. **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a “Notice to Employees,” in the form appearing on the last page of these Labor Standards, shall be given to the 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 Project before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. **Violation and Remedies.**

- a. **Liability to Employee for Unpaid Wages.** The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- b. **Stop Work--Contract Terms, Records and Payrolls.** If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Project to contain the Labor Standards as required by §2 (“Non-Conforming Contract”); or by reason of any failure to submit the payrolls or make records available as required by §8 (“Non-Complying Contractor”), the Executive Director of the Agency may, after written notice to the 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 Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.
- 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 Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14. 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 §14.

- e. Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Project 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.

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 §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- f. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the

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

- g. Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- h. Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the 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.

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 Project, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Borrower, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

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

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

***PREVAILING
WAGE***

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write the Office of Community Investment and Infrastructure, OCII
1 South Van Ness Ave. 5th Floor
San Francisco, CA 94103
or call **(415) 749-2546** and ask for
Mr. George Bridges
Contract Compliance Specialist

EXHIBIT E-4
Nondiscrimination in Contracts and Benefits



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII)
(SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)
DECLARATION FORM
Nondiscrimination in Contracts and Benefits

Section A

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

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

Section B

1. Nondiscrimination—Protected Classes

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

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

- b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
- ☐ Yes ☐ No

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

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

- a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
- ☐ Yes ☐ No
- b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
- ☐ Yes ☐ No

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

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

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

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

- (1) Have you taken all reasonable measures? ☐ Yes ☐ No
- (2) Do you provide a cash equivalent? ☐ Yes ☐ No

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

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

Section C

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

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

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____
(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

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

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

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

EXHIBIT E-5
MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sfgov.org/olse/minimum-compensation-ordinance-mco>.

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

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

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

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

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

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

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

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT E-6
HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

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

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFPDH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFPDH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII 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 and offered by SFPDH. The minimum health plan standards and fees established by SFPDH are published at <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>.

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

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

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

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

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

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

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

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT F
Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Exhibit F throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Exhibit F for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Borrower's design and professional contractors; and Borrower (prior to start of construction)	Additional insured (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Borrower (upon construction start), general contractor, and subcontractors to the general contractor	Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Borrower and Borrower's contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start – general contractor and subcontractors to the general contractor	
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Borrower and Borrower's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Borrower if engaged in any eligible design-related activities; and Borrower's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Borrower	Loss payee endorsement
Pollution Liability/Asbestos –	\$1,000,000 per claim/ \$2,000,000 aggregate	Borrower or Borrower's construction contractor(s)	Additional insured (see Section G)

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
During Construction (see Section B.6)			
Builder's Risk – During Construction (see Section B.7a)	100% of replacement value	Borrower	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Borrower or Borrower's property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value (excluding the Modular Work)	Borrower's construction contractors	OCII and Borrower named as dual obligees
Modular Factory Performance Insurance (see Section B.9)	100% of Supply Agreement value	Modular manufacturer	General contractor named as loss payee

** Umbrella, excess liability policy, or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

B. Minimum Scope and Limits of Insurance. Borrower and/or Borrower's Contractors must maintain insurance with limits no less than:

- 1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, or an Owner Controlled Insurance Policy may be used to meet the terms of this section.
 - a. Before the start of demolition/construction if the Site is unoccupied, Borrower and Borrower's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Borrower's design and professional contractors throughout the required coverage period;
 - b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Borrower and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) general aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Borrower, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Borrower must provide a completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant Section G below.

- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Borrower does not own any automobiles, Borrower must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non-owned autos), with additional insured endorsement. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, combined single limit.
- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Borrower does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the all general partners of the Partnership, in lieu of such coverage being provided by the Borrower. Additionally, the Borrower must provide a written statement confirming that the Borrower does not have employees.
- 4) Professional Liability (Errors and Omissions) insurance, applicable to the Borrower's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Borrower only if the Borrower or Sponsor has any employees providing design or engineering services. Two Million Dollars (\$2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for no less than five (5) years beyond completion of the scope of services performed. Any deductible over One Hundred Thousand Dollars (\$100,000) each claim must be reviewed by OCII Risk Management.

Design professionals who utilize the services of subcontractors or consultants to complete work in connection with this project are required to assess the risks associated with such contractors and, with the authorization of the Borrower, determine and verify the appropriate level of coverage provided by the subcontractor or consultant. The design professional and the Borrower shall assume costs and expenses that may be incurred in fulfilling any indemnity obligations as to itself or any subcontractors or consultants for whom the design professional and/or the Borrower are legally liable in the absence of adequate subcontractor or consultant coverage.

- 5) Crime Policy or Fidelity Bond (Employee Dishonesty Coverage) covering Borrower and Developer's officers and employees against employee dishonesty, forgery & alteration,

theft of money & securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Borrower must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Borrower shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Borrower. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

- 6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy aggregate, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.
- 7) Property Insurance
 - a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Borrower or the Borrower must cause its general contractor to maintain this insurance.
 - b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us").
- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts (excluding the Modular Work), naming OCII and Borrower as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Borrower to Borrower's institutional lender as completion security. This requirement shall not apply to modular manufacturer.

- 9) Performance Insurance. Borrower shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Borrower's or Borrower's general contractor's contract amount for the delivery of modules for the construction of the Project. Borrower shall limit general contractor's use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Borrower shall, and shall require general contractor, to obtain OCII's approval prior to expending such proceeds.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, 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 OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella, Excess Liability, and Owner Controlled Insurance Policies (OCIP). An Umbrella and/or Excess Liability policy(ies) or an OCIP may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.
- F. General Requirements.
- 1) If the Borrower maintains additional coverages and/or higher limits than the minimums shown in this Exhibit F, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Borrower.
 - 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, 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.
 - 3) Each insurance policy required herein must be endorsed (if endorsement is available) 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 mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.

- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- 5) Approval of Borrower's insurance by OCII will not relieve or decrease the liability of Borrower under this Agreement.
- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Borrower.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

G. Verification of Coverage. Borrower must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII before work commences. OCII 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. Borrower shall require and verify that its contractors and consultants maintain the required policies as stated herein. Borrower must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:

- 1) Identify the following as the certificate holder:
 Successor Agency to the Redevelopment Agency of the City and County of San Francisco
 Office of Community Investment and Infrastructure
 One South Van Ness Avenue, 5th Floor
 San Francisco, CA 94103
- 2) Identify the name of the insurance policy holder (Borrower, Developer, or Contractor), the Project name, and the Project address.
- 3) For policies in which OCII is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" on the certificate and on the attached endorsement or certificate.

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII's Risk Management Policy. The insurance coverage required under this

Section shall be evaluated by OCII for adequacy from time to time. OCII may require Borrower to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

EXHIBIT G

Lobbying/Debarment Certification Form

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

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

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

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

HSPY 52-52, LP, a California limited partnership

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT H

Form of Annual Monitoring Report

Owner Compliance Certification and Insurance & Tax Certification Form 2020 Annual Monitoring Report San Francisco Mayor's Office of Housing and Community Development

***** This form must be completed by Project Owner or authorized agent. *****

Complete this form, sign and date it, scan it along with current liability and property insurance certificates into a single PDF file, then email the file along with AMR_RY2020 – project name.xlsx, audited financial statements, and current waiting list to moh.amr@sfgov.org.

Project Name: _____

Project Street Address: _____

Reporting Period – Start Date: _____ End Date: _____

Owner Compliance Certification

The undersigned owner, having received housing development funds pursuant to a housing development program funding agreement/s entered into with the City and County of San Francisco ("CCSF") for the purpose of purchasing, constructing and/or improving low-income housing, does hereby certify as follows:

*Initial all statements below, and supply data to make the statement complete where needed (look for underlined blanks; e.g.: ____). **For any statements that are not true or require additional clarification, you must supply a detailed explanation on the Annual Monitoring Report Narrative Worksheet.** The failure to provide a conforming response to all statements below will render incomplete the entire Annual Monitoring Report ("AMR") submission for this project, which may result in a default condition under the funding agreement/s, and also subject the owner to scoring penalties in future efforts to obtain funding from MOHCD for this project and any other project.*

	True	False	
1			The CCSF Mayor's Office of Housing and Community Development ("MOHCD") has been alerted by the owner prior to any actions taken by the owner that affect the value of the property associated with this project, including but not limited to the establishment of any liens or encumbrances on the property; and, where required, the owner has obtained written authorization from MOHCD prior to taking any such actions.
2			The undersigned is not in default of the terms of any Agreements with CCSF for this project, nor has it been in default on any other loans, contracts or obligations on this property during the reporting period.
3			The undersigned has not been the subject of any actions relating to any other loans, contracts or obligations on this property which might have a material adverse financial impact on the property.

	True	False	
4			The owner has not lost or failed to renew funding for supportive services for the project during the reporting period and has made available (or caused to be made available through another party) all supportive services that are required by existing, applicable funding and regulatory agreements.
5			The owner has not lost or failed to renew funding for operating subsidy/ies for the project during the reporting period.
6			For any existing operating subsidies supporting the project, during the reporting period, the owner submitted a request for the maximum increase possible.
7			The owner has paid all taxes due for the reporting period and prior reporting periods.
8			The undersigned has marketed the units in the manner set forth in the marketing and resident selection provisions of the funding agreement/s entered into with CCSF.
9			The project has met affordability and other leasing provisions set forth in the funding agreement/s entered into with CCSF during the entire reporting period. As of the end date of the reporting period, _____ units (<i>supply exact number</i>) were occupied or held vacant and available for rental by low-income tenants meeting the income qualifications pursuant to the funding agreement/s entered into with CCSF.
10			The undersigned has obtained a tenant income certification and/or third party documentation to support that certification from each tenant household occupying a unit restricted to occupancy by income-qualified tenants. All income certifications are maintained onsite with respect to each qualified tenant who resides in a unit or resided therein during the immediately preceding business year.
11			The total charges for rent and a utility allowance to each income-qualified tenant in a restricted unit do not exceed the maximum rent specified in the funding agreement/s entered into with CCSF as adjusted by the most recent HUD income and rent figures, which have been taken from the figures that are supplied by MOHCD on its website.
12			All withdrawals from the replacement and operating reserve accounts have been made in accordance with the MOHCD funding agreement/s, unless approved in writing by MOHCD.
13			Security deposits required of tenants of the project are in accordance with applicable laws and the funding agreement/s entered into with CCSF.
14			The undersigned has obtained and will maintain insurance policies in accordance with requirements of the funding agreement/s entered into with CCSF as may be reasonably updated from time to time, and has supplied with this AMR certificates of insurance that are current through the end of the reporting period.
15			The undersigned has maintained the units and common areas in a decent, safe and sanitary manner in accordance with all local health, building, and housing codes and in accordance with the HUD Housing Quality Standards.
16			The data submitted in Section 1A – Property & Residents of the Annual Monitoring Report regarding any violation/s of any health, building, or housing codes is complete and accurate; all required copies of violations/citations that were not resolved by the end of the reporting periods are also included with this AMR submission.

	True	False	
17			The undersigned has made best efforts to: (a) keep the units in good repair and available for occupancy; (b) keep the Project fully rented and occupied; and (c) maximize rental revenue at the Project by increasing tenant rents, and if applicable, contract rents and commercial rents, the maximum amount permitted under all current regulatory agreements, contracts, regulations and leases, without causing undue rent burden on residential tenants.
18			All questions in the Annual Monitoring Report submitted for this reporting period have been answered fully and truthfully; answers have been supplied for all of questions requiring detailed responses on the Annual Monitoring Narrative Worksheet and any related documents have been submitted as attachments.
19			The project has received additional equity proceeds in the amount of \$ _____ (supply amount) from low-income housing tax credit investors during the reporting period.
20			Accurate information has been provided in Worksheet 2 - Fiscal Activity about any Federal Program Income earned by this project during the reporting period.
21			Any amounts charged as Asset Management Fees are reflected accurately under Income & Expenses in Worksheet 2 - Fiscal Activity of the Annual Monitoring Report, and all such amounts have been used exclusively toward asset management of this project. Asset Management Fees taken beyond pre-approved levels have been documented as required in response to question 7 in Section 4 - Narrative.
22			The calculation of cash flow in Worksheet 2 - Fiscal Activity accurately reflects all expenses incurred and income earned, and the proposed distribution of any Residual Receipts would be in accordance with all relevant agreements and policies.
23			The Waiting List that has been submitted with the 2020 Annual Monitoring Report is an accurate and correct record as of the last day of the reporting period of the households who have applied to live at the Project, including the name of the head-of-household (or a suitable alternative), date of application, number of people in the household, stated household income and desired unit size.

Property and Liability Insurance

Enter the information requested below, and attach a current copy (each) of the Property and Liability Insurance Certificates. SCAN the documents and send them as an attachment along with the complete AMR to MOHCD via e-mail to: moh.amr@sfgov.org.

Property Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	
Liability Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	

Tax Certification

Enter the information requested below. You do **NOT** need to submit copies of the invoice or checks used to pay the tax.

Property Tax		
	Tax Year:	
	Amount of Tax Paid:	
	Date Paid:	
	Amount outstanding from taxes due for Reporting Period:	
	Amount outstanding from taxes due prior to Reporting Period:	

***** This form must be completed by Project Owner or authorized agent. *****

The undersigned, acting under authority of the ownership of this project, executes this Certification, subject to the pains and penalties of perjury, and certifies that the foregoing is true and correct in all respects.

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT I

Tenant Selection Plan Policy and Tenant Screening Criteria Policy

Tenant Selection Plan Policy

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),² **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

Application Process

- **Application Materials.** The housing provider's written and/or electronic application materials should:
 - outline the screening criteria that the housing provider will use;
 - be in compliance with San Francisco Police Code Article 49 or the Fair Chance Ordinance,
 - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
 - be written in language that is clear and readily understandable,
- **First Interview.** In accordance with the housing provider policies, an initial interview is required to assess each applicant's minimum eligibility requirements for housing units. All applicants shall be offered the opportunity for an interview in lottery rank order.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process. All applicant information shall be retained for 12 months after the final applicant interview.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.
- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.

²See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2; Unruh Civil Rights Act, Civil Code § 51; California Disabled Persons Act, Civil Code § 51.4;** Dymally-Alatorre Bilingual Services Act, Gov't Code §7290-7299.8; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**

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

Reasonable Accommodation and Modification Policy

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

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

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

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

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

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

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

Notice of Denial and Appeal Process

- The housing provider shall:
 - Hold a comparable unit for the household during the entire appeal process.

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

Tenant Screening Criteria Policy

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants. These requirements are also designed to satisfy the requirements of San Francisco Police Code Article 49, Sections 4901-4920 or the Fair Chance Ordinance. This policy describes a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

Screening Criteria

- Housing providers shall not automatically bar applicants who have a criminal record² in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers shall not consider:

- o arrests that did not result in convictions, except for an open arrest warrant;
- o convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;³
- o juvenile adjudications.
- Housing providers shall consider:
 - o the individual circumstances of each applicant; and
 - o the relationship between the offense, and
 - (1) the safety and security of other tenants, staff and/or the property; and
 - (2) mitigating circumstances such as those listed below.
 - o only those offenses that occurred in the prior 7 years, except in exceptional situations, which must be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity.
 - o mitigating factors, including, but not limited to:
 - (1) the seriousness of the offense;
 - (2) the age and/or circumstances of the applicant at the time of the offense;
 - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;
 - (4) if the offense is related to acts of domestic violence committed against the applicant;
 - (5) if the offense was related to a person's disability.

² The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

³ The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release "from all and disabilities resulting from the offense."

EXHIBIT J

FORM OF DEED OF TRUST

Form of Deed of Trust

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

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

Space above for Recorder

(Assessor's Block 4591C, Lots 215 and 204)

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Hunters Point Shipyard Phase 1 Blocks 52 and 54)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, by HPSY 52-54, LP, a California limited partnership ("**Trustor**"), whose address is _____, to _____ ("**Trustee**"), whose address is _____, for the benefit of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California ("**Beneficiary**"). This Deed of Trust is executed pursuant to an Amended and Restated Loan Agreement by and between Trustor and Beneficiary dated as of _____, as it may be amended from time to time (the "**Agreement**"), the provisions of which are incorporated herein by reference. Unless otherwise specified, definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

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

a. Its leasehold interest in that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and

incorporated herein by reference (the "**Land**"), on which Trustor intends to construct an affordable housing project with 141 residential units thereon, the "**Project**"; and

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

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

d. all of Trustor's interest in and under that certain Ground Lease dated as of _____, by and between Beneficiary, as lessor, and Trustor, as lessee, including any options of any nature whatsoever; and

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

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

g. all undisbursed Loan funds, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

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

i. all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records

relating to the application and allocation of any federal, state or local tax credits or benefits;
and

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

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

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

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

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

b. payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of _____ **DOLLARS (\$_____)**, according to the terms of the Agreement and the Note; and

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

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

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

b. to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land subject to available insurance proceeds; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

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

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

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

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

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

4. Insurance and Condemnation Proceeds.

- Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.
- Any condemnation award or builders risk or property insurance proceeds must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.
- If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction or repair of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Note and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.
- Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any OCII Document unless the default has been cured by the application or release of funds.

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

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

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

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

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

Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

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

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

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

6. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods including such notice and cure periods provided to the Investor Limited Partner ("**Event of Default**"):

- a. Trustor's license to collect and retain Rents will terminate automatically.
- b. Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to

the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

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

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

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

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

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

"TRUSTOR:"

HPSY 52-54, LP, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its Co-
General Partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its Managing
Member

By: Rose Companies Holdings, LLC, a Delaware limited liability company, its
Managing Member

By: _____

Name:

Title:

[ALL SIGNATURES MUST BE NOTARIZED.]

EXHIBIT A
(Legal Description of the Property)

EXHIBIT K

FORM DECLARATION OF RESTRICTIONS

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

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

Space above for Recorder

(Assessor's Block 4591C, Lots 215 and 204)

DECLARATION OF RESTRICTIONS

Hunters Point Shipyard Phase 1 Blocks 52 and 54

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of _____, 2021, by HPSY 52-54, LP, a California limited partnership ("Declarant") owner of a leasehold interest in the land described in Exhibit A attached hereto (the "Property"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure ("**OCII**", including any successors or assigns). The restrictions and covenants stated herein shall bind Declarant and its successors and assigns and shall be enforceable by OCII and its successors and assigns.

RECITALS

A. OCII and Declarant have entered into that certain Ground Lease dated _____ (the "Ground Lease") and an Amended and Restated Loan Agreement dated as of _____, 2021 (as it may be amended from time to time, the "Loan Agreement"). The Ground Lease and Loan Agreement obligate Declarant to develop the Property as low-income housing (the "Project"). Definitions and rules of interpretation set forth in the Ground Lease apply to this Declaration, unless otherwise noted.

OCII and Declarant entered into the Loan Agreement to finance costs associated with the development of the Project). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Ground Lease and the Loan Agreement, Declarant has agreed to comply with certain affordability and other use and occupancy restrictions contained herein commencing on the date on which a certificate of occupancy is issued for the Project, and continuing for the life of the Project (the "**Compliance Term**"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed. **[KH: Updated to match Compliance Term of loan agreement]**

AGREEMENT

Now, therefore, in consideration of OCII's agreement to fund in accordance with the OCII Documents, Declarant agrees as follows:

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

1. With the exception of one manager's unit, Declarant covenants that all residential units in the Project will at all times be occupied, or held vacant and available, for rental only to households who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	No. of Units	Maximum Income Level
1 bdrm	49	50% of Area Median Income as published annually by MOHCD, derived from the income limits determined by HUD for the San Francisco Area, adjusted solely for household size, but not high housing cost area
2 bdrm	30	50% of Area Median Income as published annually by MOHCD, derived from the income limits determined by HUD for the San Francisco Area, adjusted solely for household size, but not high housing cost area
3 bdrm	23	50% of Area Median Income as published annually by MOHCD, derived from the income limits determined by HUD for the San Francisco Area, adjusted solely for household size, but not high housing cost area
4 bdrm	8	50% of Area Median Income as published annually by MOHCD, derived from the income limits determined by HUD for the San Francisco Area, adjusted solely for household size, but not high housing cost area
5 bdrm	1	50% of Area Median Income as published annually by MOHCD, derived from the income limits determined by HUD for the San Francisco Area, adjusted solely for household size, but not high housing cost area
2 bdrm	1	Manager Unit (unrestricted)
Total	141	

2. In addition to a tenant's qualification as a Qualified Tenant, the total amount for rent and utilities charged to a Qualified Tenant may not exceed either:

i. thirty percent (30%) of the Maximum Income Level specified in the foregoing table; or

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

B. Survival of Restrictions

1. The affordability restrictions and covenants herein shall remain in effect for the life of the Project and shall survive the termination of the Ground Lease and the Loan Agreement, even if the loan under the Loan Agreement is repaid or otherwise satisfied or the Deed of Trust is reconveyed. Subject to the provisions of subsection (2) below, these

affordability restrictions and covenants shall remain in first position and shall not be subordinated to the lien of any deed of trust or other financing, unless OCII determines, in its sole discretion, that subordination is necessary to secure adequate financing to ensure the viability of the Project.

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

D. This Declaration may be amended only with the prior written approval of OCII, and any attempt to otherwise amend this Declaration shall be void or voidable at OCII's sole discretion.

E. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Declarant and any non-borrower owner and lessee of the Property. In the event that Declarant fails to comply with the covenants and restrictions of this Declaration, including without limitation the Regulatory Obligations, to OCII's satisfaction, in its sole discretion, within thirty (30) days of Declarant's receipt of written notice from OCII to so comply, if Declaration has not diligently begun efforts to comply, OCII at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Declarant shall pay OCII's costs in connection with OCII's enforcement of the terms of this Declaration, including, without limitation, OCII's reasonable attorneys' fees and costs.

(document continues on following page)

Declarant has executed this Declaration as of the date first written above.

DECLARANT:

HPSY 52-54, LP, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its Co-
General Partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its Managing
Member

By: Rose Companies Holdings, LLC, a Delaware limited liability company, its
Managing Member

By: _____

Name:

Title:

EXHIBIT A
(Legal Description of the Property)

EXHIBIT L

SCHEDULE OF PERFORMANCE

	Performance Milestone	Estimated or Actual Date ³	Contractual Deadline
1	Design		
2	Submittal of Updated Design Development & Cost Estimate	<u>5/1/2021</u>	<u>6/1/2021</u>
3	Submittal of 50% CD Set & Cost Estimate	<u>7/15/2021</u>	<u>10/15/2021</u>
4	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	<u>12/15/2021</u>	<u>3/15/2022</u>
5	Permits		
6	Building / Site Permit Application Submitted	<u>10/8/2019</u> <u>Issued 4/2020</u>	
7	Addendum #1 Submitted	<u>8/15/2021</u>	<u>1/15/2022</u>
8	Addendum #2 Submitted	<u>12/15/2021</u>	<u>3/29/2022</u>
9	Request for Bids Issued	<u>12/2021</u>	<u>3/2022</u>
10	Service Plan Submission		
11	Update	<u>7/1/2023</u>	<u>12/10/2023</u>
	Additional City Financing		
	Predevelopment Financing Application #2	<u>N/A</u>	
12	Gap Financing Application	<u>7/2021</u>	<u>4/2022</u>
	Other Financing		
13	Construction Financing RFP	<u>9/2/2021</u>	<u>4/1/2022</u>
14	AHP Application	<u>3/2022</u>	<u>3/2023</u>

³ Estimated Dates are the Borrower's and OCII's best estimate for achieving milestones established herein, which estimates are established for project management purposes, but do not supersede contractual deadlines, which establish deadlines by which Borrower is required to perform under this Agreement.

15	CDLAC Application CDLAC Award (based on 2021 dates)	<u>9/2021</u> <u>12/2021</u>	<u>2/4/2022</u> <u>4/28/2022</u>
16	TCAC Application TCAC Award (based on 2020 dates)	<u>9/2021</u> <u>12/2021</u>	<u>2/4/2022</u> <u>4/28/2022</u>
	Other Financing Application		
	Closing		
17	Construction Closing	<u>5/1/2022</u>	<u>10/1/2022</u>
18	Permanent Financing Closing	<u>2/1/2025</u>	<u>8/1/2025</u>
	Construction		
19	Notice to Proceed	<u>5/1/2022</u>	<u>10/1/2022</u>
20	Temporary Certificate of Occupancy/Cert of Substantial Completion	<u>5/1/2024</u>	<u>10/1/2024</u>
21	Marketing/Rent-up		
22	Early Outreach Plan Submission	<u>6/1/2022</u>	<u>11/1/2022</u>
23	Marketing Plan Submission	<u>12/2023</u>	<u>6/2024</u>
24	Commence Marketing	<u>2/1/2024</u>	<u>6/1/2024</u>
25	95% Occupancy	<u>10/1/2024</u>	<u>6/1/2024</u>
26	Cost Certification/8609	<u>6/1/2025</u>	<u>12/1/2025</u>
	Close Out MOH/OCII Loan(s)		

EXHIBIT M

OCII MONTHLY PROJECT UPDATE FORM

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

THE PURPOSE OF THESE UPDATES IS TO TRACK PROJECT PROGRESS

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

Project Summary Information

Project:	
Sponsor:	
# Units:	
Target Population:	

Monthly Update

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

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

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

FOR OCII STAFF USE ONLY

Major issues, delays, etc.

Items for discussion with Director

EXHIBIT N

Developer Fee Schedule

Developer Fee Disbursement Schedule		
Payment Milestone	% of Project Mgmt Fee	Amount
At execution of the Loan	8%	\$75,000
At submission of CDLAC and TCAC applications through Construction Close	8%	\$75,000
Execution of Ground Lease	7%	\$65,000
Construction close	16%	\$147,500
During Construction	39%	\$347,500
Construction Completion	10%	90,000
Project Close-Out	11%	\$100,000
Total Project Management Fee	100%	\$900,000
Draft cost certification/100% occupancy	20%	\$224,000
Conversion	50%	\$560,000
Project close out	30%	\$336,000
Total At-Risk Fee		\$1,120,000
Total Cash Developer Fee		\$2,020,000
Deferred Fee		\$1,158,147
Total Developer Fee		<u>\$3,178,147</u>

EXHIBIT O

Assignment of Work Product

FOR VALUE RECEIVED, HPSY 52-54, LP, a California limited partnership (“Borrower”), does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and VanMeter Williams Pollack Architects and any other contracts entered into between Borrower and any licensed design profession or engineer (“Architect” or “Engineer”), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architects and Engineers for the account of Borrower in connection with the development of 112 units of rental housing at 151 and 351 Friedell Street (also known as Hunters Point Shipyard Blocks 52 and 54), San Francisco, California (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$XXX.

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

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

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

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

(document continues on following page)

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on _____, 2021.

BORROWER:

HPSY 52-54, LP, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its sole General Partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its Managing Member

By: Rose Companies Holdings, LLC, a Delaware limited liability company, its Managing Member

By: _____

Name:

Title:

EXHIBIT P

Consent to Assignment

In accordance with the terms of that certain Assignment of Architects and Engineers Agreement Plans and Specifications dated on or about the date hereof, HPSY 52-54, LP, a California limited partnership ("Borrower") assigned to the Successor Agency to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, ("Agency") all of its rights, title and interest in and to that certain architect's agreement ("Agreement") entered into by and between Borrower and Mithun Architecture ("Architect/Engineer") and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architect/Engineer and others for the account of Borrower in connection with the development of 112 units of rental housing at 151 and 351 Friedell Street (also known as Hunters Point Shipyard Blocks 52 and 54), San Francisco, California ("Project"). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$XXX.

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

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

Dated: _____, 2020

_____ ARCHITECT:

Mithun Architecture

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT Q

Legal Description of the Site

Real property in the City and County of San Francisco, State of California, described in the following drawings. Assessor's Block 4591C, Lots 204 and 215

EXHIBIT R

Final Financial Plan Confirmation Letter

To be attached on or before the Loan Closing Date

EXHIBIT S

Operational Rules for San Francisco Housing Lotteries and Rental Lease-Up Activities

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

<https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery Preferences/Lottery Preferences Manual.pdf>

EXHIBIT T-1

Early Outreach Plan Template

**Form of Early Outreach Plan for Initial Lease Up or Sale of Units (2016 edition)
Projects Approved by the Office of Community Investment and Infrastructure (OCII)**

*City and County of San Francisco
Mayor's Office of Housing and Community Development (MOHCD)
Working as OCII's agent*

This plan is subject to OCII and/or its agent's (MOHCD's) review within 10 business days from the date it is received and complete. **Please set all dates in this plan so that no date commences sooner than 30 working days before the date of your plan submission.**

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

Special Note: Projects initially approved by OCII will be transferred to MOHCD for long-term marketing and asset management after project completion.

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

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

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

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

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

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

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

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

Date of Building Permit Issuance	
Expected Issuance Date of Temporary	

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

The section below applies to rental projects only.

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

II. Overall Building Composition

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

III. Market Rate Units (if applicable)

Unit Type	Total #
SRO	

Studio	
Jr. 1 Bedroom	
1 Bedroom	
1+ Bedroom	
2 Bedroom	
2+ Bedroom	
3 Bedroom	
3+ Bedroom	
4 Bedroom	
Other	

- IV. Affordable Units

Total # affordable (only) Units in Building	
---	--

- AFFORDABLE UNITS BY BEDROOM SIZE

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

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

- DETAILED DESCRIPTION OF AFFORDABLE UNITS BY BEDROOM SIZE

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

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

V. Renter / Buyer Outreach

I/We understand that it is our responsibility to read and understand the rules of the regulatory agreement(s) for this development as well as the marketing and outreach policies set forth by OCII.

At least 18 months, and 8 months prior to initiation of the affirmative marketing obligations or other public advertising and marketing of the Affordable Housing Units, (as the term is defined in the relevant development agreement(s)), the Developer shall provide occupancy preference, prioritized by the applicant category (based on a list developed by Developer and OCII and/or its agent) below.

Advanced notice (the "Advance Notice"); however, must be provided through a series of three postcards to Certificate of Preference Holders (COP). Two of the three total postcards shall alert COP preference holders during (the "Advance Notice Period") of affordable and/or market rate housing opportunities in the Project that will become available:

1. COP Postcard Template 1, shall also encourage those interested to seek a housing counseling agency to assist with advanced preparation for qualifying.
2. COP Postcard Template 2, shall market workshops specific to qualifying for the Project in conjunction with your chosen housing counseling agency, and may include a description of the housing, and income qualifications for tenancy or ownership.
3. The third and final postcard shall align with the open marketing period and include notification about the information session, lottery, and how to apply (see marketing plan).

Once postcards are approved by the COP Coordinator, the Developer/ Marketing Agent shall deliver the postcards in a quantity specified by the COP Coordinator corresponding with current number of Active COP holders. Postcard mailings shall coincide with marketing intervals as described in section VII. Application/Selection Process and Timeline. The Developer/ Marketing Agent will be invoiced for associated costs such as labels, and postage after each mailing. The Return Address side of the postcard must have matt finish to allow for postage metering.

The outreach materials will include the following information, as applicable:

1) Occupancy Preferences (Verify with OCII and/or its agent)

Preference will be given to:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: a. Western Addition b. Hunters Point
3	Displaced Tenant Housing Preference
	Neighborhood Resident Housing Preference
4	San Francisco Residents or Workers
3	All Others

2) POST CARD TEMPLATE 1 & 2

1. Anticipated occupancy date
2. A description of the total number of Affordable Units in the Project;
2. List Housing Counseling Agency and/or workshop dates to assist prospective applicants.

Side One:



**Coming Summer, Spring, Fall,
Winter YEAR!
Affordable Homes for Rent or Sale
in San Francisco**

**Two-bedroom and three-bedroom rental or ownership
units at Lakeside Village in the XX Neighborhood
coming soon!**

For more information about the COP Program, please call 415-701-5526.

Side Two:

Return Address:

San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness, 5th Floor San Francisco, CA 94103

Beautiful new Lakeside Village apartments or homes
with modern design + amenities coming XXXXXXXX!
Affordable apartments or homes available to
households at an affordable price.

Get prepared now! For help with credit repair,
building savings for your deposit, maintaining financial
documentation and any housing need that requires
time, effort and care contact:

XXXX Housing Counselor
(415) 701-1022 or www.sfxxx.org
Lakeside Village specific workshops coming February 2019.



Reserve for COP mailing label



COP Postcard Template 2

Side One:



**Coming Summer, Spring, Fall,
Winter YEAR!
Affordable Homes for Rent or Sale
in San Francisco**

**2 two-bedroom + 3 three-bedroom rental or ownership units
available at
Lakeside Village, in the XX neighborhood at
1125 Laurel Court, San Francisco, CA 94124 coming soon!**

For more information about the COP Program, please call 415-701-5526.

Side Two:

Return Address:

San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness, 5th Floor San Francisco, CA 94103

Beautiful new Lakeside Village apartments or homes
with modern design + amenities coming XXXXXXXX!
Affordable apartments or homes available to
households at an affordable price.

Get prepared! Free workshops to help you qualify:

XXX Housing Counselor
(415) 701 – 1022 or www.sfxxx.org
"Rental Readiness" Tuesday 3/20 5-7pm

XXX Housing Services
(415) 701 – 5353 or www.hsxxx.org
"How to make 1125 Laurel Court home" Thursday 3/15 6-8pm



Reserve for COP mailing label



• VI. Marketing Strategy

- a) Beginning in the early outreach period and through the **lease up** of BMR units, the Developer is required to work with a Housing Counseling Agency to assist with counseling. The Developer must identify a Housing Counseling Agency in the list below. Please note the top two Housing Counseling Agencies listed have an ongoing relationship with the current population of Certificate of Preference holders:

San Francisco Housing Development Corporation (SFHDC)
Contact: Sheri Powers (415) 822-1022

Bayview Senior Services (BVSS)
Contact: Cathy Davis (415) 647-5353

SF LGBT Community Center (415) 865-5555
Veteran's Equity Center (415) 255-2347
Mission Economic Development Agency (415) 282-3334
Consumer Credit Counseling of San Francisco (800) 777-7526
Asian, Inc. (415) 928-5910

The scope of work should include the services below:

Rental Scope of Work:

To provide comprehensive outreach and marketing services integrating with education, individualized support, group workshops, and peer-support counseling to ensure COP holders have the opportunity to be prospective residents in your development..

List of services include:

- Outreach and affirmative marketing with an emphasis on Certificate of Preference holders
- Housing placement
- Budgeting and Asset Building
- Credit counseling which should address any credit issues
- Housing education
- One on one follow ups
- Tenant counseling
- Financial education including credit building techniques
- Rental application assistance and preparation
- Eviction prevention
- Workshops for application process, income eligibility, down payment requirements, credit checks, etc.
- Workshop for COP holders
- Housing rights
- Fair housing rights
- Landlord/ tenant relations and issues

Please provide any additional scope or recommendations you may have to help COP holders to be prospective residents in your development.

- b) Beginning in the early outreach period and through the **sale** of BMR units, the Developer is required to work with a Housing Counseling Agency to assist with counseling. The Developer must identify a MOHCD-approved Housing Counseling Agency in the list below. Please contact HomeownershipSF Shannon Way at (415) 202-5464 for assistance. Please note the top Housing Counseling Agency listed has an ongoing relationship with the current population of Certificate of Preference holders:

San Francisco Housing Development Corporation (SFHDC)
Contact: Sheri Powers (415) 822-1022

Bayview Hunters Point Multipurpose Senior Services, Inc. (415) 822-1444
SF LGBT Community Center (415) 865-5555
Mission Economic Development Agency (415) 282-3334
Balance (800) 777-7526
Asian, Inc. (415) 928-5910

Please also refer to www.homeownershipsf.org for more information about HomeownershipSF Housing Counseling Agencies.

Ownership Scope of Work:

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

List of services include:

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

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

Outreach Materials (i.e. post cards)

I/We understand that our project must provide a post card **as a part of this submission** for the AFFORDABLE units available that includes the following information. (Please refer to sample template in section V. Renter / Buyer Outreach)

- Certificate of Preference and Displaced Tenant Housing Preference indication (if applicable)
- Exterior and interior photo of the development
- Information on workshops
- Fair Housing logo
- Equal Opportunity logo

Please attach the Memorandum of Understanding you have negotiated with the Housing Counseling Agency.

Outreach to Certificate of Preference Holders

- I/We understand that we are responsible for marketing our Affordable Rental or Homeownership units to Certificate of Preference holders. Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. For more information, applicants may contact 415-701-5526.

I/We understand that I/we shall provide post cards for the mailing of an affordable housing announcement to all Certificate of Preference holders. We are responsible for printing the post cards, once approved by the COP Outreach Coordinator. OCII and/or its agent shall coordinate

the mailing and invoice the developer for the full cost of the first class mailing, including postage and labels.

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

I have read the City and County of San Francisco's Operational Rules for San Francisco Housing Lotteries and Rental Lease-up Activities (Exhibit S) and understand the application, selection, preparation and review and Lottery process.

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

Timeline of Entire Process (add info as needed)

TASK	TIME FRAME	DATE
OCII provides developer with: • Early Outreach Plan and Marketing Plan (which includes Tenant Selection Criteria) ("Plans") template • Fair Chance Ordinance link on HRC website • Operational Rules for Lotteries & Lease Up (another exhibit of the DDA or Loan Agreement or other relevant document) • Link to list of rental readiness service providers who can assist potential applicants or Homeownership SF if for-sale project	Developer will have template prior to or by construction commencement. Developer must submit <i>draft</i> Early Outreach and Marketing Plans 30 days after construction commencement.	
Developer provides OCII and/or its agent (MOHCD) with the Early Outreach Plan	At least 1 month after construction commencement	
OCII and/or its agent reviews Outreach Plan for accurate project information, partnering with a community outreach organization, and consistency with template.	OCII will provide approval no later than 10 business days after final draft is received.	
OCII and/or its agent reviews and approves Outreach Plan	Approval is provided within 5 business days.	
Early Outreach begins: • OCII and/or its agent monitors developer's progress on Early Outreach timeline and activities		
Developer provides OCII and/or its agent with Early Outreach marketing materials and OCII and/or its agent does 1 st of 3 COP mailings • Notice of Workshop dates to come, • encouragement to contact housing counseling agency • help with credit repair • asset building • maintaining financial documentation etc.	3 months after construction commencement or 18 to 12-months prior to the anticipated Temporary Certificate of Occupancy ("TCO").	
Developer submits refined draft Marketing Plan. Upon receipt of draft Marketing Plan, OCII notifies its agent, if any, that the tenant selection and marketing plans are forthcoming. (If no agent represents OCII proceed to next task below.)	12-months prior to the anticipated Temporary Certificate of Occupancy ("TCO").	

OCII reviews Plan for consistency with development agreements (loan agreements, VDDAs, DDAs, OPA/DDAs), including appropriate rent ranges, AMIs and occupancy preferences, engages with developer if any discrepancies, and confirms with its agent, if any, first draft of plan is consistent with applicable agreement, and sends to its agent, if any.	Within 30 days of receipt of plan (no later than 45 days after receipt of draft plan) OCII sends to plan to MOHCD	
OCII and/or its agent meet with leasing agent and Access to Housing Partner to go over all marketing, lease-up & lottery processes	After draft Marketing Plan (with the Tenant Selection Criteria) are approved and before marketing plan is finalized and approved	
OCII and/or its agent approves revised draft Plans & transmits Marketing Plan approval to developer	Within 60 days after the receipt of the Marketing Plan	
Developer provides OCII and/or its agent with marketing materials and OCII and/or its agent does 2 nd of 3 COP mailings • Notice of project specific Workshop dates • Get prepared, free workshops to help with qualification • Unit specific, # of units etc.	5-8 months before TCO	
OCII and/or its agent requests any/all Plan updates from developer with finalized dates and actual pricing	7 months before lease up/sales	
Developer submits final plan and COP postcard to OCII and/or its agent • OCII and/or its agent does 3rd of 3 COP mailings • Notice of open Marketing period • Unit specific, rent, # of units etc. • Information sessions • Open house dates • lottery	30-day period, 6 months sales	
For projects where lease-up begin between Jan-May: If a new AMI has been published since the first draft of the Marketing Plan was created, then OCII will determine if the new AMI & Rent limits should be used in the final version of the marketing Plan. Alert OCII and/or its agent if the AMI numbers are revised.	Same 30-day period as above	
Developer sends advertisements to OCII and/or its agent for review and approval	Same 30-day period as above	
OCII and/or its agent considers final Marketing Plan with advertisements for approval • Final postcard to be delivered week prior to open marketing period.	Same 30-day period as above	
Marketing Period begins. OCII and/or its agent does COP mailing and posts to website, housing alert system; Front Desk	90 days before sales	
Marketing period	28 days (rent) / 45 days (homeownership)	
OCII and/or its agent confirms DTHP & COP	Prior to applicant interviews	

OCII attends a specialized rental readiness workshop session for COP holders)	When scheduled	
OCII fields consumer complaints and works with leasing agent to address pre-lottery issues	As needed	
Lottery –OCII and/or its agent assists developer	Three weeks after marketing period ends	
Developer follows MOHCD’s post-lottery instructions which includes but are not limited to, reaching out to applicants in lottery rank order.		
Lease-up / Sales begin The appeals process needs to be included on the application, next to the signature line and in every denial letter sent to applicants		
If applicant files an appeal: - Developer tracks the appeal on weekly lease-up/sales list - Developer hears the appeal - Before 2nd denial is sent OCII and/or its agent needs to review file		
OCII and/or its agent reviews all denials and confirms Developer is correct in calculations and following marketing procedures		
OCII’s agent, if any, alerts OCII to problems/concerns with lease-up. (If no agent represents OCII proceed to next step below.)		
OCII addresses lease-up / sales issues with Developer		
OCII addresses lease-up / sales issues with consumers and hears denial appeals after initial review by OCII and/or its agent		
Developer provides OCII and/or its agent with a clean copy of the Final Waitlist		

VIII. Document Review

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

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

EXHIBIT T-2

Marketing Plan Template and Tenant Selection Plan Template City and County of San Francisco Mayor's Office of Housing and Community Development (MOHCD)

Marketing and Tenant Selection Plan for Initial Rental Units

This marketing and tenant selection plan is subject to City review within 15 business days from the date it is received and complete. **Please set all advertising dates in this plan so that no date commences sooner than 45 calendar days from the date of your plan submission.**

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

I. General Information

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

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

Today's Date	
Proposed Marketing Launch Date (Must be no sooner than 45 days from the date of first marketing plan submission)	
Name of Building	
Property Address (Street address used for marketing and mailing to new renters)	

Property Address as Stated in Planning Approval	
Planning Motion Number	
Loan Agreement Name & Date	If multiple MOHCD/OCII loan agreements, list all agreement names and dates.
Name of City and Co. of SF Planner	

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

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

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

Date of Building Permit Issuance	
Expected Construction Completion Date	
Expected Issuance Date of Temporary Certificate of Occupancy	
Expected Issuance Date of Final Certificate of Occupancy	
Actual Issuance Date of Temporary Certificate of Occupancy	

Actual Issuance Date of Final Certificate of Occupancy	
Date on which you expect units can be occupied	

List all Sources of Government Financing for the Project (e.g. CDLAC, TCAC, HUD Loan, Infill Grant, etc.)	
If there is a source of government financing, how long and at what % Area Median Income must your units be restricted as rental units under this financing?	Please include: Funder name, % AMI restriction(s), Number of units at each income level, and Date when restrictions end

II. Overall Building Composition

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

III. Market Rate Units (if applicable)

Unit Type	Total #	Rent Range of Market Rate Units
SRO		
Studio		
Jr. 1 Bedroom		
1 Bedroom		
1+ Bedroom		
2 Bedroom		
2+ Bedroom		
3 Bedroom		
3+ Bedroom		
4 Bedroom		
Other		

IV. Affordable Units

Total # of affordable units in building	
Total # of manager/staff units (if applicable)	

•

Attach the excel template named "DAHLIA-Unit Table" containing detailed information about the units

V. Renter Qualifications

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

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

3) Applicant Eligibility Criteria

All applicants must qualify based upon:

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

4) Occupancy Preferences

Insert, project-specific preference chart, per the project's OCII Loan Documents and/or Ground Lease:

SAMPLE:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: c. Western Addition d. Hunters Point
3	Displaced Tenant Housing Preference (20% Set Aside)
4	Neighborhood Resident Housing Preference (40% Set Aside)
5	Live or Work in San Francisco Preference
6	All Others

For more information about the lottery process and housing preferences, please refer to the MOHCD Housing Preferences and Lottery Procedures Manual.

5) Local Operating Subsidy Program

If your project is receiving Local Operating Subsidy Program ("LOSP") funds from Department of Homelessness and Supportive Housing for designated LOSP units, then describe the total number of units and number of units receiving the LOSP subsidy along with the referral process for those units. Please insert the following language:

“Certificate of Preference Holders who meet eligibility for HSH’s LOSP units will have priority status over other LOSP applicants. Certificate holders will be required to apply for the LOSP units by going through the HSH designated Access Sites/Points for LOSP eligibility screening.”

6) Basis of Disqualification for Lottery Winners

Please list the reasons for which a household could be disqualified. Please note that you must abide by Article 49 of the San Francisco Police Code (Fair Chance Ordinance): <http://sf-hrc.org/fair-chance-ordinance>.

Please complete with each ground for disqualification. Be specific.

Ability to pay rent standard –

Credit Standard (credit may only be ran after income qualification)–

Rental History Standard –

Criminal History Standard –

Maximum Household Size Standard –

Other -

7) Mitigating Circumstances

Please describe your mitigating circumstances policy and procedures.

8) Reasonable Accommodations

Please include instructions on filing a Request for a Reasonable Accommodation; guidelines for considering and evaluating a Request for Reasonable Accommodation, and the appeal process.

9) Grievance Policy

Your Grievance Policy must be available to all applicants. Please review the sample language and list your Grievance Policy below:

SAMPLE GRIEVANCE POLICY:

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

("Developer's Name and/or Service Provider") and through an informal hearing described above. All requests for informal or formal meetings must be in writing, and must contain specific grounds for complaint. Hearing requests should be mailed to: (insert "Developer's Name and/or Service Provider" & contact info).

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

10) Appeal Process

Please describe your appeal process.

• **VI. Marketing Strategy**

• Advertising

We understand that our affordable units must be advertised over a period of at least three (3) weeks in five (5) local newspapers that outreach to minority and low and moderate-income communities in San Francisco. The marketing must occur during the first 2 weeks of the 28 day required marketing period. Ads must appear in the "housing," "real estate" and/or "community" sections of the publications. I understand that we must save copies of our ads and make them available to MOHCD at the culmination of our marketing period.

- We will post in the following five (5) local venues throughout a 3-week period at least one time each week:

Newspaper or publication	Exact Advertisements Dates
<i>Suggestion: Bayview or Sun Reporter (African American audience)</i>	
<i>Suggestion: El Tecalote (Spanish speaking audience)</i>	
<i>Suggestion: Philippine News or Asian Journal (Filipino audience)</i>	
<i>Suggestion: Asian Weekly or Singtao Daily (Chinese audience)</i>	
<i>Suggestion: Bay Area Reporter or SF Bay Times</i>	
<i>Suggestion for Other: Choose a paper that is local to the building</i>	

- We will announce the affordable housing opportunity in at least 5 of the following non-print electronic media outlets throughout the marketing period.

Social Media and Online Publications	Exact Advertisement Dates
<i>Suggestion: Facebook, Twitter, Nextdoor, etc.</i>	
<i>Suggestion: SF Gate</i>	
<i>Suggestion: agency website</i>	
<i>Suggestion: Craig's List</i>	
<i>Other:</i>	

- **Optional** - We will post in one of the following City-wide Paper for at least 1 weekend on a Saturday or Sunday:

Newspaper or publication	Exact Advertisements Dates
<i>Suggestion: SF Examiner</i>	
<i>Suggestion: SF Chronicle</i>	

All newspaper ads and postings will state income maximums by household size; renter qualifications; project team contact information as the primary contact information; and identify MOHCD as the monitor of the affordable rental program. Ads may refer applicants to the MOHCD website at www.sfmohcd.org but will not list MOHCD telephone numbers or email addresses. A copy of the wording to be used in all advertising will be sent to MOHCD for initial review and copies of all placed ads will be sent to MOHCD upon the completion of the marketing period. All postings will display an "Equal Housing Opportunity" symbol on all marketing materials, advertisements and notices at the rental office:



SAMPLE AD LANGUAGE:

2 one-bedroom Affordable Rental Units available at 333 Birch Street. Rents range from \$800-950 per month. Households must earn no more than the maximum income levels below:

55% of Median Income

One person - \$45, 600; 2 persons - \$52,100; 3 persons - \$58,600; 4 persons - \$65,100 etc.

Application information found on the SF Housing Portal - DAHLIA at housing.sfgov.org
Applications due by 5pm on DATE. Please contact the Green Company for building information at (415) xxx-xxxx or 333birchaffordable@green.com.

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



We will use the following ad language when advertising the affordable rental units:

Building Signage

I will prominently display MOHCD prescribed and approved signage on the construction site of this project. The signage/banner should be no smaller than 5' by 5' and state Affordable Rental

Units Available Soon and include a web address and/or telephone number for interested applicants to learn more.

We will use the following building signage language when advertising the affordable rental units:

MOHCD will provide template

Website

I will create a website for the affordable units or create a link for the units on our existing website at _____.

Board of Supervisors

- I will announce the affordable housing opportunity at least twice to the Board of Supervisors District Office where the project is located by providing a copy of the flyer I will be available to discuss any possible issues related to this project with the District Supervisor, district residents, and the public at large.

Board of Supervisor's Name	Notification Dates, Name of Staff Member Responsible for the Communication and How the Communication Will be Made

Outreach Materials

We understand that our project must provide (1) a flyer and (2) a COP postcard **as a part of this submission** for the affordable rental units available that includes the following information. (Please see sample COP postcard and flyer at the end of this document).

- Reference to the MOHCD Affordable Rental Program
- Reference to the non-profit developer/project sponsor
- All applicable lottery preferences (must appear on flyer only, not COP postcard)
- Maximum and minimum income qualifications
- Rent levels
- Description of units
- Exterior and interior (if available) photo of the development
- Information Session date, time and location
- Information on how to obtain an application
- Open house dates and times (if applicable)
- Lottery date, time and location
- Fair housing logo
- Equal Opportunity Logo
- Your website

Outreach to Certificate of Preference Holders

- We understand that we are responsible for marketing our BMR units to Certificate of Preference (COP) holders. Certificate of Preference holders are primarily households

displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. For more information, applicants may contact 415-701-5613.

We understand that we shall provide **5 x7** postcards for the mailing of an affordable housing announcement to all Certificate of Preference holders. MOHCD shall coordinate the printing, mailing and invoice us for the full cost of the printing, first class mailing, including postage and labels.

-

Outreach to Organizations Who Serve People with Disabilities

We will include organizations that serve people with disabilities on our Marketing Outreach List to market our accessible units.

-

- Strategy for Marketing to Residents of the Immediate Neighborhood

We understand we must present a strategy for reaching out to the local community surrounding the building. Suggestions include posting flyers in local community meeting places, posting the units in local papers, and reaching out to local community groups. This strategy is above and beyond your ad placements in local or citywide newspapers. At a minimum, list 10 local venues in which you will post your flyer or otherwise distribute your flyer.

- *Your Strategy for Marketing to Residents of the Immediate Neighborhood Here:*

-

-

- Strategy for Language Access

I/We understand we must be able to provide assistance to applicants who may not speak English. More information about the Language Access Ordinance can be found here: <http://sfgov.org/oceia/language-access-services>. Please list the languages spoken by your staff. Describe how language assistance in Cantonese, Filipino and Spanish will be provided and include your strategy for reviewing applications submitted in these languages (i.e., translation service used, in house assistance available, etc.).

Throughout the marketing period, you must have copies of the SF Housing Resource Guide available in all four languages for applicants who require additional assistance or referrals to housing counseling. The SF Housing Resource Guide is available on our website here: <http://sfmohcd.org/san-francisco-housing-resource-guide>

Furthermore, assistance in these languages must be provided at the lottery. Please indicate whether you have the capacity to provide this service.

- *Your Strategy for Providing Language Access:*

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

Please complete the following timeline as part of your Marketing Plan.

Timeline of Entire Process

Task Name	Date
Submittal of Marketing Plan to MOHCD	
Marketing period (28 days)	
Copy of Advertisements to required newspapers	<i>One week before marketing start period</i>
Informational Workshop	<i>One week after marketing start date</i>
Additional Community Outreach	<i>Marketing start date</i>
Application Deadline	<i>28 days from marketing start date</i>
Paper applications entered in Salesforce	<i>One week after marketing deadline</i>
Flags reviewed in Salesforce	<i>One week after marketing deadline</i>
Email removed applicants	<i>Two weeks after marketing deadline</i>
Lottery	<i>Three weeks after marketing deadline</i>
Application Review / Approval Process- start date	<i>One week after lottery</i>
Lease-up process / timeline	
Initial approvals	
First Occupancy	
Project Closing- projected date	

VII. Review of Program Documents

We certify that we and all agents involved in the process of renting affordable units have read and reviewed the following documents:

- MOHCD Housing Preferences and Lottery Procedures Manual
<https://sfmohcd.org/lottery-preference-programs>
- Rental program application housing.sfgov.org
- City and County of San Francisco Fair Chance Ordinance (FCO)
<https://sfgov.org/olse/fair-chance-ordinance-fco>

I have included the following documents with my request: (Please check)

- ☐ Multifamily Marketing Plan – DAHLIA - Unit Table (Excel Document)
- ☐ Marketing Flyer
- ☐ COP Postcard

- ___ Marketing Outreach list
- ___ A copy of Building's Lease Agreement, including any and all addendums
- ___ A copy of Building's Acceptance Letter
- ___ A copy of Building's Denial Letter
- ___ A copy of Building's Landlord Verification
- ___ A copy of Resident Selection Criteria
- ___ A copy of Building's Post-Lottery Rental Application
- ___ A copy of the Tenant Income Certification Worksheet (Excel Document)

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

-
-
-

- **DAHLIA Web Posting**

We understand that Affordable units must be posted on SF Housing Portal – DAHLIA for at least 28 calendar days prior to the application deadline. The following template will be posted on DAHLIA during the marketing period.

Please complete this template thoroughly. Please remove red sections and italicized descriptions once complete.

Posting Date	Must be at least 45 days from the date of the submission of this marketing plan to MOHCD.
Type of Unit(s)	For example: Senior Housing
Building Name	<i>If different than development name</i>
Project ID	<i>MOHCD will add</i>
Photo URL	<i>URL of a high-resolution photo of the outside of your building</i>
Year Built	
Website	
Neighborhood	
Waitlist	<i>Final Waitlist Size</i>
Application Contact Person and Address	
Phone Office Hours	
Email	

Application deadline	Set the application deadline 21 calendar days from the posting date. _____, 5pm Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline. Postmarks will not be accepted. Applications received after the deadline will not be accepted.
Open House Dates (if applicable)	Date: Time: Date: Time: Date: Time:
Information Session	<i>Project Sponsor will present floor plans, timeline for the project, amenities of the building and neighborhood and any specific eligibility requirements.</i> Date: Time (beginning no earlier than 5pm): Location:
Lottery	Date: Time: Location:
Building Accessibility	<i>Accessibility features in common areas like lobby – wheelchair ramps, wheelchair accessible bathrooms and elevators. Please indicate what specific ADA accessible features the units have or can be modified to have.</i>
Building Amenities	<i>Example: Laundry room, parking, gym, etc.</i>
Parking	<i>How many spaces available for renters. Limit one parking space per household. Parking is offered to households in lottery rank order.</i>
Application Fee	<i>Application fees are only to be collected post-lottery once a household is contacted by your building.</i>
Other fees & utilities paid by the renter (Costs Not Included)	<i>Please list any fees for renter's insurance, utilities paid by the renter etc. here.</i>
Credit History Eligibility Rule	
Rental History Eligibility Rule	
Smoking Policy	
Pet Policy	<i>Please include any fees for pet rent, pet deposit, etc. Please specify that service and companion animals are welcome and pet fees do not apply.</i>

Utility Allowance	Utility	Studio	1 Bedroom	2 Bedroom
	<i>Add Utility</i>			
	<i>Add Utility</i>			
	TOTAL ALLOWANCE			
Special Notes				

COP Postcard Template

(Postcards must be at 5x7 and have a matte finish on Side Two)

Side One:

Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
----------------	----------------

VENMOA, 333 Garfield Street, San Francisco, CA 94103

5 studio rental units available at \$991 per month

20 one-bedroom rental units available at \$1,133 per month

15 two-bedroom rental units available at \$1,264 per month

Households must have a minimum monthly income of two times the rent.

Households' income must fall within the maximum range below:

Household Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons
Maximum monthly income	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12



Please contact 415-701-5626 for more information about the COP program.

Side Two: (Please Make Room For Address Label and Postage)

Applications must be received by 5PM on Thursday, January 12, 2018

Apply online to ensure your application is received on time at <http://housing.sfgov.org> or mail a self-addressed stamped envelope to: VENMOA BMR, P.O. Box 420847, San Francisco, CA 94142. Postmarks are not considered.

For assistance with your application contact:
<http://housing.sfgov.org/housing-counselors>

For more information contact VENMOA leasing:
(415) 555-1212 or bmr@venmoa.com

Information Session

12/20 at 3PM at:
SF Main Public Library – Latino-Hispanic Room
100 Larkin Street, San Francisco, CA 94102

Open House Dates

12/19, 5-7PM; 12/29, 12-2PM; 12, 5-7PM
333 Garfield Street, San Francisco, CA 94103

Lottery (attendance is optional)

2/2 at 3PM at:
SF Main Public Library – Koret Auditorium
100 Larkin Street, San Francisco, CA 94102

Return Address:

Mayor's Office of Housing and
Community Development

Reserved for

SPACE RESERVED FOR USPS

Flyer Template

Front Page:

Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
----------------	----------------

VENMOA, 333 Garfield Street, San Francisco, CA 94103

5 studio rental units available at \$991 per month

20 one-bedroom rental units available at \$1,133 per month

15 two-bedroom rental units available at \$1,264 per month

- New Units with Modern Design + Amenities
- Households must have a minimum monthly income of two times the rent
- Households must earn no more than the monthly income levels listed below:

Household Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons
Maximum monthly income	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12

Applications must be received by 5PM on Thursday, January 12, 2018. Postmarks will not be considered. *Apply online to ensure your application is received on time.*

Applications must either be submitted online at <http://housing.sfgov.org> or mailed in with a self-addressed stamped envelope to: VENMOA BMR, P.O. Box 420847, San Francisco, CA 94142

Applications versions can be downloaded from <http://housing.sfgov.org> or picked up from one of the housing counseling agencies listed at <http://housing.sfgov.org/housing-counselors>

Information Session

12/20 at 3PM at:

SF Main Public Library – Latino-Hispanic Room
100 Larkin Street, San Francisco, CA 94102

Open House Dates

12/19, 5-7PM; 12/29, 12-2PM; 12, 5-7PM
333 Garfield Street, San Francisco, CA 94103

Lottery (attendance is optional)

2/2 at 3PM at:
SF Main Public Library – Koret Auditorium
100 Larkin Street, San Francisco, CA 94102

For more information contact VENMOA leasing at (415) 555-1212 or bmr@venmoa.com

All applicants are encouraged to apply. Please see the project posting at <http://housing.sfgov.org> for applicable lottery preferences. Units are monitored through the San Francisco Mayor's Office of Housing and Community Development and are subject to monitoring and other restrictions.

